



## FRONTSTREAM UNITED STATES ARTEZ TERMS AND CONDITIONS

**1. DEFINITIONS.** In this Agreement, words and expressions shall have the following meanings:

**"Agreement" or "FSA"** means the Services Agreement signed between the Parties including the terms and conditions set out herein (the "Terms and Conditions"), as may be amended from time to time.

**"Artez Platform"** means FrontStream's fundraising software and service that enable the Client, through access to a digital toolkit hosted by FrontStream, to manage events, campaigns, fundraising programs and digital interactions (online, mobile, social media and all other forms of digital engagement) with its constituents.

**"Business Hours"** means from 9:00 a.m. to 5:00 p.m. EST during a Business Day.

**"Client Super User"** means an employee or representative designated by Client who is or will be fully trained in how to use the Artez Platform and the Services, and who will communicate with FrontStream in the event that technical or other support is required by the Client.

**"Confidential Information"** means any and all information relating to or disclosed by the Parties in the course of this Agreement, which is or should be reasonably understood to be confidential or proprietary to the disclosing Party, including, but not limited to trade secrets, marketing data, personal information of Donors, products and business plans, and financial information including the Fees.

**"Donation"** means a sum donated by a Donor to the Client using the Artez Platform and Services.

**"Donor"** means a third party who makes a Donation to the Client.

**"Fees"** means the various fees due in exchange for use of the Artez Platform and the Services, in the amounts set out in the FSA.

**"Force Majeure Event"** means any event causing a delay or failure in performance under this Agreement where such event is not the result of negligence on the part of the delayed or nonperforming party; such events may include, but are not limited to, acts of God, strike or other labor disruption, civil, governmental or military action, inability to obtain delivery of parts and supplies, public health crisis or any other event beyond a party's reasonable control.

**"FrontStream Data Export Services"** means services where FrontStream facilitates the export of Client's Donor data in particular formats for use by Client on third party databases and systems (such as Salesforce.com and The Raiser's Edge).

**"Initial Term"** means a fixed number of years, as set out in the FSA, commencing on the Effective Date.

**"Intellectual Property"** includes all intellectual and industrial property rights, including without limitation, all copyrights, moral rights, trade-marks, trade names, business names, logos, trading styles, patents, innovations, discoveries, industrial designs, trade secrets and all registrations and all applications for registration thereof.

**"Mobile Application Store"** means an online store (such as iTunes or Google Play) that can be used to access and download a Mobile Fundraising Application.

**"Mobile Fundraising Application" or "MFA"** means a FrontStream mobile application, such as those applications made for use on Android devices or Apple devices like the iPhone, which enable Donations to the Client by connecting Donors to the Artez Platform over such devices.

**"Party"** means either FrontStream or the Client.

**"Parties"** means FrontStream and the Client, collectively.

**"PayPal Mobile Express Checkout Application" or "PayPal Express Checkout"** means software that enables Donations using the PayPal payment system on a mobile device.

**"Personal Information"** means information collected by FrontStream on behalf of the Client that can be linked to an identifiable individual.

**"Services"** means the method of connection and access to the Artez Platform, including one or more of the MFAs and PayPal Express Checkout, as well as any other new method of connection to the Artez Platform that may be offered to the Client by FrontStream in the future.

**"Term"** means the Initial Term beginning on the Effective Date and any renewal terms that may apply.

## 2. SERVICES

FrontStream will provide, and Client may purchase access to the Artez Platform and use of the Services subject to the following:

(a) FrontStream will use commercially reasonable efforts to make the Services and the Artez Platform available to the Client 24



hours a day, 7 days a week, except for: (i) Planned downtime (which it shall schedule to the extent practical during the weekend hours); and/or (ii) Any unavailability caused by a Force Majeure Event.

(b) FrontStream is not responsible for providing or maintaining any hardware or telecommunications equipment or service for the Client to use the Artez Platform or the Services.

(c) FrontStream will provide certain training to the Client for the use of the Artez Platform and the Services, including: (i) an overview of the Services as well as instruction as to how to set up events in the Artez Platform and how to manage Donors and registrants in the Artez Platform; (ii) access to introductory and on-going group training for the Artez Platform in two formats: in-class (located at a FrontStream office at a scheduled time) group tutorials and web-based group classes.

(d) FrontStream will respond to telephone and email inquiries by the Client Super User during Business Hours that involve troubleshooting and technical questions related to the proper use of the Artez Platform and other Services.

