

# Terms of Service

Last updated: Apr 23, 2024

This Terms of Service (this "Agreement") is between **Infrared5, Inc.** also known as "**Red5**", ("**Infrared5**", "**we**", "**us**", or "**our**") and the party agreeing to this Agreement as provided herein ("**Client**", "**you**" or "**your**"). To be eligible for a Red5 Cloud account you must review and accept the terms of this Agreement by checking the box that states you have read and agree to these terms, when creating an account.

We reserve the right to make changes or updates to this Agreement from time to time by posting such updates to the Agreement on the [Red5 website](#). Your use of the Services after such change or update constitutes your agreement with such change or update. If you have questions about this Agreement, please email [support@red5.net](mailto:support@red5.net).

**1. By clicking "I ACCEPT,"** signing an order form referencing this Agreement, accessing or using the Services, or otherwise indicating your acceptance of this Agreement, you are agreeing to be bound by this Agreement. Each party expressly agrees that this Agreement is legally binding upon it.

**2. Description of Services:** Infrared5 Services ("Services") include providing infrastructure and tools for streaming live WebRTC-based audio and video content for you via an online platform and API, and all relevant technical and customer support.

### 3. Purpose, Restrictions, Additional Terms:

**3.1. Purpose; Restrictions:** All Services provided by Infrared5 may be used for lawful purposes only. Transmission or storage of any information, data or material in violation of any United States law, or the law of any other jurisdiction, is prohibited. This includes, but is not limited to: material that is unlawful, defamatory, libelous, threatening, harassing, hateful, sexually explicit, or racially or ethnically offensive, that impersonates another person, or that encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law or otherwise be inappropriate, material that is subject to protection under the copyright laws of the United States or any foreign country, protected by trade secret, or that is otherwise subject to third-party proprietary rights, including privacy and publicity rights, unless Client is the owner of such rights or has permission from their rightful owner to post the material and to grant Infrared5 all of the rights necessary for provision of the Services. Client warrants and represents that all material it provides to Infrared5 and all use of Service will accord with such rules, and agrees to indemnify, defend and hold harmless Infrared5 from any action or claim(s) resulting from or associated with Client's use of the Service, which damages Infrared5, or any other party(ies) in any way. Client further agrees to remove Client content if properly notified that it infringes on another's intellectual property rights pursuant to this Agreement. Infrared5 reserves the right to remove content without prior notice. Infrared5 also reserves the right to decide whether content is appropriate and complies with this Agreement. Infrared5 may remove such content and/or terminate Client's access for uploading such material in violation of this Agreement at any time, without prior notice and at Infrared5's sole discretion. In addition, Infrared5 Services may not be used to distribute, store or transmit any virus, Trojan horse, worm or any other content that may be harmful to the Infrared5 network, equipment or other users. Your use of the Services shall be in accordance with the [Acceptable Use Policy](#).

**3.2. Additional Terms:** Client's use of the Services is subject to all additional terms, policies, rules, or guidelines applicable to any or all of the Services or to certain features of the Services that Infrared5 may post on or link to from the Services (the "Additional Terms"). All Additional Terms, including without limitation, the [Data Processing Addendum](#), are incorporated by this reference into, and made a part of, this Agreement.

**4. Payment:** Infrared5's current fees for the Services are set forth on the website. All fees due under this Agreement are payable in United States dollars. Client shall pay Infrared5 for Services. Recurring Infrared5 Service charges will be charged to Client's on-file method of payment each pay period on the start-date of the Service paid plan. Infrared5 retains the right to adjust prices on any and all Services. Price changes will take effect 30 days after being posted on the website. Any non-recurring charges incurred by Client will also be charged to Client's on-file method of payment, unless otherwise agreed between Client and Infrared5. Infrared5 will charge non-recurring charges incurred by Client to the on-file method of payment during the billing period if they exceed the allowance specified on their plan. If valid payment for any recurring and/or non-recurring payment has not been received from Client within 5 days of the initial bill date, Infrared5 reserves the right to cancel Client's account. If Client's account has been terminated due to non-payment, and Client would like to reactivate the account, all monies that were due upon cancellation will then be due upon reactivation. Client can cancel their account at any time. However, Client must cancel their account at least 24 hours before the end of the current billing cycle to avoid billing in the next billing period.

**5. Upgrading or Downgrading Services:** Services may be upgraded or downgraded at any time via the Infrared5 account management interface. Pro-rated fees will be charged for any upgrade made before the end of Client's current billing cycle, and the new plan price will take effect immediately. All charges incurred prior to the next billing date will be billed at the current Service plan rates. If a downgrade of Services takes place, the new rates will take effect on the first day of Client's next billing cycle.

