



Proposal Terms and Conditions

Discussion

This document specifies terms and conditions that apply to any Work-For-Hire done by Active Lightning for any client [CLIENT].

CLIENT-Supplied Information and Assumptions

To accomplish the tasks and provide the deliverables specified by proposed Work-For-Hire, Active Lightning assumes that CLIENT will provide Active Lightning with the information it needs related to the project. Inability to or delays in providing needed information, direction, or decisions may result in slippage of the promised deliveries and associated costs.

To complete the tasks and deliver software discussed in any proposed Work-For-Hire, Active Lightning understands that CLIENT will provide:

- Access to key project personnel to respond to interrogatives and make decisions
- Review and acceptance, as applicable, of Proposal deliverables

These assumptions are in addition to those listed in "Specifications and Assumptions" in any project description.

Terms and Conditions

The following terms and conditions apply to any Work-For-Hire performed by Active Lightning:

1 Warranty

Active Lightning will provide the deliverables specified with the degree of skill and care that is required by customarily accepted good and sound professional practices and standards, at the time the work is performed, to ensure all work is correct and appropriate for the purpose intended, including work performed by subcontractors.

In the event of any error, omission, or other professional negligence, or any breach of the above warranty, the sole and exclusive responsibility of Active Lightning will be to re-perform the deficient work at its own expense and Active Lightning will have no other liability whatsoever.

Active Lightning will not be responsible for any error, omission, or other professional negligence, or any breach of warranty by any other third party software or operating system [software].

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ACTIVE LIGHTNING SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CLIENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING OUT OF OR RELATED TO ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOSS OF PROFIT, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF Primary Contact's AUTHORIZED REPRESENTATIVE HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

2 Schedule Contingencies

Conditions or events beyond the control of Active Lightning may jeopardize the proposed performance schedules. Active Lightning shall not be responsible for delays in delivery beyond Active Lightning's control. Examples of conditions or events beyond Active Lightning's control include a change in the CLIENT personnel working on the project or an inability to access Primary Contact personnel, remote desktop, or information.

3 Estimates, Price and Price Contingencies

Active Lightning attempts to identify assumptions and important aspects of any project it does under Work-For-Hire that impact the time and money that it will take to accomplish the project. This assessment, and any estimate, is a best guess based on the professional experience of our talented experts. With the development of custom software it is impossible to identify all contingencies and the evolving desires of the CLIENT.

In the case that a project is offered on a fixed-price basis, and a problem, constraint, unexpected properties of 3rd party software, properties of the technical infrastructure that do not support required features, or like issue arises during the course of creating the custom software for the CLIENT that: a) was not identified in the fixed-price Proposal, b) is needed for the software to function as desired or specified, and c) causes a significant additional

labor cost, then the cost will be shared equally (50%/50%) by both Active Lightning and the CLIENT. It is understood that Active Lightning does its best to avoid these situations.

If a project is not explicitly proposed on a fixed-price basis, then Work-For-Hire done by Active Lightning is performed on a time and expenses basis. Time is charged in quarter hour increments. Active Lightning will endeavor to communicate with the CLIENT about the charges incurred at 7-15 day intervals.

It is the responsibility of the CLIENT to apprise Active Lightning if budgetary constraints are more important than the targeted deliverables.

When the need for a project cost overage in excess of 20% is identified we will attempt to contact CLIENT to obtain authorization for incurring additional unplanned-for expenses. When the Primary Contact is unavailable for authorization, Active Lightning will use the communicated priorities to determine whether we move forward with incurring extra expense --- to meet the deadline --- or stop work.

Sometimes, rapid development to meet the CLIENT's desired milestone and delivery date may cause the billable hours to exceed the estimate beyond this 20% when either a) workers are unaware that the project has exceeded the limit.

The CLIENT needs to be aware that the nature of custom software development does not lend itself to tight estimates, and plan for cost contingencies. Also, the CLIENT should consider and monitor it's communication and requests, knowing that billable time is involved in reading and responding to communication and requests.

The CLIENT is responsible to pay for the professional services time that is used in producing the deliverables of the Work-For-Hire project. Active Lightning owns the software it develops until it has been paid in full. Upon payment for services rendered, the ownership of code is covered by Term 6, Software Ownership and Right to Reuse Code.

4 Indemnity

CLIENT hereby undertakes and agrees to indemnify and save harmless Active Lightning, its officers, directors and employees, from any and all liability, loss, damage, suits, debts, claims, expenses, etc., whatsoever, arising directly or indirectly from this Work-For-Hire agreement or any ensuing Agreement including any patent, copyright, trade secret, or trademark infringement claims.

