

PANORAMA TERMS AND CONDITIONS

Last updated: November 14, 2017

These Panorama Terms and Conditions (“**Terms**”) govern the relationship between FrontStream Holdings, LLC (together with all affiliates, “**FrontStream**,” “**we**,” “**our**,” or “**us**”) and you with regards to our provision of the Service(s) (as defined below). FrontStream and you may be collectively referred to as “Parties” and/or individually as “Party.”

Carefully read these Terms. By accessing or using the Service(s), you agree on behalf of yourself and any organization or company that you represent (together, “Customer” or “you”) that you have read and understand these Terms and our [Privacy Policy](#). If you do not agree with these Terms or our [Privacy Policy](#), do not use of the Services.

We reserve the right to modify these Terms at any time. All changes will be effective immediately upon posting to the Services and, by accessing or using the Services after changes are posted, you agree to those changes. Material changes will be conspicuously posted on the Service or otherwise communicated to you.

ARBITRATION NOTICE: These Terms contain a binding arbitration provision. You agree that, except for certain types of disputes described in the arbitration provision below, all disputes between you and FrontStream will be resolved by mandatory binding arbitration and you waive any right to participate in a class action lawsuit or class-wide arbitration.

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 or using the Services.
- 1.2 “Support Services” means the support services to be performed by FrontStream as described in Section 3.
- 1.3 “Effective Date” means the date on which Customer accepts these Terms, the date of first payment for any Service, or the date on which Customer first accesses or uses any Service, whichever is earlier.
- 1.4 “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.
- 1.5 “Order Form” means each pricing confirmation, order form, or equivalent document signed by both parties that sets forth the FrontStream services being ordered.
- 1.6 “Software” means all FrontStream software and other applications and all modifications, updates, enhancements, or replacements for any of the foregoing.
- 1.7 “Renewal Effective Date” means each annual anniversary from the Effective Date.
- 1.8 “Service(s)” means, collectively and individually, the services provided by FrontStream through its online Panorama platform (including, for example, Artez, BiddingForGood, FirstGiving, and GiftWorks Cloud) and selected by the Customer as identified on the Order Forms, including all underlying Software and technology. “Services” includes Support Services.

2. Services and Restrictions.

- 2.1 Services. Subject to these Terms and Customer’s payment of all applicable fees, FrontStream grants Customer a limited, nonexclusive, revocable, nonassignable, nontransferable, nonsublicensable license to access and use the Services for Customer’s internal business purposes. All other access and use is strictly prohibited. No rights are granted to Customer with regards to any of the Services except as explicitly set forth herein. Customer shall not sublicense, sell, rent, lease, transfer, distribute or make the Services available to any third party except to Customer’s contracts as permitted by Section 2.5. Customer shall be bound by and comply with these Terms and solely Customer is responsible for all activities of all users of its Services account(s) and for the accuracy, integrity, legality, reliability, and appropriateness of all data and other information submitted, input, or provided using the Services. Certain Services (including, but not limited to Artez and BiddingForGood) 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. Customer warrants that it will comply with that Merchant Agreement.

