

## Dialup Access Terms & Conditions

### Definitions

**Access Period** means:

1. For plans which have monthly fees, a renewable period of 1 month;
2. For plans which are "block hour accounts" (as specified in the Internet Connection Prices): a renewable period of the maximum life of the hours specified in the Membership Form or, if the Customer uses the hours before the expiration of that period, the actual time it takes for the Customer to use the hours.

**Account** means a Logon ID and Password allowing Users to access the Service.

**Alias** is an additional email address that forwards through to a main account. Ideal for small businesses or families.

**Download** includes any data transferred from FunnelWeb Internet's modems to a User's modem. This includes, but is not exclusive to, WWW browsing, FTP downloads, retrieval of e-mail, Newsgroups and Internet Relay Chat. Data transferred from a User's modem to FunnelWeb Internet's modems is not considered download.

**FunnelWeb Internet** means Funnel Web Internet Service Provider.

**Information** includes, but is not limited to, digital data accessible through an Account, irrespective of the form in which it is finally presented to or recreated by the user.

**Service** means the provision of Internet access to the User.

**Upload** means to copy a file from a local computer connected to the Internet to a remote computer.

**User** means the person or group, which contracts with FunnelWeb Internet pursuant to this agreement for the Service.

### Agreement

In this agreement unless a contrary intention appears words importing the singular include the plural and vice versa. Headings are for ease of reference only and do not affect the interpretation of this agreement.

### Internet access

The conditions under which FunnelWeb Internet gains access to the Internet and the scope of services available on the Internet may change from time to time and FunnelWeb Internet reserves the right to pass on any such changes to the User.

### Usage Rules

Users must comply with the following Usage Rules:

1. The Service must not be used for any purpose or activity which is illegal or fraudulent in nature or otherwise in breach of any law, or of any rule, condition or guideline relating to the use of the Internet and the networks which make up the Internet.
2. Without limiting the generality of these rules, Users must not use the Service to perform any activity, which is:
  - a) prohibited under the Telecommunications Act 1989, or,
  - b) constitutes a breach of intellectual property.
3. Users may not use the Service to deal with material deemed to be unacceptable.
4. Users must not use the Service in any other way, which in the opinion of FunnelWeb Internet is an abuse or misuse of the Service of Account

These rules are subject to change from time to time at the sole discretion of FunnelWeb Internet.

### Account

The User will be provided with an account having a Logon ID and Password. The Account is solely for the User's access. Users will at all times be responsible for any use, which is made of their Account.

The User will not bypass or attempt to bypass any restrictions associated with the Account or any other Account.

The Logon ID and Password must not be disclosed to any other person.

FunnelWeb Internet suggests that the Passwords not be written down, stored on or near any computer used to access the Account or in any communications or other program used to access the Account.

If it is suspected at any time that unauthorised access or use of a User's Account is occurring, FunnelWeb Internet must be informed immediately so that appropriate action may be taken.

Any user who joins during a calendar month will have their allocated monthly hours or MBs pro-rated to the end of the month. Users are required to pay for a full month upfront.

Block hour users are not entitled to put their plans on suspension. The minimum connection time recognised is 1 minute. For example, if you are connected for 40 seconds you will be debited 1 minute. Any unused hours will not be carried over on renewal or expiry of the term.

### Access Period

1. The Service shall be provided by FunnelWeb Internet to the User from the Commencement Date for the Access Period.
2. This agreement may be renewed for subsequent periods, subject to approval by FunnelWeb Internet.
3. Renewal of this agreement for a subsequent period may involve an adjustment to the Charges at the discretion of FunnelWeb Internet.

### Payment

The User agrees to pay all amounts outstanding on the Account by the date specified on the monthly statements. Payments calculated are for a month's access in advance and excess usage for the past month in arrears. If all amounts outstanding are not paid in full by this date, FunnelWeb Internet may suspend dial-in services on the Account until payment is received. FunnelWeb Internet will continue to offer all other services on suspended accounts including collection of mail and personal web site hosting. The User agrees to pay any charges incurred by FunnelWeb Internet as a result of outstanding amounts on Accounts including, but not limited to, dishonoured cheque fees and bank charges.

### Down-time

FunnelWeb Internet will endeavour to maintain a continuous and uninterrupted connection with the Internet. However, the parties acknowledge that access to the Service may be limited or not possible due to system failure beyond the control of FunnelWeb Internet or for reasons of system maintenance.

