



Redcap Easy Web Hosting Standard Terms & Conditions

1. Your registration of a website hosting service account ("Account") with Redcap Internet trading as Redcap Hosting ("Redcap Hosting") and your access, connection and use of Redcap Hosting service ("Service") is subject to the following terms and conditions ("Standard Terms and Conditions"), Conditions of Service, Acceptable Use Policy and all applicable laws. By accessing and using the Service you represent that you have read, understood and accepted these Terms and agreed to be bound by them. If you do not agree to these Terms please do not use the Service or register an Account.
2. When you request Redcap Hosting to supply a service to you, which may be made using our standard application form, we decide whether to accept your application and to supply the Service to you based on:
 - 2.1. the particular terms of the Service;
 - 2.2. your eligibility for that Service;
 - 2.3. its availability to you;
 - 2.4. you meeting our credit requirements; and
 - 2.5. your prior conduct or history in respect to any previous supply by us or our resellers of any goods or service to you, including your compliance with the Specific Conditions and General Terms and Conditions relevant to the supply of that Service.
3. Redcap Hosting reserves the right to change charging, terms and conditions without notice, in order to cover any price increases by our service providers or other contractors. You agree to indemnify and hold Redcap Hosting, its parents, subsidiaries, affiliates, officers and employees, harmless from any claim, demand, or damage, including reasonable solicitors fees, asserted by any third party due to or arising out of your use of or conduct on the Service.
4. Redcap Hosting provides an electronic hosting service, including advice, information and links to content from third parties. Redcap Hosting does not control in any respect any information, products or services offered by these third parties. The materials available through Redcap Hosting and any third party are provided "as is" and "as available" and without warranties or conditions of any kind either expressed or implied.
5. To the fullest extent permitted by applicable law, Redcap Hosting expressly disclaims all warranties and conditions, express or implied, including, but not limited to, implied warranties and conditions of merchantability, merchantable quality, correspondence to description and fitness for a particular purpose.
6. Redcap Hosting does not represent or warrant that the Service will be uninterrupted or error-free, that defects will be corrected, or that any site or the server that makes it available, are free of viruses or other harmful components. Redcap Hosting does not warrant or represent that the use or the results from the use of the materials available through the Service or from third parties will be correct, accurate, timely, reliable or otherwise.
7. These Standard Terms and Conditions and Services Application, constitute the entire agreement between Redcap Hosting and You and supersede all prior representations, agreements, statements and understandings, whether verbal or in writing.
8. You are responsible for the use of Your Service. Redcap Hosting cannot and will not protect You against computer viruses and/or other possible security problems.
9. **Rights of Redcap Hosting**
 - 9.1. Under the Terms and Conditions Redcap Hosting may:
 - 9.1.1. delete any transitory data stored on Redcap Hosting servers for a duration exceeding 90 days;
 - 9.1.2. reject any email (including attachments), which exceeds 5MB (including encapsulation) and is sent to You via any of Redcap Hosting mail servers.
 - 9.1.3. where it is deemed necessary in order to comply with Redcap Hosting's legal obligations, Redcap Hosting may monitor data accessed or transmitted by You while using the Service;
 - 9.1.4. take any steps deemed necessary to comply with Redcap Hosting's legal obligations under the relevant State or Federal legislation, industry code of practice or under direction from a relevant regulatory authority or court order;
 - 9.1.5. increase the amount You are charged for Your Internet Service by providing You with 21 days notice;
 - 9.1.6. vary the conditions of the Service by providing without notification;
 - 9.1.7. remove a Service by providing You with 21 days notice;
 - 9.1.8. remove, block, terminate or disconnect any Account that breaks this agreement immediately without refund or remuneration.
10. **Force Majeure**
 - 10.1. Redcap Hosting is not liable for:
 - 10.1.1. any delay in installing any Service;
 - 10.1.2. any delay in correcting any fault in any Service;
 - 10.1.3. failure or incorrect operation of any Service; or

10.1.4. any other delay or default in performance under this Agreement, if it is caused by any event which is reasonably beyond our control, including but not limited to compliance with Redcap Hosting's Legal Obligations, war, accident, industrial action, embargo, delay or failure or default by any other supplier.