- 2.2 Customer Information. Solely Customer is responsible for the accuracy, completeness, timeliness, and currentness of any information and or materials that Customer: (i) submits, inputs, or provides to or using the Services; (ii) provides to a merchant when setting up a merchant account pursuant to a Merchant Agreement; and (iii) any other information and material provided by the Customer to FrontStream or FrontStream's subcontractors or agents. FrontStream undertakes no obligation and has no responsibility for cross-checking, verifying or updating any of the information or materials provided by or on behalf of Customer. FrontStream reserves the right to delete or modify any information or materials provided by or on behalf of Customer that FrontStream believes poses a risk to the Services or to FrontStream's systems, networks, or infrastructure.
- 2.3 Restrictions. Customer agrees to only access and use of the Services as expressly authorized in these Terms. Customer shall be responsible for complying with all local, state, and federal laws and regulations that apply to Customer's access to or use of the Services. Customer specifically agrees not to:
- (i) reverse engineer, decompile, disassemble, or derive the source code of any Service or any Confidential Information (as defined below) or any portion thereof, or attempt to do any of the foregoing;
 - (ii) copy, publish, license, rent, modify, or create derivative works of any Service;
 - (iii) use the Service to infringe the patent, copyright, trademark, trade secret, or other intellectual property rights of any third party or any third-party rights of publicity or privacy;
 - (iv) use the Services to post, transmit, or propagate any virus, Trojan horses, worms, time bombs, cancelbots, malware, adware or other computer programming that may damage, interfere with, surreptitiously intercept, or expropriate any system or data;
 - (v) use the Service in violation of any applicable law, statute, ordinance or regulation or for unlawful purposes;
 - (vi) gain or attempt to gain unpermitted access by any means to any FrontStream computer system, network, or database;
 - (vii) file copyright, trademark, patent, or other intellectual property applications that include the Services or any portion thereof;
 - (viii) access, use, or copy any portion of the Services, including any of their content, through the use of indexing agents, spiders, scrapers, bots, web crawlers, or other automated devices or mechanisms, or harvest or collect email addresses or other contact information of other users of FrontStream's services by electronic or other means;
 - (ix) use the Services in a manner that restricts or inhibits any other person from using or enjoying FrontStream's services or that may expose FrontStream or its customers to any harm or liability of any type;
 - (x) engage in data mining or similar data gathering or extraction activities or retrieve data or other content from the Services for purposes of creating or compiling that content for any purpose other than your authorized use of the Services as permitted by these Terms;
 - (xi) provide inaccurate, incomplete, or out-of-date information via the Services, provide information via the Services to which you do not have sufficient rights or permissions to use or provide to FrontStream, or commit fraud or falsify information in connection with your use of the Services; or
 - (xii) establish or facilitate any fundraising campaigns using the Services that are fraudulent, misleading, inaccurate, or dishonest or that relate to or involve (a) illegal drugs, narcotics, steroids, controlled substances or other products or related paraphernalia that present a risk to consumer safety; (b) relate to or involve knives, explosives, ammunition, firearms, or other weaponry or accessories; (c) annuities, investments, equity or lottery contracts, lay-away systems, off-shore banking or similar transactions, money service businesses (including currency exchanges, check cashing or the like), debt collection or crypto-currencies; (d) gambling, gaming or any other activity with an entry fee and a prize, including, but not limited to, casino games, sports betting, fantasy

sports, horse or greyhound racing, lottery tickets, other ventures that facilitate gambling, games of skill or chance (whether or not it is legally defined as a lottery) or sweepstakes; (e) the promotion of hate, violence, harassment, discrimination, terrorism, or intolerance of any kind relating to race, ethnicity, national origin, religious affiliation, sexual orientation, sex, gender or gender identity, or serious disabilities or diseases; (f) activities with, in, or involving countries, regions, governments, persons, or entities that are subject to United States and other economic sanctions under applicable law, unless such activities are expressly authorized by the appropriate governmental authority; (g) ransom, human trafficking or exploitation; (h) pornography, other sexual content, or offensive, graphic, perverse or sensitive content; (i) the defense or support of anyone alleged to be involved in criminal activity; (j) offering monetary rewards, including gift cards; (k) transactions for the sale of items before the seller has control or possession of the item; (l) collection of payments on behalf of merchants by payment processors or otherwise; or (m) credit repair or debt settlement services.

FrontStream reserves the right to investigate Customer and Customer's use of the Services by engaging public and private organizations, including without limitation collection agents, private investigators, and applicable local, state, and federal agencies. FrontStream further reserves the right to take any action against Customer that FrontStream, in its sole discretion, deems appropriate, including without limitation by suspending access to the Services and terminating these Terms as described below, by reporting Customer to law enforcement authorities, or by taking other measures as may be permitted by law.