**6. Excessive Traffic:** Client understands that traffic exceeding their specified bandwidth limits are subject to an extra monthly fee per each gigabyte of bandwidth transfer and/or restrictions placed on their account by Infrared5, at the sole discretion of Infrared5. Rates for excessive bandwidth are posted on the [Red5 website](#) and correspond to the plan Client is subscribed to. Infrared5 may change these rates at any time in their sole discretion by posting the new rates on the [Red5 website](#). Client will be notified via email of any excessive bandwidth usage and the related fees incurred during the current calendar month. Infrared5 will charge these fees to Client's on-file method of payment, unless otherwise agreed between Client and Infrared5. Upon receiving notification of excessive usage, Client may upgrade the account to cover the additional usage and Infrared5 will reevaluate the excess fees, based on Client's new account settings. If Client fails to upgrade the account to cover the additional usage, then Client shall be charged the excess fees.

**7. Term and Termination of Service:** This Agreement shall begin the date Client submits the necessary information via the [Red5 website](#) to complete the sign up process and shall remain in full force and effect until Client's account is terminated, with the exception of Sections- 4, 6, 8, 14, 15, 16, 17, 18, 19, 20, 22

and 23 which will survive expiration of termination of this Agreement. Services will be suspended or terminated if: (a) 15 days after the payment due date for paid accounts, Client fails to pay any outstanding amount; (b) Client violates any term of this Agreement; (c) Client's traffic created from use of Services or Client's use of Services is fraudulent or negatively impacting the operating capability of Services. If Client's Services are suspended, Infrared5 will make a reasonable attempt to notify Client. Client's account contents may be deleted upon termination of Service and will require then-current upload charges to reinstate the material. Infrared5 reserves the right to terminate Client's use of the Services for any reason. A waiver of or failure to enforce this or any other provision by Infrared5 does not constitute a continuing waiver or a waiver of any other of Infrared5's rights at law or in equity.

**8. Termination of Service by Client:** Client shall have the right to terminate the Service at any time via the Infrared5 account management interface, unless the parties are subject to a written agreement which specifies otherwise. Prior to termination of the Service, Client is responsible for removing their materials from their allotted space on Infrared5's servers. Infrared5 will not be responsible for storage and preservation of Client's materials at any time. Infrared5 reserves the right to immediately collect up to the total amount of any charges associated with the account that have not been satisfactorily paid, by charging Client's payment method on file. Client's account shall be canceled immediately upon submitting the request to terminate through the Infrared5 account management interface. No refunds will be made for the current month of the billing cycle. All monies due, including but not limited to, excess bandwidth fees, application service, development, consulting and all other services offered by Infrared5, are due upon termination of Service.

## **9. Regulation of Certain Content, Copyright Policy:**

### **9.1. Regulation of Certain Content:**

Client accepts that it is the Client's responsibility to prescreen and editorially control the content of Client's website, if any, including but not limited to live and recorded audio and/or video content. Infrared5 reserves the right to request the removal of information in the live or recorded audio and/or video content brought to its attention which it deems detrimental to Infrared5 or any person. Client agrees not to include in its website(s), application(s), and in the live or recorded audio and/or video content any technology, information or material which violates or infringes any patent, trademark, copyright, trade secret or any other legal rights of any person, firm or corporation, or which a reasonable person would consider abusive, profane or offensive, which is defamatory or harassing, or which violates or encourages others to violate any applicable law. Client accepts that it is the Client's responsibility to maintain a copy of their content, even if the Client's content is stored on Infrared5's servers. Infrared5 is not responsible for maintaining copies of Client's content. Infrared5 reserves the right to refuse Service to anyone, in its sole discretion. Infrared5 may without liability, actively cooperate with and furnish identifying and supporting information to any person likely to be harmed by Client's violation of these provisions and to any law enforcement agency serving a warrant or subpoena on Infrared5. Infrared5 will be the sole arbiter as to what constitutes a violation of this provision. Client agrees to indemnify, defend and hold harmless Infrared5 from any claim(s) arising out of Client's violation of this Agreement.

### **9.2. Copyright Policy:**

If you are a copyright owner or an agent thereof and believe that any content on the Red5 website, Services or network infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Designated Copyright Agent with all of the following information in writing (see 17 U.S.C 512(c)(3) for further details):

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- (iii) A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

**Infrared5's Designated Copyright Agent to receive notifications of claimed copyright infringement is:**

**Copyright Agent**

**Infrared5, Inc.**

769 Centre Street, Jamaica Plain, MA 02130 USA

support@red5.net

**See also** <https://www.copyright.gov/onlinesp/list/index.html>.

No other notices or communications should be sent to the Designated Agent, who is appointed solely for the purpose of receiving notices of claims alleging copyright infringement under the DMCA. Also note, there are substantial penalties for false claims (see 17 U.S.C. § 512(f) – providing sanctions for material misrepresentations of copyright infringement).