(e) Inquiries or other support services related to the integration of Client's systems with the Services or the Artez Platform, as well as any user interface customization for Client, are outside the scope of the training and support services described above. FrontStream may provide Client with integration and user interface customization services as part of a separate professional services agreement to be negotiated between the Parties.

## **2.1 Special Provisions Applicable to Clients who use the MFAs**

(a) In consideration of the Fees to be paid by Client, and subject to the terms and conditions herein, FrontStream grants to Client a non-exclusive non-transferable license to use the MFA to solicit Donations over the Artez Platform.

(b) The Client acknowledges and agrees that:

(i) FrontStream shall retain all right, title and interest in and to the Mobile Fundraising Applications and any related Intellectual Property.

(ii) It will provide to FrontStream at least six weeks prior to the key Client event "go live" date, all icons, logos, event information tabs, header graphics, colour schemes and "About Us" wording that it wishes to use with the Mobile Fundraising Applications.

(iii) In the event that specialized technical support is required from FrontStream by the Client with regard to the MFA, then FrontStream reserves the right to charge additional fees for any such support.

(iv) FrontStream will submit the Mobile Fundraising Applications to the relevant Mobile Application Stores in order that they can be made available for access and download by Donors. The relevant Mobile Application Store will determine in its sole discretion whether to make the Mobile Fundraising Application available through its store, and shall remain solely responsible for ensuring that the Mobile Fundraising Application continues to be available in its store throughout the Term of this Agreement.

(v) In the event that Client makes any changes to the Mobile Fundraising Application after submission to the relevant Mobile Application Stores, and such changes require additional technical work and support, FrontStream shall have the right to charge additional fees for any such additional support work.

## **2.2 Special Provisions Applicable to Clients who use the PayPal Mobile Express Checkout Application**

(a) Client represents and warrants to FrontStream that:

(i) As of the Effective Date, and for the Term, it has and will maintain a properly registered PayPal account tagged as a nonprofit.

(ii) It will provide to FrontStream the required logos, URLs, descriptions, unique identifiers and other data necessary for Donations to be solicited through PayPal Express Checkout. It will provide this information at least 90 days before the date on which it plans to be fully operational with the PayPal Express Checkout.

(iii) It consents to, and provides all necessary licenses for FrontStream and/or PayPal to use its name and logos in PayPal Express Checkout.

(iv) It will provide to FrontStream, within 4 days of any request by FrontStream, sufficient documentation to prove its compliance with all applicable laws regarding charitable organizations.

(b) Client understands and agrees that:

(i) PayPal shall have the right and sole discretion to approve it for use of the PayPal payment system and that FrontStream shall in no way be liable to the Client in the event that PayPal does not approve it for such use.

(ii) PayPal is not a Party to this Agreement and may modify and enhance its payment system at any time. Such changes by PayPal may require changes to be made to the PayPal Mobile Express Checkout Application as a consequence, and the Parties



shall use commercially reasonable efforts to effect such changes in a timely manner to minimize any resulting downtime.

### **2.3 Special Provisions Applicable to Clients who use FrontStream Data Export Services**

- (a) FrontStream will use various data connectors, bridges, ETL (Extract, Transform and Load) tools, and other methods and 3rd party tools to support the export of Client's Donor data from the FrontStream platform to certain 3rd party databases. FrontStream Data Export Services will be available 24 hours a day, 7 days a week, except when pre-defined and ad hoc maintenance windows are reasonably required by FrontStream.
- (b) Data connectors provided by FrontStream, including but not limited to the Raiser's Edge Data Connector and the Cloud Connector for salesforce.com, may be updated or discontinued at any time by FrontStream upon providing Client with reasonable notice. Subject to the terms and conditions of this Agreement, FrontStream grants to Client a non-exclusive license to the various data connectors it makes available, on an 'as is' basis without any express or implied warranty.
- (c) Annual support and maintenance fees apply as specified above, but do not include installation, configuration and other integration work that Client may require to use the FrontStream Data Export Services.
- (d) Client shall work with a FrontStream approved third party (at Client's cost) to perform the integration work necessary to use the FrontStream Data Export Services.
- (e) Client understands and agrees that FrontStream is responsible for data accuracy and integrity on the Artez Platform, but not for the accuracy or integrity of such data once it is exported to Client's or third party systems. Any additional work that may be needed from time to time to fix, repair or otherwise adjust the FrontStream Data Export Services shall be at Client's cost, if such work is required through no fault or action by FrontStream.