2. 4 **Privacy Policy.** We may collect certain information from your use of the Services as described in our [Privacy Policy](#), which is incorporated into these Terms by this reference. Your use of the Services constitutes your consent to the information collection, use, and sharing described in our [Privacy Policy](#).
2. 5 **Access Credentials** Customer shall be responsible for protecting and safeguarding all Access Credentials provided to Customer for the purpose of accessing and using the Services. Customer shall not disclose or make available Customer's Access Credentials other than to Customer's authorized employees or contractors and shall use all commercially reasonable efforts to prevent unauthorized access to, or use of, the Service(s) and Access Credentials, and will notify FrontStream promptly of any such unauthorized use or disclosure. 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 Services.
2. 6 **Audit; Excessive Use.** If Customer has subscribed to Service(s) that is inappropriate for Customer's actual usage, FrontStream may terminate these Terms or may require Customer to switch to an appropriate tier within the same Service or different Service(s), which may result Customer having to pay FrontStream additional Fees, or (ii) terminate these Terms. FrontStream may, in its sole discretion and from time to time, establish practices to maximize the operation and availability of FrontStream Service(s) and to prevent abuses. FrontStream and its designated representatives may audit, examine, and make copies of data, documents, information, and other records in your possession or control that relate to or concern the Services in order to determine your compliance with these Terms. FrontStream additionally reserves the right to monitor your use of the Services to identify excessive use and to take such technical and other remedies as FrontStream deems appropriate. Customer's use of the Service(s) may be deemed excessive, for example, if, within any month, your usage greatly exceeds the average level of monthly email usage of other FrontStream customers. In the event Customer is deemed to have exceeded its permitted email use, FrontStream reserves the right to (i) terminate these Terms; (ii) impose additional Fees; or (iii) require Customer to switch to an appropriate tier within the same Service or different Service(s), which may result Customer having to pay FrontStream additional Fees.
3. **Support Services.** During FrontStream's normal business hours (i.e., 8:30 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, excluding United States federal holidays for Canadian and United States Customers; and 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 technical support for the Services via phone and email, which technical support consists of: (i) initial implementation of the Service(s), where required; (ii) basic training for use and best practices of the Service(s); and/or (iii) technical assistance. Support Services also includes the provision of FrontStream's online knowledge resource center (knowledge based videos), which FrontStream takes commercially reasonable steps to make available 24/7. Support Services do not include customization, site skinning, custom report(s), or enhancements or modifications to the Service(s). Any customized service development or other

services not described herein shall require the Parties to enter into a separate written agreement under the terms and pricing as agreed to by the Parties in that separate written agreement.

4. Fees and Payment.

4.1 Fees and Payment. Customer agrees to pay to FrontStream the fees for the Services as identified in the Order Forms before you sign up for the Service(s) (collectively, the “**Fees**”). Subscription Fees shall be paid by Customer before the start date of the applicable subscription and all other Fees shall be paid by Customer within fifteen (15) calendar 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) after receiving that notice indicates your consent to the change in Fees. If you do not consent to the change in the Fees, you may terminate the Terms effective upon the date of the notice by providing written notice to FrontStream.

4.2 Taxes. Fees do not include any applicable taxes, tariffs, duties and other charges or assessments imposed or levied by any government in connection with these Terms or the Services, including without limitation any federal, state, provincial and local sales, goods and services, harmonized, value-added, personal property or any other consumption taxes. Solely Customer shall be responsible for the payment of such taxes, if any. To the extent that FrontStream is responsible for collecting such taxes, they will be charged as a separate line item on invoices and Customer shall pay such taxes in accordance with Section 4.1.

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 or the highest rate permitted by law, calculated from the date payment was due until the date payment is made, and Customer shall reimburse FrontStream for 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 that raise doubt as to Customer’s ability or willingness to pay any Fees. If a Customer defaults under this Section 4, FrontStream shall have other rights and remedies as may be provided by law and at equity.

4.4 Autopay Enrollment Authorization. You hereby authorize FrontStream to debit Fees owed to FrontStream, in addition to any late fees, credit card fees, and other amounts then due, automatically according to the frequency or dates, as applicable, set forth in the applicable Order Form from your bank account. FrontStream may cancel this authorization at any time. Customer may cancel this authorization by contacting FrontStream in writing and such cancellation shall be effective ten (10) business days after FrontStream’s receipt of the request. FrontStream will send you written notice before the scheduled date of any payment to be debited if the amount debited will be different in amount from the prior debit made under these Terms, or different from the agreed upon payment amount (including any late charges, credit card fees, and other amounts that may be due). For more information regarding this AutoPay Enrollment Authorization, please contact FrontStream by e-mail at: billing@frontstream.com.

