

SOMETHING HAPPENED LLC
13184 Isanti St. NE; Blaine, MN 55449 | 763-200-4861
Technical Consulting Agreement (updated August 30, 2016)

This Agreement, dated this ____ day of _____, 20____ (“Effective Date”), by and between Something Happened LLC (hereinafter “Something Happened”), a Limited Liability Company having its principal place of business as listed above, and _____ (hereinafter “Client”), a _____ having its principal place of business at _____:

WHEREAS Something Happened wishes to provide certain professional computer, technical, and Information Technology related services; and

WHEREAS Client wishes to procure the services from Something Happened for good and valuable consideration, as more fully described herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth, the parties hereto agree as follows:

1. SCOPE OF SERVICES

Client retains Something Happened to perform, or cause to be performed Services for Client. Services include technical support, repair, maintenance, and installation of computer, server, network, and phone equipment.

Something Happened may decline to perform any services requested by Client that are in violation of any applicable law or that are not typically associated with Services provided by Something Happened.

2. PERFORMANCE OF SERVICES

Something Happened shall, to the best of its ability, render Services requested by Client in a timely and professional manner consistent with generally accepted industry standards.

Client shall provide in a timely and professional manner, and at no cost to Something Happened, assistance, cooperation, complete and accurate information and data, equipment, access to applicable computer and telecommunications facilities, networks, firewalls, servers, programs, files, documentation, passwords, a suitable work environment, and other resources requested by Something Happened to enable it to perform the Services (collectively, “Assistance”). Something Happened shall not be liable for any deficiency in performing the Services if such deficiency results from the Client’s failure to provide full Assistance as required hereunder. Assistance includes, but is not limited to, designating a project manager or contact person to interface with Something Happened during the course of Services.

3. PAYMENT/COMPENSATION

Unless otherwise indicated in writing, all Services will be performed on a time-and-materials basis at Something Happened’s then-current rates. Accordingly, Client shall pay Something Happened for all time spent performing the Services, plus the cost of any materials, taxes, travel, lodging, communications, shipping charges, and out-of-pocket expenses incurred by Something Happened in connection with providing Services.

In no event will Something Happened perform Services without payment, free services, services as a favor, bartered services, or otherwise discounted services unless agreed upon in writing and signed by both parties. Phone or email support for “Quick Questions” or calls to answer questions which are under 10 minutes in length, or email chains of 5 total emails or less, may not be billed to Client at Something Happened’s discretion, provided Client does not abuse this policy. Phone support in excess of 10 minutes, or emails chains in excess of 5 total emails, will be billed in quarter hour increments at our normal hourly rate.

Special rates may apply for Services requested outside of normal business hours (8 am to 5 pm, Monday through Friday) or on holidays.

Invoices will be created and emailed to Client for work that has been completed each week. Terms of payment are within Something Happened's sole discretion, and unless otherwise agreed to by Something Happened, payment must be received by Something Happened within 15 days of the date on the invoice. Something Happened may invoice parts of an order separately or request a portion in advance before work begins for some Services.

Client shall pay all amounts due that are not in dispute. Disputes of charges on an invoice must be made in writing and mailed to our address or emailed to billing@somethinghappened.tech within 7 days of receipt of invoice. Payments must be made in a single transaction in the amount of the invoice.

Something Happened reserves the right to charge Client a late penalty charge of 1% or \$5, whichever is greater, or the maximum legal rate permitted by law, applied against undisputed overdue amounts. Each week thereafter Client will continue to be charged an additional late penalty charge.

If payment has not been made according to the terms herein Something Happened reserves the right to disable and/or render useless any equipment or Services that have not been paid for until payment is made.

Something Happened is not responsible for pricing, typographical, or other errors in any offer by Something Happened or its representatives.

Unless Client provides Something Happened with a valid and correct tax exemption certificate, Client is responsible for any applicable sales or other taxes. Something Happened will make every effort to ensure that sales and other taxes are collected properly. Client agrees to be responsible for any taxes that are due for products and Services provided to Client.