### **3. FEES**

3.1 The Client shall pay all Fees to FrontStream. Any annual fees will be invoiced to the Client on the Effective Date, and subsequent anniversaries of the Effective Date during the Term. Any monthly fees will be invoiced to the Client at the beginning of each month as of the Effective Date for the duration of the Term. Any transaction fees will be invoiced to the Client at the end of the month for the specified percentage of the nominal value of all approved transactions processed through the Artez Platform in the previous month.

3.2 In the event that the Donations are made to the Client using the PayPal Mobile Express Checkout Application, FrontStream will deduct the Transaction Fees from such Donations and will remit the balance to the Client's PayPal account within 30 days of receiving the Donation. Client agrees that FrontStream is not responsible for the integrity of Client's PayPal account and once it has transferred the net amount of Donations to Client's PayPal account, FrontStream is no longer responsible for such monies. FrontStream will issue tax receipts to each Donor by email within 7 days of receipt of the Donation.

3.3 Unless otherwise noted, all Fees specified under this Agreement do not include any applicable taxes, tariffs, duties and other charges or assessments imposed or levied by any government in connection with this Agreement, including without limitation any federal, provincial, state and local sales, goods and services, value-added, personal property or any other consumption taxes. Client shall remain solely responsible for the payment of such taxes, if any.

3.4 All invoices are due upon receipt. Any payments not received by FrontStream within 30 days of date of invoice will be subject to late payment charges.

### **4. WARRANTIES** FrontStream warrants to the Client that:

4.1 It is the sole and beneficial owner of the Artez Platform and the Mobile Fundraising Applications;

4.2 The Artez Platform is, and the Mobile Fundraising Applications are, of professional quality conforming to generally accepted industry standards and practices;

4.3 Throughout the Term:

- (a) FrontStream shall implement and maintain organizational, physical, and electronic security measures for the secure acceptance, processing and transmission of Donations in keeping with industry standards in global e-commerce;
- (b) FrontStream shall use commercially reasonable efforts to ensure that the Artez Platform is sufficiently scalable to process



the volume of transactions that may be reasonably anticipated; and  
(c) FrontStream will comply with applicable data protection and privacy laws.

4.4 Except as otherwise provided in this Agreement, the Artez Platform, the Services, and the FrontStream Data Export Services Support are provided "as is" without warranty of any kind. FrontStream and its suppliers hereby disclaim all warranties and conditions with regard to products and services, including all implied representations, warranties and conditions of merchantability, merchantable quality, fitness for any purpose and title and those arising by statute or otherwise in law or from a course of dealing or usage of trade.

## 5. CLIENT DUTIES

5.1 The Client shall select a merchant gateway that FrontStream has integrated with, and shall enter into merchant agreement(s) with third parties as necessary for the Client to accept electronic online donations or payments ("Merchant Agreements"). The Client shall provide sufficient details regarding such agreements to facilitate FrontStream's ability to fulfill its obligations under this Agreement. As part of the Artez Platform and the Services, FrontStream shall create and maintain an interface to selected electronic payment processing system(s). Pursuant to the Merchant Agreements, the relevant third parties will process credit card payments and deposit funds into the Client's bank account. Except in the case of Donations processed through PayPal Express Checkout, FrontStream's Transaction Fees do not include or cover payment gateway fees or any other fees incurred pursuant to Client's Merchant Agreements; such additional fees are the sole responsibility of the Client.

5.2 The Client shall not:

- (a) Decompile, reverse engineer, reverse assemble, attempt to derive source code or otherwise translate into human readable form any aspect of the Artez Platform or the Services;
- (b) nor shall the Client copy, modify, sell, lease, license, distribute, disclose or otherwise make the Artez Platform or Services available to third parties.

