

## **TERMS AND CONDITIONS**

These Terms and Conditions (“Terms and Conditions”) govern the relationship between FrontStream (“FrontStream”) and the Customer (“Customer” or “you”) for the provision of the Service(s) (the “Agreement”). FrontStream and Customer may be collectively referred to as “Parties” and/or individually as “Party.”

**CAREFULLY READ THESE TERMS AND CONDITIONS. USING THE SERVICE(S) INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS AND THE PRIVACY POLICY FOUND AT [WWW.FRONTSTREAM.COM](http://WWW.FRONTSTREAM.COM). IF YOU DO NOT AGREE, PROMPTLY DISCONTINUE USE OF THE SERVICES. THE PARTIES UNDERSTAND AND AGREE THE TERMS AND CONDITIONS WILL GOVERN ONE OR MORE SERVICES AS SELECTED BY THE CUSTOMER.**

In consideration of the promises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree as follows:

### **1. Definitions.**

- 1.1 “Access Credentials” means keys, certificates, access codes, user IDs or other login information provided to Customer for the purpose of accessing and using the Service(s).
- 1.2 “Customer” means the legal entity or individual who selects to receive the applicable Service(s).
- 1.3 “Customer Service” means the support services performed by FrontStream’s personnel and/or agents for the benefit of Customer as described in Section 3; or as additionally requested by Customer under the terms and pricing agreed to in a separate agreement or statement of work.
- 1.4 “Effective Date” means the date on which Customer accepts the Terms and Conditions, the date of payment for a Service, or the date on which FrontStream provides Customer with access to a Service, whichever is earlier.
- 1.5 “Fees” means the applicable fees for the Service(s) with specific defined terms as outlined in Exhibit A attached hereto as part of the Agreement.
- 1.6 “FrontStream” means any affiliate or associated entity, parent or subsidiary of FrontStream Holdings, LLC.
- 1.7 “Merchant Agreement” means a separate agreement between Customer and a third party service provider in order for Customer (if Customer is a Non-Profit Organization) to accept electronic online donations and/or payments.
- 1.8 “Product” means all software and other applications and all modifications, updates, enhancements, or replacements for any of the foregoing, furnished by FrontStream to you related to the Service(s).
- 1.9 “Renewal Effective Date” means each succeeding anniversary from the Effective Date.
- 1.10 “Service” means collectively or individually, the FrontStream Service(s), as selected by the Customer, and any Product(s) necessary to provide Service(s) as further described herein.
- 1.11 “Term” means the time period during which you are authorized to access and/or use FrontStream’s Service(s) as agreed to by the Parties.
- 1.12 “User Data” means any information submitted by Customer or end-user of the Service(s).

### **2. Service(s) and Restrictions.**

- 2.1 Services. Subject to all terms and conditions of this Agreement, which may be revised at FrontStream’s discretion, from time to time, Customer may access and use one or more Services as selected. Any other access or use is strictly prohibited. No rights are granted to any of the Service(s) except as explicitly set forth herein. Customer may not sublicense, sell, rent, lease, transfer, distribute or make the Service(s) available to any third party. Customer shall be bound by and comply with the Agreement, and Customer is solely responsible for all activities of its users and for the accuracy, integrity, legality, reliability, and appropriateness of all User Data. Service(s) may require Customer to enter into a separate Merchant Agreement with a third party service provider prior to accepting electronic online donations and/or payments.
- 2.2 Accuracy, Completeness and Timeliness of Information. Customer is solely responsible for the accuracy and completeness of any information or materials or information that Customer: (i) adds to the Service(s); (ii) provides to a merchant when setting up a merchant account pursuant to the Merchant Agreement; or (iii) any other information or material provided by the Customer to FrontStream or its subcontractors or agents. FrontStream undertakes no obligation and has no responsibility for cross-checking, verifying or updating any of the materials you provide. FrontStream reserves the right to delete or modify any materials that you submit which FrontStream believes in good faith pose a risk to the Products or Service(s).