5. Intellectual Property; Ownership. FrontStream hereby asserts and claims, and Customer recognizes and acknowledges, that FrontStream or, as applicable, its suppliers and licensors, exclusively own all right, title, and interest in and to the Confidential Information and the Services, including all copies thereof and the Services’ text, audio, video, graphics, charts, photographs, interfaces, icons, software, computer code, data, trademarks, logos, slogans, names of products and services, documentation, other components and content, and the design, selection, and arrangement of content, as well as all copyright, trademark, and other intellectual property rights in or to the same (collectively, “**Intellectual Property Rights**”). These Terms do not provide Customer with any title or ownership of any Intellectual Property Rights. Except as expressly described in these Terms, no licenses or other rights, express or implied, are granted by FrontStream to you under any patent, copyright, trademark, trade secret, or other intellectual property right of FrontStream. Customer shall not remove, alter, modify or deface any copyright notice, trademark notice, other confidentiality or proprietary notices, logos, or names from the Services, including, but not limited to, those that identify FrontStream or any other party as the source of origin of such Services, information or documentation. Any unauthorized use of any trademarks, trade dress, copyrighted materials, or any other intellectual property belonging to FrontStream or any third party is strictly prohibited and may be prosecuted to the fullest extent of the law. The Services may contain references to third-party marks and copies of third-party copyrighted materials, which are the property of their respective owners.

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6. **WARRANTIES & DISCLAIMERS.** FrontStream warrants to you that: (i) it has the right to provide the Service(s) to you, and (ii) the Service(s) will perform in accordance with the then-current documentation as may be provided by FrontStream to you. If the Services provided for any given calendar month are not performed as warranted, then you must provide written notice to FrontStream of the nonconformity no later than five (5) business days after the nonconformity occurs to allow FrontStream to correct the nonconforming Service(s). FrontStream shall provide corrected Services or information as soon as reasonably practicable following receipt of written notice of nonperformance.

EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION, THE SERVICE(S) ARE PROVIDED TO YOU ON AN “AS-IS, WITH ALL FAULTS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTY OF ANY KIND. YOUR USE OF THE SERVICES IS AT YOUR OWN RISK.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION, FRONTSTREAM MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE REGARDING AVAILABILITY, QUALITY, ACCURACY, RELIABILITY, OR COMPATIBILITY WITH ANY STANDARDS OR USER REQUIREMENTS, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, AND 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 SERVICES (1) WILL BE UNINTERRUPTED OR ERROR-FREE, (2) ARE FREE OF VIRUSES, UNAUTHORIZED CODE, OR OTHER HARMFUL CONDITIONS OR COMPONENTS, OR (3) ARE COMPLETELY SECURE. EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION, FRONTSTREAM DOES NOT WARRANT THAT ANY DEFECTS IN THE SERVICES WILL BE CORRECTED. FRONTSTREAM IS NOT RESPONSIBLE FOR ANY TYPOGRAPHICAL ERRORS ON THE SERVICE. FRONTSTREAM HAS NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY CUSTOMER COMMUNICATION. FRONTSTREAM MAKES NO WARRANTY THAT THE SERVICE WILL ENSURE YOUR OR ANY OTHER PERSON’S COMPLIANCE WITH REGULATORY PROGRAMS.

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 SERVICES, INCLUDING ALL MATERIALS CONTAINED THEREIN. YOU, ALONE, ARE RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER HARDWARE, SOFTWARE, SYSTEMS, AND NETWORKS, ANY LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY INFORMATION FROM THE SERVICES, AND ANY OTHER DAMAGE THAT MAY BE INCURRED. YOU ACKNOWLEDGE THAT FRONTSTREAM DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. FRONTSTREAM IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. FRONTSTREAM MAKES NO REPRESENTATION THAT THE SERVICE IS APPROPRIATE OR AVAILABLE FOR USE IN LOCATIONS OTHER THAN THE UNITED STATES. IF YOU CHOOSE TO ACCESS THE SERVICE FROM LOCATIONS OTHER THAN THE UNITED STATES, YOU DO SO AT YOUR OWN RISK AND YOU ARE RESPONSIBLE FOR COMPLYING WITH APPLICABLE LAWS AND REGULATIONS.

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).

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. NO ADVICE OR INFORMATION, OBTAINED BY YOU IN ANY MANNER FROM THE SERVICES CREATES ANY WARRANTY. FURTHERMORE, YOU ACKNOWLEDGE THAT IT IS CUSTOMER'S RESPONSIBILITY TO VERIFY ANY INFORMATION UPON WHICH CUSTOMER USES OR RELIES.

7. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL FRONTSTREAM, ITS AFFILIATES, OR ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, OWNERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, CONSULTANTS, AGENTS, SUPPLIERS, OR LICENSORS (TOGETHER, "**FRONTSTREAM PARTIES**") BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE, OR ANY OTHER LOSS OR DAMAGE OF ANY KIND, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR YOUR ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE, THE SERVICES (INCLUDING WITHOUT LIMITATION THE INPUT OF PERSONALLY IDENTIFIABLE AND OTHER INFORMATION INTO THE SERVICES), WHETHER THE CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, OR OTHERWISE, AND EVEN IF FRONTSTREAM HAS EXPRESS KNOWLEDGE OF THE POSSIBILITY OF THE LOSS OR DAMAGE. YOUR SOLE AND EXCLUSIVE REMEDY IS TO STOP ACCESSING AND USING THE SERVICES. THESE LIMITATIONS OF LIABILITY APPLY, 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 ONLINE 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 NO FRONTSTREAM PARTY SHALL BE LIABLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY USER OF THE SERVICES.

HOWEVER, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO FRONTSTREAM'S BREACH OF WARRANTY, IN WHICH EVENT THE FRONTSTREAM PARTIES' LIABILITY TO YOU WILL NOT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO FRONTSTREAM DURING THE TWELVE (12)-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU. 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.

8. **Indemnity.** Customer hereby agrees to indemnify, defend and hold harmless FrontStream Parties from and against any and all third-party demands, claims, actions, complaints, proceedings, damages, liabilities, losses, judgments, settlements, fines, penalties, fees, costs and expenses (including without limitation reasonable attorneys' fees and the costs of any investigation) arising in connection with or incurred as a result of (i) Customer's breach of or default under these Terms, (ii) Customer's violation of applicable laws or regulations, (iii) Customer's access to or use of the Services, (iv) Customer's misuse of any material, data, or other information downloaded or otherwise obtained from the Services, or (v) 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 subject to indemnification by Customer and, in such case, Customer agrees to cooperate with FrontStream in the defense of such matter.

9. **Term, Termination and Suspension.**

- 9.1 Term. These Terms shall commence on the Effective Date and, unless terminated in accordance with these Terms, shall continue in effect for one (1) year. These Terms will automatically renew on each Renewal Effective Date for subsequent one (1)-year periods unless either Party notifies the other Party in writing that it does not want to renew these Terms at least ninety (90) calendar days before the end of the then-current term.
- 9.2 Termination for Material Breach. These Terms 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)-calendar day notification period.
- 9.3 Termination for Convenience. FrontStream may terminate these Terms for convenience at any time by providing the Customer with at least sixty (60) calendar days' prior written notice.
- 9.4 Termination for Changes to Applicable Law. These Terms may be terminated by either Party upon written notice at any time if the continued relationship, the provision of the Service(s), or the transactions hereunder would violate any applicable law or regulation (whether such law or regulation is existing as of the Effective Date or thereafter modified or enacted).
- 9.5 Termination or Suspension by FrontStream. FrontStream may, in its sole discretion, terminate or suspend Customer's account and Customer's access to or use of the Services without liability and with or without notice, if FrontStream reasonably believes that: (i) any Service is being used in breach of these Terms or otherwise in a potentially harmful or unlawful manner; (ii) the use of any Service by Customer adversely affects FrontStream's or its suppliers' equipment, security network infrastructure or provision of services to others; (iii) a court or other governmental authority having jurisdiction issues an order prohibiting FrontStream from furnishing any Service to Customer; or (iv) Customer fails to pay fees under these Terms after being given notice.
- 9.6 Effect of Termination. Except for any termination for convenience by FrontStream per Section 9.3 above, termination of these Terms does not relieve Customer of any outstanding payments due or any liability arising prior to termination. Customer acknowledges and agrees that all prepaid Fees are non-refundable. Upon termination of any Service hereunder, Customer shall immediately cease using, and return or destroy, as applicable, all Services and Confidential Information. FrontStream will allow the Customer thirty (30) calendar days from the date of termination of any subscription to any Service to retrieve Customer's data via the applicable Service.
10. **Confidentiality**. Customer acknowledges and agrees that the Services, including their forms, formats, modes and methods of compilation, related technology, and the selection, configuration, presentation and expression thereof, as well as all trade secrets, data, and other information Customer obtains from or about FrontStream in connection with these Terms or the Services, whether or not identified as "confidential" (together, "**Confidential Information**"), are the confidential and proprietary information of FrontStream. Confidential Information may be in any form and includes all copies of Confidential Information. Confidential Information is solely the property of FrontStream. Customer will use the same measures to protect the Confidential Information from unauthorized use and disclosure as it uses to protect its own most confidential information, but in no event less than a reasonable degree of care. You shall not disclose all or any part of the Confidential Information to any other person or entity, except to your employees and contractors who have a need to know for purposes of receiving, implementing, or using the Services as permitted hereunder and in accordance with these Terms, provided those employees and contractors are bound by confidentiality obligations no less stringent than those contained in these Terms. Customer may not use the Confidential Information for any purpose except as necessary to perform its obligations or exercise its rights under these Terms. Customer shall not use or permit any use of all or any part of the Confidential Information or attempt to sell, assign, convey, lease, sub-license, commercially exploit, or otherwise market or use all or any part of the Confidential Information in any way or manner, except as expressly permitted by this Section. Customer will be responsible for all breaches of this Section by its employees and contractors. Customer may also disclose the Confidential Information as follows: (i) with FrontStream's specific prior express written consent in each instance of disclosure; and (ii) if you are required by law to disclose the Confidential Information, but only after prompt notice to Frontstream of such requirement or request and after allowing FrontStream sufficient time to review any proposed disclosure, such that Frontstream has a reasonable opportunity to oppose or prevent a disclosure; in any event, Customer will release only that Confidential Information that Customer's legal counsel advises is required to be disclosed in order to comply with the request.