5 Proprietary Information

Active Lightning and its employees and contractors will not compromise CLIENT and its property rights, intellectual property rights, or non-disclosure policies. CLIENT understands that the ecommerce solution AspDotNetStorefront is proprietary to Discovery Productions, Inc. --- doing business as AspDotNetStorefront, PatternStream is proprietary to Finite Matters Limited, FrameMaker is proprietary to Adobe Systems Incorpo-

rated, ActiveTransfer is proprietary to Active Lightning, and database content is proprietary to CLIENT and shall remain proprietary to these parties notwithstanding anything to the contrary contained herein.

CLIENT and Active Lightning will make available and disclose such software, processes, product information, and data [hereafter Information] as the parties mutually agree are necessary and desirable for tests, analysis, review, study, evaluation, development, and completion. Either company may consider portions of the Information proprietary.

Both CLIENT and Active Lightning agree:

- To require their respective personnel to maintain the Information in confidence.
- The Information shall at all times remain the property of the respective companies and shall not be used or disclosed to anyone without the prior consent.

Notwithstanding the foregoing, this Work-For-Hire agreement shall not apply to Information which:

- Is in the public domain.
- Is known and can be shown to be known by either company prior to disclosure.
- Becomes part of the public domain by publication or otherwise and is not the result of any unauthorized act or omission on the part of either company; or
- Can be demonstrated to have been supplied to either company by a third party who is under no obligation to maintain such Information in confidence.

It is acknowledged by CLIENT that unauthorized copying, transfer or use of software or unauthorized disclosure of the Information may cause Active Lightning irreparable injury that cannot be adequately compensated for by means of monetary damages. It is therefore agreed that any breach of this section by CLIENT may be enforced by means of equitable relief (such as, but not necessarily limited to injunctive relief) in addition to any other rights and remedies that may be available.

6 Software Ownership and Right to Reuse Code

The software that Active Lightning develops in a Work-For-Hire project [Software] involves instructions to various branded software applications and operating systems in the setting or context of the computer network environment set up for this project. All these instructions that are utilized to provide the functional utility described in the Work-For-Hire project description are hereby referred to as "Code."

Upon final payment for services rendered for ActiveTransfer™, Active Lightning grants to CLIENT a non-exclusive, non-transferable single-site right and license for use of the ActiveTransfer™ software for the purpose of synchronizing inventory and sales data between its in-house point-of-sale system and its ecom-

merce marketing channels, including its online shopping cart. Such right and license shall continue for an indefinite term, so long as CLIENT remains in compliance with all terms and conditions herein. Active Lightning shall at all times retain all its right, title and interest in and to the ActiveTransfer™ software. CLIENT agrees not to resell licensed software and to comply with the terms here-in.

Upon final payment for services rendered for custom software---other than ActiveTransfer™ or other branded products---CLIENT receives all right and title to Code developed by Active Lightning or its subcontractors. As the Owner, CLIENT grants the right to Active Lightning, in perpetuity to reuse part or all of the Code for other for-profit projects. CLIENT hereby agrees that it is NOT entitled to any remuneration that Active Lightning receives from selling custom software to other customers, even if such software uses part or all of the Code.

7 Copyright

Active Lightning agrees that CLIENT owns the copyright to published html files that Active Lightning works on in accordance with Work-For-Hire.

8 AspDotNetStorefront

AspDotNetStorefront (the company) has no obligations or liabilities whatsoever to or related to CLIENT (including, without limitation, the CLIENT's purchase, use and/or resale of any Software).

CLIENT should not contact AspDotNetStorefront in relation to the Software or Services provided by AspDotNetStorefront or Active Lightning, and CLIENT must deal exclusively with Active Lightning.

AspDotNetStorefront will NOT be involved in any disputes between Active Lightning and one of its actual or potential CLIENTs. Active Lightning alone, and not AspDotNetStorefront, is responsible for all customer service issues that a CLIENT may have.

If CLIENT's project involves AspDotNetStorefront software, then CLIENT must comply with any and all software license agreements and other agreements AspDotNetStorefront (the company) has in place including AspDotNetStorefront's Source Code Licensing Agreement ("SLA") and End User License Agreement ("EULA"), both of which are posted on the AspDotNetStorefront website.