- 2.3 **Restrictions.** Customer agrees to limit its use of the Service as expressly authorized in the Agreement and specifically agrees not to (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of any FrontStream Product or Service, or any FrontStream Confidential Information or any portion thereof; (ii) modify or create derivative works of the Product or the Service; (iii) use the Service to knowingly infringe the Intellectual Property rights of any third party or any rights of publicity or privacy, or propagate any virus, worms or other programming intended to damage any system or data; (iv) use the Service in violation of any applicable law, statute, ordinance or regulation; (v) gain or attempt to gain unpermitted access by any means to any FrontStream computer system, network, or database; and/or (vi) file copyright or patent applications that include the Product or Service or any portion thereof.
- 2.4 **User Data.** Customer understands and agrees that, subject to FrontStream's privacy and data protection obligations under the Agreement and the privacy policy referred to above, FrontStream may use the User Data for its own internal purposes, for the delivery of the Service(s), analytics, benchmarking and analysis, or use that enables targeting of communication, engagement tools and fundraising efforts to optimize results of the Service(s) and individual engagement. User Data will not be sold or provided to any third party, except for subcontractors or agents of FrontStream who are assisting it in the performance of the foregoing tasks, and as otherwise set forth in such privacy policy.
- 2.5 **Access Credentials** Customer shall be responsible for protecting and safeguarding Access Credentials, if any, provided to Customer for the purpose of accessing and using the Product and/or Service. Customer shall not disclose or make available Customer's Access Credentials other than to Customer's authorized employees and shall use all commercially reasonable efforts to prevent unauthorized access to, or use of, the Service(s), and will notify FrontStream promptly of any such unauthorized use. If Customer makes Access Credentials available to any third party, Customer shall be liable for all actions taken by such third party in connection with the Service(s).
- 2.6 **Fair Use Policy.** FRONTSTREAM SHALL HAVE THE ABSOLUTE AND UNILATERAL RIGHT IN ITS SOLE DISCRETION TO DENY USE OF AND ACCESS TO ALL OR ANY PORTION OF THE FRONTSTREAM SERVICE(S) TO CUSTOMERS WHO ARE DEEMED BY FRONTSTREAM TO BE USING THE FRONTSTREAM SERVICE(S) IN A MANNER NOT REASONABLY INTENDED BY FRONTSTREAM, INCLUDING BUT NOT LIMITED TO SUSPENDING OR TERMINATING CUSTOMER'S ACCOUNT WITH FRONTSTREAM. If Customer has purchased FrontStream Service(s) that is inappropriate for your actual usage, FrontStream may require Customer to (i) switch to an appropriate tier within the same Service or different Service(s) which may result Customer having to pay FrontStream additional fees for use of the appropriate tier within the same Service or other Service(s), or (ii) terminate the Agreement. FrontStream may, in its sole discretion and from time to time, establish or amend general operating practices to maximize the operation and availability of FrontStream Service(s) and to prevent abuses. As part of these practices, FrontStream reserves the right to monitor the system to identify excessive use and to take such technical and other remedies as FrontStream deems appropriate. Customer's use of FrontStream Service(s) may be deemed excessive if, within any month, your usage greatly exceeds the average level of monthly usage of other FrontStream customers (i.e. sending spam emails). In the event Customer is deemed to have violated this Fair Use Policy, FrontStream reserves the right to (i) offer an alternative pricing plan; or (ii) offer other FrontStream Service(s) that will permit you to continue to using FrontStream's Service(s). FrontStream reserves the right to terminate or suspend your right to use any FrontStream Service(s), without prior notice in the event of a violation of this policy. If FrontStream believes that you are breached this Fair Use Policy and Customer has not switched to another Service, FrontStream will allow the Customer thirty (30) days from date of first communication to retrieve Customer's data before deletion of the Customer account and data. Customer will receive a notice thirty (30) days before account deletion. All communications will be sent to the email address attached to the Customer's account.
3. **Customer Service (Support Service and Technical Support).** During normal business hours (8:30 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, excluding United States federal holidays for Canadian and US Customers) (9:00 a.m. to 5:00 p.m. Australian Eastern Time, Monday through Friday, excluding Public holidays for Australian Customers), FrontStream will provide Customer with phone and email support that includes: (i) implementation of the Service(s), where required; (ii) training for use and best practices of the Service(s); and/or (iii) technical assistance. Customer Service shall also include Customer's right to access FrontStream's online knowledge resource center available 24/7. Customer Service does not include customization, site skinning, custom

report(s) and/or enhancements to the Service(s). Any customized service development or customer services not described herein shall require a separate statement of work to the Agreement under the terms and pricing as agreed to by the parties.