11. Unauthorised Commercial Use

11.1. The Service is provided to individuals only. Any unauthorised commercial use of the Service, in particular the resale of its services, is expressly prohibited. Access is granted on the basis that it be for the sole use of the applicant (the Applicant can be a business entity). Any other individual, organisation, or business may not use the account without prior agreement. Accounts are granted on a single user (entity) basis and are not transferable or refundable. Redcap Hosting reserves the right to grant a refund. Refunds will be calculated on the basis of pro-rata for the life of this agreement or at Redcap Hosting's discretion.

12. Maintenance of a Delivery System

12.1. You agree to provide and maintain the telephone line, modem, computer, hardware, software and all other equipment required to access Redcap Hosting. In accordance with the telecommunications act we agree to keep all information absolutely confidential and not disclose to any third party your details unless required to do so by law.

12.2. In order to provide the Service to You, we need information about your domain. Failure to give us such information will delay your successful access to email and website under this hosting agreement. In the event that you delay giving Redcap Hosting the necessary information you will hold Redcap Hosting free of any blame for any delays.

12.3. Reporting A Problem

12.3.1. Before reporting a fault to us, You must take reasonable steps to ensure that the problem is not a fault in any of Your Equipment or settings. We are not responsible for rectifying any fault in the Service where the problem arises in or is caused by another Supplier's Network or by Your equipment.

12.3.2. If You report a problem in the Service and ask us to register a fault to repair it, we will run through a checklist of common faults. By registering a problem You acknowledge that you have physically carried out the actions as outlined in this verbal checklist. If we determine that the Service is not faulty, the problem is associated with Your Equipment, or a fault was found because an item in the checklist was not carried out effectively, we may charge you an incorrect call-out fee of \$25 plus any contractor fees applicable.

13. Authorised Users

13.1. The applicant is solely responsible for all authorised users of the Account, whether such usage is a result of

deliberate and/or negligent action on the applicant's part. The applicant is over the age of eighteen (18) years and agrees to pay all fees and charges incurred through the use of the account. Redcap Hosting takes reasonable care to ensure the security of the system, we accept no responsibility for loss of any data.

13.2. Should You continue to make use of the Service beyond the expiration of the Service Period, Redcap Hosting shall be entitled to levy on a pro-rata basis any applicable Charges relating to Your continued use of the Service.

13.3. If you choose not to provide all or part of the Personal Information we request, we may not be able to provide you with the Services requested by you, or we may refuse to provide, or limit the provision to you of, any Service or personal or commercial credit requested by you.

13.4. By providing Personal Information to us and acquiring the Service, you acknowledge and consent to the collection, use and disclosure of your Personal Information in accordance with our privacy policy. A copy of our privacy policy is available on our website.

14. Billing

14.1. You must pay all Charges for the Service in accordance with your Account Agreement and these terms, which may be varied from time to time. The set-up fee is processed upon the Commencement Date and is non-refundable unless we are unable to provide the Service to you. All portions of Usage are charged for and unused services are not transferable or refundable. Redcap Hosting reserves the right to re-issue an invoice if any invoicing error is subsequently discovered. Your invoice will be calculated by reference to data recorded or logged by Redcap Hosting.

14.2. Records held by Redcap Hosting will be conclusive evidence of the Usage of the Service and the Charges payable by You.

14.3. Payment must be made in full by the manner prescribed for the Service. You may not make any allowance by way of set-off or withholding. The applicant agrees to maintain their account in good order and meet the payment conditions applicable to their account(s).

14.4. Where an account becomes in arrears Redcap Hosting will initiate actions to secure payment of delinquent accounts. A late fee will apply to accounts that are not paid by or on the renewal date. This fee is \$11.00 per default. If we are unable to secure a suitable payment, your service will be restricted without further notice.