FunnelWeb Internet will endeavour to perform any system maintenance, which may affect the Service at times of anticipated minimum system usage. Without assuming any liability for not doing so, FunnelWeb Internet will attempt to give notice of the time and duration of such maintenance.

#### **Available Space**

The Available Space provided by FunnelWeb Internet should not be used to store valuable or otherwise important information of the User. Users should keep copies of any information stored in the Available Space. While FunnelWeb Internet guarantees the availability of the amount of Available Space paid for by the user, FunnelWeb Internet cannot guarantee and makes no warranty, representation or promise as to the security or integrity of any information stored in the Account File Space.

#### **Records**

FunnelWeb Internet may maintain such records as it requires to determine appropriate usage charges and compliance with the Usage Rules.

#### **Disclaimer**

This section is subject to the section headed Trade Practices Act/Consumer Protection below. FunnelWeb Internet makes no warranty, representation or promise not expressly set out in this agreement. FunnelWeb Internet disclaims and excludes any and all implied warranties of merchantability, title and fitness for a particular purpose. FunnelWeb Internet does not warrant that the Service or Account will satisfy the User's requirements or that the Service or Account is free from defect or error or that the operation of the Service of Account will be uninterrupted. FunnelWeb Internet is not responsible for the content and range of Information accessible on the Internet through the Service or Account. FunnelWeb Internet does not censor, edit, manipulate or otherwise modify any such Information. FunnelWeb Internet makes no warranty, representation or promise that such Information is accessible, true, error or virus free, merchantable or fit for any purpose. FunnelWeb Internet will not be responsible for any loss of profits, loss of business, loss of Information, interruption of business or any other direct, indirect, incidental, special or consequential loss or damage suffered by the User or any third party as a result of the use of the Service or Account or arising under or outside of this agreement. FunnelWeb Internet's aggregate liability arising from or relating to this agreement, the Service or the Account is limited to the payments made by the User for the current month or to the re-supply of the Services at the option of FunnelWeb Internet.

#### **Trade Practices Act/Consumer Protection**

The above section headed Disclaimer is subject to any rights the User may have under the Trade Practices Act 1974 or any equivalent state of Territory legislation which cannot be excluded or restricted. To the extent to which any such rights may be restricted the FunnelWeb Internet's liability may be limited at the option of FunnelWeb Internet to supplying the Service again, or the payment of the cost of having the Service supplied again.

#### **Indemnity**

The User indemnifies FunnelWeb Internet from and against all actions, claims, suits, demands, damages, liabilities, losses, costs and expenses arising out of or in any way connected with the User's use of the Services and Account.

#### **Termination**

FunnelWeb Internet may immediately terminate this agreement by notice to the User if the User has breached any of the other terms of this agreement or FunnelWeb

Internet determines that the User's access to the Service has been in such a way as to breach the Usage Rules. Either party may by written notice terminate this agreement. Verbal terminations will not be accepted. The User will be sent a final statement on which to finalise their account. This account will include excess usage for the month terminated. We reserve the right to change or withdraw these Terms & Conditions at any time with 30 days prior notice.

#### **Miscellaneous Notices**

All notices to the User under this agreement may be delivered to the address given by the User in the application form, faxed to the facsimile number (if any) given by the User in the application form or by electronic mail to the Users Account.

All notices to FunnelWeb Internet may be delivered to:

FunnelWeb Internet, PO Box 125, Mitchell ACT 2911

Fax: 02 6242 6630

Email: info@fwi.net.au

A notice will take effect from the time it is received unless a later time is specified.

#### **Exercise of rights**

FunnelWeb Internet may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by FunnelWeb Internet does not prevent a further exercise of that or any other right, power or remedy. Failure by FunnelWeb Internet to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

#### **Waiver and Variation**

A provision of or a right created under this agreement may not be:

(a) waived except in writing signed by the party granting the waiver; or

(b) varied except in writing signed by the parties.

#### **Approvals and consents**

A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this agreement expressly provides otherwise.

#### **Remedies cumulative**

The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

#### **Survival of indemnities**

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement.

#### **Enforcement of Indemnities**

It is not necessary for FunnelWeb Internet to incur any expense or make payment before enforcing a right of indemnity conferred by this agreement.

#### **Governing Law**

This agreement and the transactions contemplated by this agreement are governed by the law in force in the Australian Capital Territory.

#### **Jurisdiction**

Each party irrevocably and unconditionally submits to the jurisdiction of the courts of the Australian Capital Territory and the courts of appeal from them for determining any dispute concerning this agreement or the transactions contemplated by this agreement.