**4. Fees and Payment.**

4.1 Fees and Payment. Due to the nature of the Service(s) and corresponding fees, these Terms and Conditions do not outline the fees for the provision of the Service(s). You will receive a separate notice with the applicable non-refundable fees from FrontStream before you sign up for the Service(s) (collectively, the "Fees"). You agree to pay for the applicable Fees when invoiced. For the avoidance of doubt, subscription related invoices shall be paid before the subscription date and transactional related invoices shall be paid fifteen (15) days from invoice date. FrontStream reserves the right to change the Fees at any time by providing Customer with reasonable notice before such change. Your continued use of the Service(s) indicates your consent to the change in Fees. If you do not consent to the change in the Fees, you must stop using the Service(s).

4.2 Taxes. 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, state, provincial and local sales, goods and services, harmonized, value-added, personal property or any other consumption taxes. Customer shall remain solely responsible for the payment of such taxes, if any. Customer understands that any Fees are exclusive of all such taxes. To the extent that FrontStream is responsible for collecting such taxes, they will be charged as a separate line item on invoices.

4.3 Late Payment. FrontStream may impose late charges on overdue payments at a rate equal to the lesser of one and a half percent (1.5%) per month (19.6% per annum) or the highest rate permitted by law, calculated from the date payment was due until the date payment is made and all expenses incurred in collection, including reasonable attorneys' fees. FrontStream may decline to provide the Service(s) if in FrontStream's reasonable opinion, circumstances exist which raise doubt as to Customer's ability or willingness to pay as provided herein. If a Customer defaults, FrontStream shall have other rights and remedies as may be provided by law. If Customer Service is withheld in accordance with the foregoing, in order to reinstate such Customer Service, Customer will be responsible for paying all Fees associated.

**5. Intellectual Property; Ownership.** To the fullest extent permitted or available under applicable law, FrontStream, or its suppliers, hereby assert and claim, and Customer recognizes and acknowledges, FrontStream's ownership of all right, title, and interest in and to Confidential Information (as defined in Section 9 below), Products, and Service(s) including all copies thereof including any and all technology, enhancements, derivations, and modifications thereto including, but not limited to, ownership of all intellectual property rights (collectively, "Intellectual Property"). This Agreement does not provide Customer with any title or ownership of the Intellectual Property, but only a right of limited use. Customer shall not remove any copyright, trademark, or other confidentiality or proprietary notices from the Products or Service(s). Customer shall not remove, alter, modify or deface any copyright notice, trademark, logo, name, or other confidentiality or proprietary notices from the Products or Service(s), including, but not limited to, those which identify FrontStream or any other party as the source of origin of such Products and/or Service(s), information or other documentation.

**6. Warranties/ Disclaimers/Exclusive Remedy.** FrontStream warrants to you that: (i) it has the right to provide the Products and Service(s) to you, and (ii) the Service(s) will perform in accordance with the descriptions set forth in the subscription package provided to you. If the Service(s) provided for any given month during the Term are not performed as warranted, then you must provide written notice to FrontStream no later than five (5) business days after such event to allow FrontStream to correct the Service(s). FrontStream shall provide corrected Service(s) or information as soon as reasonably practicable following receipt of written notice of nonperformance.

EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION 6, THE PRODUCTS, AND SERVICE(S) ARE PROVIDED TO YOU ON AN "AS-IS, WITH ALL FAULTS" BASIS, AND YOUR USE THEREOF IS AT YOUR OWN RISK, TO THE EXTENT LEGALLY PERMITTED, FRONTSTREAM MAKES NO OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, OR WARRANTIES OR CONDITIONS ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE.