For instructions on providing Infrared5 with a DMCA counter-notification, please see, for example, <https://www.lumendatabase.org/topics/29>. Upon receipt of a valid counter-notification, Infrared5 will forward it to the original complainant who submitted the DMCA notice alleging copyright infringement. The original complainant will then have ten (10) days to notify Infrared5 that it has filed a lawsuit relating to the allegedly infringing material, otherwise Infrared5 will restore the removed material or cease disabling access to it.

**9.3 Repeat Infringer Policy.** Per Section 512 of the DMCA, it is Infrared5's policy to terminate Client's or any user's access to the Infrared5 Services, if they are determined to be a repeat infringer in appropriate circumstances, without obligation to refund any fees. A repeat infringer is a Client or user who has been notified of infringing activity more than twice and/or has had content removed from the Infrared5 Services more than twice.

**10. Service Level Agreement:** Infrared5 Services will be available in accordance with the Service Level Agreement.

**11. Maintenance:** Client hereby acknowledges and agrees that Infrared5 reserves the right to temporarily suspend Services for the purposes of maintaining, repairing, or upgrading its systems and network. Infrared5 will use commercially reasonable efforts to notify Client of pending maintenance, however, Infrared5 is at no time under any obligation to inform Client of such maintenance.

## 12. Ownership:

**(a) General:** As between Client and Infrared5, Infrared5 exclusively owns and reserves all right, title and interest in and to the Infrared5 Service. As between Client and Infrared5, Client exclusively owns and reserves all right, title and interest in Client's content and applications.

**(b) Use of Marks:** Subject to this Agreement, each party ("Licensor") grants to the other party ("Licensee") the right to use and display Licensor's name and logo (the "Licensor Marks") on the Licensee's websites and in other promotional materials solely in connection with Licensee's of activities under this Agreement. Use of the Licensor Marks will be in accordance with the Licensor's applicable usage guidelines and will insure to the benefit of Licensor. Licensee will not use, register or take other action with respect to any of the Licensor Marks, except to the extent allowed in advance in writing by Licensor. In using the Licensor Marks under this subsection, Licensee will always use the then-current Licensor Marks and will not add to, delete from or modify any of Licensor Marks. Licensee will not, at any time, misrepresent the relationship between the parties, including, but not limited to presenting itself as an affiliate or other legal agent of the Licensor. The rights to use and display the Licensor Marks under this subsection will end automatically in the event this Agreement terminates.

**13. Network and System Security Violations:** Network and system security violations are prohibited by Infrared5 and Infrared5 reserves the right to pursue criminal and/or civil charges and/or work in conjunction with legal authorities in relation to any such violation. Examples of such violations are, but not limited to, the following: unauthorized access of network, data, servers, files, etc. that Client does not have permission to access. Any attempt to test, probe or scan the Infrared5 system or network, or use the Infrared5 network or system for the purposes of such tests, in order to ascertain vulnerability, or any attempt to breach security or authentication measures without authorization. Any attempt to interfere or disrupt the Infrared5 Service or network by using the following methods without limitation: flooding, mail-bombing, denial of service attacks, any other deliberate attempts to overload the system, or any usage or attempted usage of Services for which Client is not authorized to use.

## 14. Confidentiality and Trade Secrets:

**(a) Confidentiality:** Each party hereby acknowledges that it may be exposed to confidential and proprietary information belonging to the other party or relating to its affairs, including without limitation technical information and development techniques, business and financial information, visitor and/or customer lists and other information designated by a party as confidential or proprietary ("Confidential Information"). Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the party, or (iii) information received by a party from a third party who was free to disclose it. Each party agrees that during the term of this Agreement and at all times thereafter it shall not use, commercialize or disclose the other party's Confidential Information except in performing its obligations under this Agreement. Each party shall use the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall it use less than due diligence and care. Neither party shall alter or remove from any Confidential Information of the other party any proprietary, copyright, trademark or trade secret legend.

**(b) Trade Secrets:** Infrared5 represents that its hardware and software configurations are trade secrets. Client shall not access internal components of hardware; source codes or object codes of software or any other internal hardware or software configurations by either direct means or by means of any process of reverse engineering.

**15. Injunctive Relief:** The parties acknowledge that violation by one party of any or all of the provisions of Section 14, above, would cause irreparable harm to the other party not adequately compensable by monetary damages. In the event of an actual or threatened violation of the Section 14, the non-violating party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of Section 14.

**16. Warranties:** Infrared5 makes no warranties of any kind, whether expressed or implied, for the Service. Infrared5 also disclaims any warranty, express or implied, of merchantability, non-infringement or fitness for a particular purpose. Use of any information obtained via Infrared5 is at Client's own risk. Infrared5 specifically denies any responsibility for the accuracy or quality of information obtained through its Services.