14.5. Interest is payable on any amount due and payable which is outstanding under this agreement at an annual rate equal to 3% above the prime rate of interest on overdrafts charged by the Commonwealth Bank of Australia.

14.6. Debt recovery services will be used to recover any amount outstanding beyond this initial action plus an administration fee of \$125. Please note that you will be liable for any financial institution charges and collection fees including but not limited to solicitors costs, court and collection agent fees as appointed by Redcap Hosting.

- 14.7. If You supplied credit card details, You authorise Redcap Hosting to debit the credit card for all valid charges when they become due including Excess usage.
- 14.8. Your Service as specified in your account will continue automatically beyond your contract period and you will be billed annually. Should you not require this service after your contract period you must contact us and terminate your account in writing within 7 days notice.
- 14.9. Redcap Hosting may from time to time without notice suspend any Service or disconnect or deny You access to any Service:
 - 14.9.1. during any technical failure, modification or maintenance involved in the Service provided that Redcap Hosting will use reasonable endeavours to procure the resumption of the Services as reasonably practicable
 - 14.9.2. if You fail to comply with the Terms and Conditions (including failure to pay charges due) until the breach (if capable of remedy) is remedied; or
 - 14.9.3. if You do, or allows to be done, anything which in Redcap Hosting opinion may have the affect of jeopardising the operation of any Service.
 - 14.9.4. the ACCC issues us with a Competition Notice in respect to the Service or we anticipate that it may do so.
 - 14.9.5. you become bankrupt or Insolvent or appear likely to do so and we reasonably believe that it is unlikely that we will receive or retain amounts due and payable by you to us.
- 14.10. Notwithstanding any suspension of any Service under this clause You shall remain liable for all charges due throughout the period of suspension.
- 14.11. To terminate your account, you must provide written notice of this intent before your next billing cycle or 7 business days, whichever is greater and have completed your contract term. You will be responsible for all charges during this notice period. Any Service provided by Redcap Hosting cannot be pro-rated nor are refundable.
- 14.12. If you are permitted to upgrade or change an account, that upgrade or change will occur on the next billing cycle. An option does exist for an immediate upgrade (subject to technical feasibility).
- 14.13. Data is calculated one way, either weekly or monthly dependent on your account type. That is your data incoming and outgoing are treated as separate entities and we will calculate based on whichever is greater. Upon reaching your allocated amount you will be charge in accordance with your account. Webhosting is a ratio of uploads to downloads may apply to the account. In which case the account will be charged the associated cost after re-alignment to the agreed ratio. The agreed ratio is 1:4 (incoming:outgoing) unless otherwise specified.

15. Third Parties

- 15.1. Redcap Hosting is not liable for any call charges incurred by You dialing into our service. Nor any costs associated with dial up or broadband connections. These are the responsibility of the Account holder.

16. No Assignment

- 16.1. Redcap Hosting may on 30 days written notice to You, assign all its rights and obligations under this Agreement. You may not assign Your rights under this Agreement or otherwise transfer the benefit of this Agreement or a right or remedy under it, without the prior written consent of Redcap Hosting.

17. Notice

- 17.1. Any notice provided under this Agreement must be provided in writing. For the purposes of this clause, You agree that an email constitutes notice in writing and that an email will be deemed to have been received by You where Redcap Hosting sends an email to Your Redcap Hosting email address or nominated email address, and Redcap Hosting does not receive a delivery failure report for that email.

18. Technical

- 18.1. Redcap Hosting provides telephone support for registered account users between 9am-4pm Monday - Friday. Redcap Hosting has the right to not return calls to mobile phones.
- 18.2. Support is limited to non-implementation specific technical information relating to the use of the Services. Redcap Hosting is not responsible for, and will not provide support for, any fault caused by:
 - 18.3.1. Your equipment;
 - 18.3.2. the interaction of Software with other software packages used by You;
 - 18.3.3. the inability to gain wireless connectivity from Your wireless Access Point/Router to Your computer
 - 18.3.4. other services as provided by another carrier or third party other than Redcap Hosting.
- 18.3. Advice from Redcap Hosting's staff is given in good faith and with the best of intention, however Redcap Hosting does not represent that its staff are experts in the operation of Your computer hardware or software. You undertake to act on any advice given by any Redcap Hosting's staff member at Your own risk.
- 18.4. Redcap Hosting makes reasonable efforts to ensure that the information on the Redcap Hosting website is correct and up to date. However, Redcap Hosting does not warrant the accuracy of that material except in the case of these terms and conditions.