FRONTSTREAM ALSO MAKES NO REPRESENTATIONS OR WARRANTIES THAT YOUR ACCESS TO AND USE OF THE FRONTSTREAM WEBSITE, PRODUCTS, AND SERVICE(S) (1) WILL BE UNINTERRUPTED OR ERROR-FREE, (2) IS FREE OF VIRUSES, UNAUTHORIZED CODE, OR OTHER HARMFUL COMPONENTS, OR (3) IS COMPLETELY SECURE. YOU ARE RESPONSIBLE FOR TAKING ALL PRECAUTIONS YOU BELIEVE ARE NECESSARY OR ADVISABLE TO PROTECT YOU AGAINST ANY CLAIM, DAMAGE, LOSS OR HAZARD THAT MAY ARISE BY VIRTUE OF YOUR USE OF THE WEBSITE AND THE PRODUCTS, SERVICE(S), AND MATERIALS CONTAINED THEREIN. YOU ACKNOWLEDGE THAT FRONTSTREAM DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS. FRONTSTREAM IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. Some jurisdictions do not permit the exclusion or limitation of implied warranties. Therefore, only if required by applicable law, some or all of the exclusions or limitations above may not apply. You may have other rights from jurisdiction to jurisdiction.

THIS DISCLAIMER APPLIES, WITHOUT LIMITATION, TO ANY DAMAGES OR INJURY ARISING FROM ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECTS, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUSES, FILE CORRUPTION, COMMUNICATION OR ON-LINE FAILURE, NETWORK OR SYSTEM OUTAGE, YOUR LOSS OF PROFITS OR THEFT, DESTRUCTION, UNAUTHORIZED ACCESS TO, ALTERATION OF, LOSS OR USE OF ANY RECORD OR DATA, AND ANY OTHER TANGIBLE OR INTANGIBLE LOSS. YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT NEITHER FRONTSTREAM NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY USER OF THE SITE. YOU AGREE THAT YOU MUST COMMENCE ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO USE OF THE PRODUCTS, SERVICE(S), OR THE WEBSITE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES OR THE CAUSE OF ACTION IS PERMANENTLY BARRED.

FOR AUSTRALIAN CUSTOMERS, TO THE EXTENT THAT FRONTSTREAM IS PERMITTED BY LAW, ALL CONDITIONS AND WARRANTIES THAT ARE NOT EXPRESSLY SET OUT IN THESE TERMS ARE EXCLUDED. THIS DOES NOT LIMIT ANY APPLICABLE STATUTORY GUARANTEES PROVIDED IN AUSTRALIA UNDER SCHEDULE 2 OF THE *COMPETITION AND CONSUMER ACT 2010* (CTH) AND ANY OTHER EQUIVALENT LEGISLATION IN EACH STATE OR TERRITORY IN AUSTRALIA (AUSTRALIAN CONSUMER LAW). IF THE AUSTRALIAN CONSUMER LAW CONFERS CERTAIN RIGHTS, GUARANTEES OR REMEDIES ON YOU WHICH ARE NOT ABLE TO BE EXCLUDED, RESTRICTED OR MODIFIED EXCEPT IN LIMITED CIRCUMSTANCES, FRONTSTREAM'S LIABILITY FOR BREACH OF ANY SUCH RIGHT, GUARANTEE OR REMEDY IS LIMITED TO (AT OUR ELECTION).

FOR ANY BREACH OF THE ABOVE WARRANTIES, AND IF YOU ESTABLISH THAT YOU INCURRED DAMAGES, LIABILITIES, LOSSES, FEES, OR COSTS AS A DIRECT RESULT OF SUCH BREACH, THEN FRONTSTREAM'S AGGREGATE LIABILITY SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, THE FEES PAID BY YOU TO FRONTSTREAM DURING THE PRECEDING TWELVE MONTHS OF THE CLAIM. SUCH REMITTANCE OF FEES PAID REPRESENTS YOUR EXCLUSIVE REMEDY, AND FRONTSTREAM'S SOLE LIABILITY, FOR ALL BREACHES OF ANY WARRANTY SPECIFIED IN THE AGREEMENT. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE. THE FOREGOING LIMITATIONS OF LIABILITY REPRESENT THE ALLOCATION OF RISK OF FAILURE BETWEEN THE PARTIES AS REFLECTED IN THE FEES AGREED TO BY THE PARTIES AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

No employee, salesperson, vendor or other agent or purported agent of FrontStream is authorized to make any warranties, representations or guaranties to the contrary of the foregoing, and any such purported warranties, representations or guaranties shall not be relied upon as having been given by or on behalf of FrontStream. Furthermore, you acknowledge that it is Customer's responsibility to verify any information upon which Customer uses or relies.