## 17. Limitation of Liabilities:

INFRARED5 IS NOT LIABLE FOR ANY AMOUNT EXCEEDING THE PRICE PAID BY CLIENT FOR SERVICES HEREUNDER DURING THE ONE (1) MONTH PRECEDING THE EVENT GIVING RISE TO ANY CLAIM. TO THE EXTENT ALLOWED UNDER APPLICABLE LAW, IN NO EVENT SHALL INFRARED5 BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFIT, LOST DATA, BUSINESS INTERRUPTION OR ATTORNEY FEES) EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY.

**18. Force Majeure:** Infrared5 is excused from, and will not be liable for, any failure or delay in performance of responsibilities otherwise imposed by this Agreement including, but not limited to, any delay, outages or interruptions of the Services, for any cause beyond its reasonable control. Such causes shall include without limitation fires, floods, storms, earthquakes, civil disturbances, acts of God, acts of terrorism, disruption of telecommunications, transportation, utilities or necessary supplies, governmental action, computer viruses and incompatible or defective equipment, software or services not supplied by Infrared5, or other cause beyond its reasonable control (including, without limitation, any mechanical, electronic, communications or third-party supplier failure).

**19. Jurisdiction and Venue Clause:** The parties to this Agreement agree that any dispute which may arise with respect to this Agreement, without limitation, will be resolved pursuant to the law of the Commonwealth of Massachusetts without regard to its conflicts of laws rules. The forum for venue for the judicial or alternate dispute resolution of such dispute shall be proper only within Suffolk County, Commonwealth of Massachusetts. The parties hereto consent to the jurisdiction of the courts of the Suffolk County, Commonwealth of Massachusetts for purposes of enforcing the arbitration provision and proceedings and further consent that any process of notice of motion or other application to the court or the judge thereof may be served upon the parties by certified or registered mail, return receipt requested. The parties agree that the Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods will not apply to this Agreement.

**20. Arbitration Clause:** Client agrees to first attempt to resolve any dispute or claim arising against Infrared5 by emailing [support@red5.net](mailto:support@red5.net). If the parties cannot resolve any dispute that arises through means of customer support, both parties agree to resolve any dispute arising under this Agreement, the Privacy Policy, the Data Processing Addendum, the Acceptable Use Policy, or Service Level Agreement or in relation to Services by binding arbitration in

Suffolk County, Commonwealth of Massachusetts. This applies to all claims under any legal theory, and applies whether the Client's account is active or not. If the parties have a dispute about whether this agreement to arbitrate can be enforced or applies to any dispute, both parties agree the arbitrator will decide that as well. The arbitration will be governed by the then-current version of AAA's Commercial Arbitration Rules (the "Rules") and will be held with a single arbitrator appointed in accordance with the Rules. To the extent anything described in this Arbitration Section conflicts with the Rules, the language of this Arbitration Section applies. Each party will be entitled to a copy of non-privileged relevant documents in the possession or control of the other party and to take a reasonable number of depositions. All such discoveries will be in accordance with procedures approved by the arbitrator. This Arbitration Section does not alter in any way the statute of limitations that would apply to any claims or counterclaims asserted by either party. The arbitrator's award will be based on the evidence admitted and the substantive law of the Commonwealth of Massachusetts and the United States, as applicable, and will contain an award for each issue and counterclaim. The award will provide in writing the factual findings and legal reasoning for such award. The arbitrator will not be entitled to modify this Agreement. Except as provided in the Federal Arbitration Act, the arbitration award will be final and binding on the parties. Judgment may be entered in any court of competent jurisdiction.

**21. Export Regulations:** The transfer of technology across national boundaries is regulated by the US Government. Client agrees not to export or re-export (including by way of electronic transmission) any data or technology derived from its audio and/or video stream without first obtaining any required export product or governmental approval. Client shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by US regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the US Department of Commerce. This provision and the assurances made herein shall survive termination of this Agreement.

**22. Notices:** All notices given hereunder must be in writing and transmitted by E-mail, U.S. Mail, return receipt requested, or special courier service (Fed Ex, UPS, etc.). Notice information shall be sent to "Infrared5, P.O. Box 301776, Jamaica Plain, MA 02130 USA."

**23. Miscellaneous:** This is the entire Agreement between the parties. This Agreement supersedes all previous representations, understandings or agreements and shall prevail notwithstanding any variance with terms and conditions of any order submitted. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Headings are for reference purposes only and have no substantive effect. Each party is an independent contractor in relation to the other party with respect to all matters arising under this Agreement. Infrared5's failure to enforce at any time any provision of this Agreement does not waive Infrared5's rights to do so later. Use of Infrared5's Services constitutes acceptance of this Agreement. All other terms shall be negotiated in good faith.