- 18.5. Redcap Hosting will immediately terminate any account that it believes, in its sole discretion, is transmitting or is otherwise connected with any spam or other unsolicited bulk email. In addition, because damages are often difficult to quantify, you agree to pay Redcap Hosting liquidated damages from or otherwise connected with your Account. This will be charged at the rate of \$5 for each piece of spam or unsolicited bulk email transmitted, or 39 cents per megabyte, or actual damages to Redcap Hosting, whichever is greater.
- 18.6. The server space is provided to you at Your risk. Redcap Hosting does not provide free support, additional features or guarantee its continuance for any period of time. Furthermore, Redcap Hosting does not warrant any data stored in this area.

19. Acceptable Use Provisions

- 19.1. Continuous transfer of data well in excess of your fair share for several days will be considered excessive use which is solely assessed by Redcap Hosting. If a user is found making excessive use of the Service the user will find the service restricted and if it continues will have the service suspended or cancelled. Furthermore, if you use devices or knowledge to exceed our account restrictions pertaining to your account, that data or service in excess of your allocated amount may be subject to cost recovery. The following violates Redcap Hosting's agreement:
- 19.1.1. Illegal use. Use of Redcap Hosting's Services to transmit any material (by email, uploading, posting, or otherwise) that, intentionally or unintentionally, violates any applicable local, state, national or international law, or any rules or regulations promulgated hereunder.
- 19.1.2. Fraudulent activity. Using the Services to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as "pyramid schemes," "Ponzi schemes," and "chain letters."
- 19.1.3. Forgery or Impersonation. Adding, removing or modifying identifying network header information in an effort to deceive or mislead is prohibited. Attempting to impersonate any person by using forged headers or other identifying information is prohibited. The use of anonymous remailers or nicknames does not constitute impersonation. Using deliberately misleading headers ("munging" headers) in news postings in order to avoid spam email address collectors is allowed.
- 19.1.4. Unauthorised Access. Using the Services to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Redcap Hosting's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data.

- 19.1.5. Copyright or Trademark Infringement. Using the Services to transmit any material (by email, uploading, posting, or otherwise) that infringes any copyright, trademark, patent, trade secret, or other proprietary rights of any third party, including, but not limited to, the Unauthorised copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the Unauthorised transmittal of copyrighted software.
- 19.1.6. Network Disruptions and Unfriendly Activity. Using the Services for any activity which adversely affects the ability of other people or systems to use Redcap Hosting's Services or the Internet. This includes "denial of service" (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited. It is the Users responsibility to ensure that their network is configured in a secure manner. A User may not, through action or inaction, allow others to use their network for illegal or inappropriate actions. A User may not permit their network, through action or inaction, to be configured in such a way that gives a third party the capability to use their network in an illegal or inappropriate manner.

- 19.2. Redcap Hosting reserves the right to act in an appropriate manner where there are grounds for believing that malicious or unacceptable use of the system or our network is occurring. Any member found to be using the system for either abusive or derogatory reasons may lose access to system, any uncollected Email and forfeit all prepaid Account.

20. Revision of the Terms and Conditions

- 20.1. Redcap Hosting reserves the right to revise, amend, or modify the revision of terms and conditions, our Internet Service Agreements and our other policies and agreements at any time and in any manner. Notice of any revision, amendment, or modification will be posted on the Internet at www.redcap.net.au/terms

21. Execution

- 21.1. The Terms and Conditions of Service are deemed to have been executed and agreed upon Your use of the Service.

August 2005