5.3 The Client acknowledges and agrees that:

- (a) FrontStream and its licensors shall retain all right, title and interest in and to the Artez Platform and the Mobile Fundraising Applications, including but not limited to the Intellectual Property in the Artez Platform and the Mobile Fundraising Applications.
- (b) Any ideas, concepts, know-how, techniques, software or documentation developed by FrontStream (alone or jointly with the Client) in connection with the Artez Platform or any of the Services provided to the Client will be the exclusive property of FrontStream.
- (c) Client shall be solely responsible for ensuring its own compliance with any applicable data and privacy protection laws, codes of practice and other legal obligations associated with the collection, use and disclosure of Personal Information, including any disclosure necessary for FrontStream to provide the Services and for Client's use of the Artez Platform.
- (d) FrontStream has the right to immediately remove, without notice, any information from any web site (or remove the web site entirely), Mobile Fundraising Application or other information database used to provide Services to the Client or access to the Artez Platform if, in the opinion of FrontStream, such information is in breach of Section 5.3 (c) above.
- (e) In order to process recurring Donations to the Client for monthly giving plans, FrontStream must obtain and store Personal Information. That information shall be stored securely and the processes governing this storage shall conform to Payment Card Industry ("PCI") security requirements. FrontStream agrees that it shall not own any such Personal Information, but merely retains it to facilitate recurring Donations. FrontStream shall perform this duty until any such giving plan expires or is cancelled, after which the data shall be responsibly destroyed. In order to comply with its PCI certification, FrontStream cannot and will not transmit or relinquish any such information to any organization (including the Client itself) that is not also accredited by the Payment Card Industry.
- (f) As of the Effective Date, the Client will appoint a Client Super User and shall notify FrontStream immediately in the event that the identity of this Client Super User changes during the Term.
- (g) Client shall assist FrontStream with the provision of all accurate tax receipt information and data required to generate Donors' tax receipts, including a valid name, address and image of the charities signing authority and Client logo.
- (h) In the event that Client issues tax receipts on behalf of a third party charitable organization, Client shall get a written letter of authorization from the third party in order for Client to issue tax receipts on their behalf. Client shall immediately forward the



letter of authorization to FrontStream.

## **6. CONFIDENTIALITY**

6.1 Each Party shall hold any Confidential Information disclosed to it by the other Party absolutely secret and shall not disclose it or permit it to be disclosed to any third party except to either (a) those of its employees to whom disclosure is necessary for the purposes of their employment; or (b) where disclosure is required to be made by a Party under an applicable law or by a Government agency.

6.2 Save and except for Personal Information, the obligation in Section 6.1 shall not apply to information which the recipient can show:

- (a) was in the public domain when the recipient acquired it or came into the public domain after that time through no fault of the recipient;
- (b) by reasonable written evidence was within the recipient's knowledge before it was acquired; or
- (c) was subsequently disclosed to the recipient by a third party who had the right to make that disclosure.

## **7. NOTICE OF INFRINGEMENT**

7.1 Each of the Client and FrontStream shall promptly and fully notify the other of any actual, threatened or suspected infringement or misappropriation globally of any of the Intellectual Property in the Artez Platform or the Services which comes to its notice, and of any claim by any third party that the use of the Artez Platform or Services globally may infringe the rights of any other person.

7.2 Each Party shall at the request and expense of the other do all such things as may be reasonably required to assist that Party in taking or resisting any proceedings in relation to such an infringement or claim.

7.3 If the Mobile Fundraising Applications or their intended use under this Agreement becomes, or in FrontStream's opinion is likely to become, the subject of a claim, FrontStream may, at its sole option terminate the right and license of the Client to use the Mobile Fundraising Applications.

## **8. INDEMNITY**

8.1 Each Party shall defend, indemnify and hold the other harmless from any and all third party claims, liabilities, losses, damages, expenses, or causes of action, including, without limitation reasonable legal fees and expenses, arising out of or related to any breaches of this Agreement by it.

## **9. LIMITATION OF LIABILITY**

9.1 FrontStream's entire aggregate liability to the Client for losses and damages for any cause related to or arising out of this Agreement, will in no event exceed the Fees paid by the Client to FrontStream in the twelve months preceding any claim.

9.2 Other than for a breach of Section 5.2 by the Client, in no event will either Party be liable to the other for any indirect, special, incidental, consequential or punitive loss or damage, including but not limited to, a loss of data or information of any kind.

## **10. TERM AND TERMINATION**

10.1 This Agreement shall come into effect on the Effective Date and, unless terminated in accordance with this Section 10.1 and subject to Sections 10.3 and 10.4 below, shall remain in effect for the Initial Term. This Agreement shall automatically renew for successive 1 year terms, absent any other written agreement between FrontStream and the Client. Should either FrontStream or the Client wish to terminate this Agreement at the end of the Initial Term or at the end of any renewal term that Party shall provide the other Party with written notice at least sixty (60) days prior to the expiration of the relevant term.