7. **Indemnity.** Customer hereby agrees to indemnify, defend and hold harmless FrontStream and its Affiliates or associated entities, officers, directors, employees, agents, contractors, licensors and any information service providers and any other service or software providers for FrontStream, from and against any and all third party

demands, claims, actions, proceedings, damages, liabilities, losses, fees, costs or expenses (including without limitation reasonable attorneys' fees and the costs of any investigation) resulting from or incurred as a result of (i) Customer's breach of or default under the terms or conditions of this Agreement, or (ii) any negligence, gross negligence or willful misconduct by or on behalf of Customer or Customer's employees or agents. FrontStream reserves the right, at its own expense, to assume exclusive defense and control of any matter otherwise subject to indemnification by Customer and in such case, Customer agrees to cooperate with FrontStream in the defense of such matter.

## **8. Term, Termination and Suspension.**

8.1 Term. The Agreement shall commence on the Effective Date and shall be valid for one (1) year. This Agreement will automatically renew on the Renewal Effective Date for one (1) year periods on each succeeding anniversary of the Effective Date (also becoming the "Term"), unless either Party notifies the other Party, in writing, that it does not want to renew the Agreement at least ninety (90) days before the end of the then-current Term.

8.2 Termination for Material Breach. This Agreement may be terminated by either Party upon thirty (30) calendar days' written notice for a material breach by the other Party, unless such other Party cures the breach within the thirty (30) day notification period. Termination of the Agreement does not relieve Customer of any outstanding payments due or any liability arising prior to termination.

8.3 Termination for Convenience. FrontStream may terminate the Agreement for convenience by providing the Customer with at least fifteen (15) days prior written notice. Customer acknowledges and agrees that all prepaid Fees are non-refundable, regardless of a termination that occurs according to this Section.

8.4 Termination for Changes to Applicable Law. This Agreement may be terminated by either Party if the continued relationship, the provision of the Service(s), and/or the transactions hereunder would violate any applicable law (whether such law is existing at the time of the Agreement or thereafter modified or enacted) or result in material costs or liabilities to the terminating Party that were not anticipated as part of the Agreement.

8.5 Termination or Suspension by FrontStream. FrontStream may terminate and/or suspend any license granted to Customer for any Product or materials and/or suspend, terminate or limit any of Customer's use of the Service without liability, with or without notice, based on FrontStream's reasonable belief that: (i) the Service is being used in breach of the Agreement or otherwise in a potentially harmful or unlawful manner; (ii) the use of Service adversely affects FrontStream (or its Suppliers') equipment, security network infrastructure or its service to others; (iii) a court or other governmental authority having jurisdiction issues an order prohibiting FrontStream from furnishing the Service to Customer; or (iv) Customer fails to pay undisputed charges for the Service after being given notice.

8.6 Effect of Termination. Upon termination of any Service hereunder, Customer shall cease using, and return or destroy, all Products and other materials licensed to Customer for such Service hereunder.

9. **Confidentiality.** Customer acknowledges and agree that the Service(s), Products, and the form, format, mode or method of compilation, selection, configuration, technology, presentation or expression thereof, trade secrets, and other data (the "Confidential Information") are the confidential and proprietary information of FrontStream. Customer shall receive and maintain the Confidential Information as a confidential disclosure. You shall not disclose all or any part of the Confidential Information to any other person or entity, except as necessary to receive or implement the Products and Service(s) as permitted hereunder and in accordance with the terms hereof. Customer shall not use or permit any use of all or any part of the Confidential Information or attempt to sell, assign, convey, lease, sublicense, commercially exploit, and/or otherwise market or use all or any part of the Confidential Information in any way or manner, except as expressly permitted in this Agreement. Except as otherwise permitted in this Section, Customer may disclose the Confidential Information as follows: (i) with FrontStream's prior express written consent in each instance of disclosure; or (ii) if you are required by law to disclose the Confidential Information, but only after prompt notice to FrontStream of such disclosure and sufficient time to review any proposed disclosure, such that FrontStream has a reasonable opportunity to oppose or prevent a disclosure, and only to the extent so required.