- 11. Data Protection.** The Parties acknowledge that the Services 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 personally identifiable information, 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 and regulations governing the collection, use or disclosure of personally identifiable information.
- 12. Feedback.** FrontStream welcomes comments regarding the Services. If you submit comments or feedback to us regarding the Services, they will not be considered or treated as confidential. We may use any comments and feedback that you send us in our discretion and without attribution or compensation to you.
- 13. General Provisions.**
- 13.1 Entire Agreement. These Terms, including our [Privacy Policy](#), represents the entire agreement between the Parties on the subject matter hereof and supersede all prior and contemporaneous discussions, agreements and understandings of any kind and nature between the Parties. FrontStream's failure to enforce any provision in these Terms will not constitute a waiver of that provision or any other provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by FrontStream. The headings in these Terms are for convenience only and do not affect the interpretation of these Terms.
- 13.2 Notices. All notices permitted or required by these Terms shall be in writing and shall be delivered (i) personally with postage prepaid certified, including by a recognized courier service, (ii) by certified or registered mail, postage prepaid and return receipt requested; or, (iii), only where you are the recipient, upon delivery by email. Notices shall be deemed given upon delivery five (5) calendar days after deposit in the mail or actual receipt. Notices sent by customers located in Australia shall be sent to FrontStream Pty, Ltd. at 7 Jeffcott Street, Suite 104, West Melbourne VIC 3003; notices sent by customers located in Canada shall be sent to FrontStream, Inc. at 215 Spadina Avenue, Suite 500. Toronto, ON. M5T 2C7, and notices sent by customers located in the United States shall be sent to FrontStream Holdings, LLC at 11480 Commerce Park Drive, Suite 300, Reston, VA 20191.
- 13.3 Force Majeure. FrontStream shall not be liable for any failure or delay in performing the Services or any other obligation under these Terms caused by, nor for any damages suffered by Customer or any other person by reason of, an act of God, natural disasters, fire, flood, storms, or other extraordinary elements of nature; 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, or public health crises; or any other cause beyond its reasonable control.
- 13.4 Third-Party Beneficiaries. These Terms do not confer any rights, remedies, or benefits upon any person other than you and Company, except that our affiliates are third-party beneficiaries of these Terms.
- 13.5 Severability & Survival. The illegality or unenforceability of any provision of these Terms shall not affect the validity and enforceability of any other provisions hereof. Any provisions that by their nature are intended to survive termination shall survive any termination of these Terms, including without limitation: Section 2.4, "[Privacy Policy](#)"; Section 4, "[Fees & Payment](#)" (as applicable); Section 5, "[Intellectual Property; Ownership](#)"; Section 6, "[Warranties & Disclaimer](#)"; Section 7, "[Limitation of Liability](#)"; Section 8, "[Indemnity](#)"; Section 9, "[Term, Termination and Suspension](#)" (as applicable); Section 10, "[Confidentiality](#)"; Section 12, "[Feedback](#)"; and Section 13 "[General Provisions](#)."
- 13.6 Assignment. These Terms may not be assigned by Customer without the prior written consent of FrontStream. Any attempt by Customer to assign these Terms without such prior written consent shall be null and void. We may assign our rights and delegate our duties under these Terms at any time to any party without notice to you. These Terms insure to the benefit of FrontStream's affiliates, successors and assigns.