10.2 Upon termination or expiration of this Agreement, all right to use the Artez Platform will automatically terminate.

10.3 In respect of the PayPal Mobile Application, upon receipt of written notice of Client's intention to terminate, FrontStream





will immediately notify PayPal and request that Client be removed from the PayPal Mobile Express Checkout Application. The Agreement regarding the use of PayPal Express Checkout will terminate on the date that PayPal actually removes the Client from the application, such date shall be as soon as possible, but determined at the sole discretion of PayPal. In the event that either (i) the relationship between FrontStream and PayPal is terminated for any reason; or (ii) the PayPal User Agreement between PayPal and the Client is terminated for any reason, then this Agreement regarding the use of PayPal Express Checkout will terminate on the date that PayPal actually removes the Client from the application, such date to be determined at the sole discretion of PayPal. In the event that PayPal determines, in its sole discretion, not to approve the Client for inclusion in the application, then this Agreement regarding the use of PayPal Express Checkout will terminate on the date of receipt of such notification from PayPal.

10.4 In respect of the Mobile Fundraising Applications, where a Mobile Application Store determines in its sole discretion not to make the Mobile Fundraising Application available, then this Agreement regarding the use of that Mobile Fundraising Application will terminate on the date of receipt of such notification from the relevant Mobile Application Store.

10.5 Without prejudice to any other right that may be available to it, either Party shall be entitled to summarily terminate this Agreement regarding one or more of the Services by giving written notice to the other if:

- (a) the other Party has committed a material breach of any of its obligations under this Agreement which is not capable of remedy; or
- (b) the other Party has committed a material breach of any of its obligations under this Agreement which is capable of remedy, but which remains un-remedied for a period of fourteen (14) days following receipt of written request to do so; or
- (c) the other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order; or
- (d) the other Party has an order made against it, or passes a resolution, for its winding up (except for the purposes of bona fide solvent amalgamation or reconstruction) or has a receiver or similar officer appointed over a material part of its property or assets; or
- (e) the other Party is guilty of any act which brings the Party giving written notice into disrepute; or
- (f) the other Party purports to assign to a third party the burden or benefit of this Agreement.

10.6 The Client agrees that upon termination of this Agreement:

- (a) FrontStream will deactivate the aspects of the Artez Platform relating to the Client, so that it is not publicly available.
- (b) FrontStream shall not be liable to the Client or any third party for any termination of the Client's access to the Artez Platform, or for damages arising out of any Party's reliance on the continued availability of the Artez Platform.
- (c) FrontStream will remain bound by Payment Card Industry rules as to how to deal with any data and Personal Information.
- (d) Should it require FrontStream to transfer any data or Personal Information in a manner that is permissible to FrontStream pursuant to Section 10.6(c), but which will necessitate FrontStream incurring costs, it will indemnify FrontStream for these costs.
- (e) It will not be entitled to any pro-rated reimbursement regarding any annual fee or monthly fee that has already been paid by it, unless the termination is the result of a material breach by FrontStream.

## **11. GENERAL**

11.1 This Agreement shall be governed by the laws of the Commonwealth of Virginia and the Parties submit to the exclusive jurisdiction of the Commonwealth of Virginia courts in respect of all matters relating to this Agreement.

11.2 Notices under this Agreement may be served by post to the registered office of the receiving Party or by email.

11.3 Notices shall be deemed to be served:

- (a) in the case of email, on receipt of an email acknowledgement by the other Party, not to be unreasonably withheld; or
- (b) five (5) days after mailing if sent by registered airmail or international courier service, provided the postage is properly paid and such notice is correctly addressed to the receiving Party.

11.4 If any provision of this Agreement is found by a court of law to be unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.



11.5 Failure by either Party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision.

11.6 The FSA (including the Terms and Conditions set out herein as may be amended from time to time) is the entire understanding and agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings between the Parties. FrontStream may amend these Terms and Conditions by posting amended Terms and Conditions on its website: [www.frontstream.com](http://www.frontstream.com). FrontStream shall provide timely notice to Client of the posting of amended Terms and Conditions. Client shall provide timely written notification to FrontStream of any objection to such amendments. In the absence of such Client objections, the amended Terms and Conditions shall become effective between the Parties 60 days after the posting of the amended Terms and Conditions. The Client understands and agrees that continued use of the Artez Platform or any aspect of the Services after this 60-day period, shall be deemed acceptance of the amended Terms and Conditions.