4. REPRESENTATIONS AND WARRANTIES

Something Happened represents and warrants that the Services performed for Client pursuant to this Agreement shall be performed in a professional manner by individuals well-qualified to perform such work as their best effort and agrees to provide Client, upon request, with information concerning the individual's experience that affirms these qualifications.

Unless otherwise stated, all materials, supplies, parts, software, recommendations, Services, and other products supplied under this agreement are provided on an "as is" basis, and Something Happened provides no additional warranties, expressed or implied. The only warranties attendant to any materials, supplies, parts, Services, and other products supplied under this Agreement are those which may be offered by the manufacturer, and any recourse the Client may have for failure of any such materials, supplies, parts, or other products supplied under this Agreement must be sought only from the manufacturer.

Something Happened makes no warranties, either express or implied, as to any matter whatsoever, including, without limitation, the condition of the Services or any work product or deliverables developed hereunder, and Something Happened expressly disclaims all warranties of merchantability, fitness for any particular purpose or need, accuracy, non-infringement of third party rights and title, and all warranties that may arise from the course of dealing, course of performance or usage of trade. To the extent permitted by applicable law, in no event will either party be liable under any legal theory for any special, indirect, consequential, exemplary or incidental damages, however caused, arising out of or relating to this Agreement, even if such a party has been advised of

the possibility of such damages. Neither party's liability to the other party under this Agreement shall exceed the total amounts paid or payable by Client under this Agreement.

Something Happened does not accept liability beyond the remedies set forth herein, including but not limited to any liability for product or service not being available, lost profits, loss of business or for lost or corrupted data or software, or the provision of Services and support. Except as expressly provided herein, Something Happened will not be liable for any consequential, special, indirect, or punitive damages, even if advised of the possibility of such damages, or for any claim by any third party. Client agrees that for any liability related to the purchase of product or service, Something Happened is not liable or responsible for any amount of damages above the amount invoiced for the applicable product or service. Notwithstanding anything in this agreement to the contrary, the remedies set forth in this agreement shall apply even if such remedies fail their essential purpose.

5. SOFTWARE AND LICENSING

Software that may be provided may be subject to a license agreement. Title to software remains with the applicable licensor(s). It is the Client's responsibility to ensure that ALL software in use by Client is properly licensed, and Client agrees to maintain records of applicable licenses. Something Happened will not promote the use of, or knowingly support software which is not properly licensed by Client.

Client agrees to indemnify and hold harmless Something Happened of and from any and all claims, demands, losses, causes of action, damage, lawsuits, judgements, including attorney's fees and costs, related to licensing.

6. TERM/TERMINATION

This Agreement shall commence on the Effective Date. Either party may terminate this Agreement and/or any work in progress at any time upon 7 days advance written notice to the other party. Notice of termination of any work in progress shall not be considered notice of termination of this Agreement unless specifically stated in the notice; provided, however, any termination of this Agreement shall automatically terminate any work in progress. Any work in progress outstanding at the time of termination of this Agreement shall continue to be governed by this Agreement as if it had not been terminated.

Either party may terminate this Agreement immediately upon notice to the other party if the other party breaches or is in default of any obligation hereunder, including the failure to make any payment when due, which default is incapable of cure or which, being capable of cure, has not been cured within 7 days after receipt of written notice from the non-defaulting party.

Upon termination of this Agreement, Something Happened shall immediately cease performing any Services and Client shall pay Something Happened any compensation due for Services actually rendered. Termination of this Agreement by either party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party's obligations under this Agreement. Neither party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement by a party shall be without prejudice to any other right or remedy of such party under this Agreement or applicable law.

7. INDEPENDENT CONTRACTOR

Something Happened is an independent contractor and not an employee of Client, and, unless otherwise stated in this Agreement, is not entitled to any of the benefits normally provided to the employees of Client. Something Happened will furnish its Services as an independent contractor and not as an employee of Client or

anyone affiliated with Client. Something Happened has no power or authority to act for, represent, or bind client in any manner, unless said power is expressly given to Something Happened by Client.

Something Happened reserves the right to use subcontractors explicitly approved by Something Happened.