- 13.7 Applicable Law. These Terms 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. The United Nations Convention for the International Sale of Goods does not apply. If there is a dispute, the prevailing party will be entitled to recovery of its costs and expenses, including reasonable attorneys' fees. Any cause of action or other claim with respect to the Services must be commenced within one (1) year after the cause of action or claim arises.
- 13.8 Arbitration Agreement; Class Waiver; Waiver of Trial by Jury. For US Customers, please read the following paragraphs carefully because they require you to arbitrate disputes with FrontStream and limit the manner in which you can seek relief from us.
- (i) *Applicability.* Any dispute, claim, or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation, or validity of these Terms (together, "**Disputes**") will be resolved by binding arbitration on an individual basis as described in these Terms (this "**Arbitration Agreement**"). But, in the event of any actual, alleged, or threatened violation of confidentiality or violation of FrontStream's intellectual property or other proprietary rights, FrontStream may immediately resort to court proceedings in a court of competent jurisdiction in order to seek immediate injunctive relief without posting bond, proving damages, or meeting any similar requirement. Any institution of any action for injunctive relief will not constitute a waiver of the right or obligation of either party to submit any claim seeking relief other than injunctive relief to arbitration. This Arbitration Agreement applies to you; FrontStream; FrontStream's affiliates; FrontStream's and its affiliates' respective directors, officers, employees, owners, agents, predecessors in interest, successors in interest, and assigns; authorized and unauthorized users or beneficiaries of the Service; and any third-party beneficiaries.
- (ii) *Arbitrator.* Arbitration proceedings will be administered by the American Arbitration Association ("**AAA**") before an arbitrator chosen by agreement of the parties. If the parties fail to reach agreement on the arbitrator within 30 days after service of the demand for arbitration, the arbitrator will be chosen by the AAA. The decision of the arbitrator will be final and binding. Any final award or judgment may be filed and enforced in any court of competent jurisdiction. The prevailing party will bear all costs of arbitration, including all attorneys' fees. Any arbitration proceeding may not be consolidated or joined with any other proceeding and will not proceed as a class action. **The parties understand that they would have had a right or opportunity to litigate disputes through a court, to have a judge or jury decide their case, and to participate in a class action or other proceeding involving multiple claimants, but they have instead chosen to have all Disputes decided through individual arbitration.**
- (iii) *Place; Federal Arbitration Act.* The place of arbitration will be [city/county], [state], unless otherwise agreed to in writing by all parties to the arbitration. This Arbitration Agreement evidences a transaction involving interstate commerce and the Federal Arbitration Act, 9 U.S.C. Sections 1-16, will govern the interpretation, enforcement, and proceedings pursuant to this Arbitration Agreement.
- (iv) *Confidentiality.* Any and all actions taken under this Arbitration Agreement, including all filings, orders, judgments, and awards made in any arbitration proceeding, are confidential and may not be disclosed to any third party.
- (v) *Time Limitation on Claims.* Arbitration proceedings must be initiated within one year after any Dispute arises; otherwise, the Dispute is permanently barred.
- 13.9 Electronic Communications. These Terms and any other documentation, agreements, notices, or communications between you and FrontStream may be provided to you electronically to the extent permissible by law. Please print or otherwise save a copy of all documentation, agreements, notices, and other communications for your reference.
- 13.10 Affiliates. The Service(s) may be performed by an affiliate or associated entity (as that term is defined under Australian law) of FrontStream.



By accepting and agreeing to these Terms on behalf of the Customer, you represent and warrant that you are a duly authorized representative of Customer and have the authority to enter into these Terms. If you have any questions about these Terms, please contact FrontStream by email at termsandconditions@frontstream.com or by mail at the applicable address set forth above.