10. **Data Protection.** The Parties acknowledge that the Service may be used to process information regulated by privacy or data protection laws. To the extent that any applicable privacy or data protection laws impose an

obligation upon FrontStream to comply with an individual's request for access to or correction of their User Data, Customer agrees that it shall satisfy such obligations. FrontStream shall implement and maintain organizational, physical, and electronic security measures and FrontStream will comply with applicable data protection and privacy protections laws, codes of practice, and any other legal obligations associated with the collection, use and disclosure of User Data, if any, including disclosure to provide the Service(s) and for Customer's use of the Service.

## 11. General Provisions.

- 11.1 Entire Agreement. This Agreement represents the entire agreement between the Parties on the subject matter hereof and supersedes all prior discussions, agreements and understandings of every kind and nature between the Parties. No modification of the Agreement shall be effective unless in writing and signed by both Parties.
- 11.2 Notices. All notices relating to the Agreement shall be in writing and shall be delivered (i) postage prepaid certified, or electronic transmission. Notices shall be deemed given upon delivery five (5) calendar days after deposit in the mail, or acknowledgment or receipt. Notices for Australian Customers shall be sent to FrontStream Pty, Ltd. at 7 Jeffcott Street, Suite 104, West Melbourne VIC 3003; for Canadian Customers, notices shall be sent to FrontStream, Inc. at 215 Spadina Avenue, Suite 500. Toronto, ON. M5T 2C7, and notices to US Customers shall be sent to FrontStream Holdings, LLC at 11480 Commerce Park Drive, Suite 300, Reston, VA 20191. Notices to Customer will be sent to the address included in the invoice.
- 11.3 Force Majeure. FrontStream shall not be liable for any failure or delay in performing Service(s) or any other obligation under the Agreement, nor for any damages suffered by the other or an end user by reason of a Force Majeure Event, to the extent that such delay or failure is caused by an act of God, natural disasters, fire, flood, storms; strikes or other industrial disputes, court orders, breakdown of equipment; acts of war or terrorism, civil, sabotage, acts of government or regulatory authority; labor conditions, public health crisis or any other cause beyond its control and without the fault or negligence of the delayed or nonperforming Party.
- 11.4 Relationship with Third Parties. No Customer, end user or other person or entity not a Party to the Agreement shall be considered a third party beneficiary of the Agreement.
- 11.5 Severability & Survival. The illegality or unenforceability of any provision of the Agreement shall not affect the validity and enforceability of any legal and enforceable provisions hereof. The following provisions shall survive any termination of the Agreement: Section 2.4, "User Data"; Section 4, "Fees & Payment"; Section 5, "Intellectual Property/ Ownership"; Section 6, "Warranties/Disclaimer/Exclusive Remedies"; Section 7, "Indemnity"; Section 8, "Term/ Termination/Suspension"; Section 9, "Confidentiality"; Section 11 "General Provisions."
- 11.6 Assignment. This Agreement may not be assigned by Customer without the written consent of FrontStream, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Customer may not assign the Agreement to a direct competitor of FrontStream. Any attempt by Customer to assign the Agreement without such written consent shall be null and void. This Agreement binds the Parties, their respective participating subsidiaries, affiliates, successors and permitted assigns.
- 11.7 Applicable Law. This Agreement shall be governed, construed, enforced and performed in accordance with the laws of the Commonwealth of Virginia (for residents of Canada, the laws of Ontario) (for residents of Australia, the laws of Victoria), without reference and/or regard to its conflicts of laws principles. Each Party hereby submits to the exclusive jurisdiction of the courts the Commonwealth of Virginia (for residents of Canada, the laws of Ontario) (for residents of Australia, the laws of Victoria) and hereby waives any objections to venue with respect to actions brought in such courts.
- 11.8 Affiliates. The Service(s) may be performed by an affiliate or associated entity, parent or subsidiary of FrontStream.