9 Remedies

If CLIENT is in default of any payment hereunder or attempts to use, copy, license or convey the items supplied by Active Lightning hereunder in a manner contrary to the terms of this Agreement or in competition with Active Lightning or in derogation of Active Lightning's proprietary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, Active Lightning shall have, in addition to any other remedies available to it, the right to injunctive relief, CLIENT

hereby acknowledging that other remedies are inadequate.

10 Term

This Work-For-Hire agreement is at the will of the parties and may be terminated by either Active Lightning or the CLIENT at any time, with or without cause. In the event of termination of this Agreement prior to completion of the services, CLIENT shall be responsible for payment for all services rendered and expenses incurred by Active Lightning up to the date of termination.

11 Notice

All notices under this Work-For-Hire agreement or any ensuing Agreement shall be in writing and given either in person or by telefax or express overnight service to the address of the party set forth herein (or to such other address as a party may furnish to the other as provided in this sentence), and shall be deemed received on the date of personal delivery, confirmed telefax transmission or receipt (in the case of express overnight service), and if notice is given pursuant to the foregoing to a permitted successor or assign, then notice shall thereafter be given pursuant to the foregoing to such permitted successor or assign.

12 Assignment; Binding Effect

CLIENT shall not assign, transfer or delegate any rights or obligations under this Work-For-Hire agreement or any ensuing Agreement without the prior written consent of Active Lightning, which consent may be withheld in Active Lightning's sole discretion. All or any portion of the services to be provided by Active Lightning hereunder may be subcontracted by Active Lightning without CLIENT's consent, which subcontracting shall in no way relieve Active Lightning of its obligations hereunder. This Work-For-Hire (including these terms and conditions) and any ensuing Agreement shall be binding upon the parties and their respective legal representatives, heirs, devisees, legatees or other successors and assigns, and shall inure to the benefit of the parties and their respective permitted legal representatives, heirs, devisees, legatees or other successors and assigns.

13 Entire Agreement

Any ensuing Agreement, together with this Work-For-Hire agreement, constitutes the entire agreement of the parties with respect to its subject matter, supersedes all prior or contemporaneous agreements (written or oral), if any, of the parties with respect to its subject matter, and may not be amended except in writing signed by both parties. In the event of any conflict between the terms of the Work-For-Hire agreement and any ensuing Agreement, the terms of the Agreement shall control.

14 No Waiver

The failure of any party at any time or times to require the performance of any provisions of this Work-For-Hire agreement (including these terms and conditions) or any ensuing agreement shall in no manner affect the right to enforce the same; and no waiver by any party of any provision (or of a breach of any provision) of this Work-For-Hire agreement (including these terms and conditions), whether by conduct or otherwise, in any one or more instances, shall be deemed or construed either as a further or continuing waiver of any such provision or breach or as a waiver of any other provision (or of a breach of any other provision) of this Work-For-Hire agreement (including these terms and conditions).

15 Governing Law

This Work-For-Hire agreement (including these terms and conditions) and any ensuing Agreement shall be governed by, construed and enforced in accordance with the laws of the United States of America and the Commonwealth of Massachusetts.

16 Severability

It is the intention of all of the parties hereto that each provision of this Work-For-Hire agreement (including these terms and conditions) or any ensuing Agreement is severable and, if for any reason any provision is held to be invalid or unenforceable, neither the validity or enforceability of the remaining provisions of the Agreement shall be affected thereby.

17 Payment

Active Lightning shall be paid within 15 days of invoice. Invoices greater than 30 days old will be assessed an additional late fee of 2.0 percent. Payment for hardware and off-the-shelf software must be paid in order to take delivery.

These prices include all reasonable phone and miscellaneous expenses incurred by Active Lightning personnel. These prices do not include any travel, lodging, and meal expenses.

Active Lightning shall not be responsible for the payment of any local, state, or federal taxes for deliverables outside the Commonwealth of Massachusetts.

18 Attorneys' Fees

In the event that any party should institute suit for any relief under this Work-For-Hire agreement or any ensuing Agreement against the other party, the losing party shall pay to the prevailing party all reasonable expenses and court costs, including reasonable attorneys' fees, incurred by the prevailing party, which shall be deemed to have accrued on the date such suit is instituted and shall be enforceable even though such suit is not prosecuted to judgment.

Statement of Acceptance:

I hereby accept the terms above constituting Active Lightning's Work-For-Hire Agreement, as a CLIENT of Active Lightning. I am sending the required retainer/ deposit. Please initiate work on the project we have discussed. I am an authorized signer for my company [CLIENT].

Print: Name:
Title:

Date