**By accepting and agreeing to the Terms and Conditions on behalf of the Customer, you represent and warrant that you are a duly authorized representative to enter into this Agreement.** If you have any questions about the Terms and Conditions, please contact FrontStream at: [termsandconditions@frontstream.com](mailto:termsandconditions@frontstream.com).

**EXHIBIT A**

“Artez Subscription” means the annual amount Customer pays to FrontStream for access to the Artez Services during the Term.

“Artez Peer-to-Peer Transaction Fee” means the monthly per-to-peer transaction fee invoiced to the Customer at the end of each calendar month for the specified percentage of the nominal value of all approved peer-to-peer transactions processed through the use of the Artez Services in the previous month. Unless otherwise stated, all transaction through the Artez Services will be classified as Peer-to-Peer.

“Artez Direct Donation Transaction Fee” means the monthly donation transaction fee invoiced to the Customer at the end of each calendar month for the specified percentage of the nominal value of all approved donation transaction processed through the use of the Artez Services Direct Donation template in the previous month.

“Argofire Monthly Fee” means the monthly fee for access and use of the Argofire Gateway independent of processor fees that are charged by the bank.

“Argofire Transaction Fee” means the agreed upon per transaction fee charged on top of the bank credit card processing fees.

“BiddingForGood Subscription Fee” means the annual amount Customer pays to FrontStream for access to the BiddingForGood Services during the Term.

“BiddingForGood Performance Fee” means the percentage of the total gross proceeds from online/mobile/text bidding activity on Customer’s auction items that Customer includes on the BiddingForGood online auction which are invoiced at the conclusion of each auction/event. If bidding on an item leaves the BiddingForGood online auction (i.e. online/mobile/text bidding) and resumes in a traditional live or silent auction, the performance fee will be based on the high online bid for that item regardless of whether or not the items are won by bidders in the room

“BiddingForGood Quick Sale Fee” means the percentage amount paid to FrontStream for all transactions processed through Quick Sale. The BiddingForGood Quick Sale Fee will be assessed as part of the BiddingForGood Performance Fee invoice at the conclusion of each auction/event.

“BiddingForGood Ticketing Fee” means the percentage amount that will be assessed for all transactions processed through the use of the BiddingForGood’s ticketing platform. The BiddingForGood Ticketing Fee will be assessed as part of the BiddingForGood Performance Fee invoice at the conclusion of each auction/event

“BiddingForGood Mobile Support (Per Day)” means the amount paid via credit card (following a Wi-Fi connectivity assessment with Customer’s event venue) to FrontStream for use of BiddingForGood’s mobile bidding support option services for Customer’s fundraising event.

“BiddingForGood Mobile Premium Support (Per Day) On-Site Event Support” Travel and Expense for two (2) BiddingForGood representatives to and from event are in addition to basic fees. Additional fees may apply for additional event days of service/support.

“BiddingForGood Marketplace Fees” means the percentage amount Customer pays to FrontStream per item when Customer sells an item made available by FrontStream at an auction.

“Internet Connectivity for Mobile Bidding Fee” means the fees paid by Customer for access to bandwidth and WiFi connectivity to support bidding on mobile devices on the date of the auction/event.

“ApprovedForGood Annual Fee” means the annual amount Customer pays to FrontStream for access to the ApprovedForGood Services during the Term.



“FirstGiving Annual Subscription Fee” means the annual amount Customer pays to FrontStream for access to the FirstGiving Services during the Term.

“FirstGiving Transaction Fee” means the transaction fee charged to Customer upon the processing of each transaction processed through FirstGiving Services. FirstGiving will deduct all fees from the transaction prior to disbursement to the recipient.

“FirstGiving Credit Card Fee” means the transaction fee charged to Customer upon the processing of each transaction processed through FirstGiving Services. FirstGiving will deduct all fees from the transaction prior to disbursement to the recipient.

“Giftworks Subscription Fee” means the monthly amount Customer pays to FrontStream for access to the Giftworks Services for one (1) user during the applicable period.

“Giftworks Setup Fee – Per User” means the one-time fee Customer pays to FrontStream per user for access to the Giftworks Services in addition to the monthly Giftworks Subscription Fee.