8. LIABILITY

Without regard to the fault or negligence of any party, Client hereby unconditionally indemnifies, holds harmless, protects and defends Something Happened, and all subsidiary, affiliate, related, and parent companies, their current and former respective shareholders, non-leased employees, officers, agents and representatives (all indemnified parties referred to as “Something Happened Indemnified Parties”) from and against any and all claims, demands, damages (including liquidated, punitive and compensatory), injuries, deaths, actions and causes of actions, costs and expenses (including attorney’s fees and expenses at all levels of proceedings), losses and liabilities of whatever nature (including liability to third parties), and all other consequences of any sort, whether known or unknown, without limit and without regard to the cause or causes thereof or the negligence of Something Happened or any Something Happened Indemnified Party, that may be asserted or brought against any Something Happened Indemnified Party which is in any way related to this Agreement, the products or Services provided by Something Happened, the actions of any employee or of any other individual, including without limitation, any violation of any local, state and/or federal law, regulation, ordinance, directive or rule whatsoever.

All indemnifications are and shall be deemed to be contractual in nature and shall survive the termination or expiration of this Agreement.

Client shall be solely responsible for loss of any data or information stored on or in any of Client’s equipment and shall be solely responsible for making “back-up” or security copies of such data or information. It is the Client’s responsibility to verify that backups are run regularly, as well as the integrity of the backups. Something Happened shall not be held liable in the event of data loss, backup software failure, backup selection, backup hardware failure, backup media failure, or backup system failure even in the event that Something Happened performed the backups. Something Happened shall not be held liable for data loss or damages due to computer viruses, spyware, malware, malicious software, corrupted data, security breaches of any kind, and/or any component failure.

9. CONFIDENTIALITY

Something Happened will treat as proprietary and keep confidential any information belonging to Client, its affiliated customers, companies, personnel, or any third parties, which is disclosed to Something Happened in the course of Something Happened’s services to Client.

Confidential Information includes, without limitation, the terms and conditions of this Agreement; all business plans, technical information or data, product ideas, methodologies, passwords, calculation algorithms and analytical routines; and all personnel, client, contracts and financial information or materials disclosed or otherwise provided by Client.

Confidential Information does not include that which (a) is already in Client’s possession at the time of disclosure to Client, (b) is or becomes part of the public knowledge other than as a result of any action or inaction of the Client, (c) is obtained by Client from an unrelated third party without a duty of confidentiality.

10. GOVERNING LAW

This agreement is to be construed in accordance with and governed by the internal laws of the State of Minnesota, without regard to or application of provisions relating to choice of law.

11. SEVERABILITY

If any provision of this Agreement is unenforceable, then such provision will be enforced to the maximum extent possible under applicable law so as to affect the intent of the parties and the other provisions of this Agreement will continue in full force and effect.

12. DISPUTE RESOLUTION AND BINDING ARBITRATION

Client agrees that any disputes, claims, or controversies (whether in contract, tort, or otherwise, whether preexisting, present or future, and including statutory, consumer protection, common law, intentional tort, and equitable claims) arising out of or relating to this contract shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association.

The parties shall select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the two arbitrators in turn shall select a third arbitrator, all three of whom shall preside jointly over the matter. The arbitration shall take place at a location that is reasonably and centrally located between the parties, or otherwise mutually agreed upon by the parties. All documents, materials and information in the possession of each party that are in any way relevant to the dispute shall be made available to the other party for review and copying no later than 30 days after the notice of arbitration is served. The arbitrator(s) shall not have the authority to modify any provision of this Agreement or to award punitive damages. The arbitrator(s) shall have the power to issue mandatory orders and restraint orders in connection with the arbitration. The decision rendered by the arbitrator(s) shall be final and binding on the parties, and judgment may be entered in conformity with the decision in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under the prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

The arbitration proceeding will be limited solely to the dispute or controversy between Client and Something Happened. Neither Client nor Something Happened shall be entitled to join or consolidate claims by or against other clients, customers, or arbitrate any claim as a representative or class action.

Any award of the arbitrator(s) shall be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction.

You acknowledge that you are giving up your rights to litigate claims in a court or before a jury or to participate in a class action or representative action with respect to such a claim. Other rights that you would have if you went to court, such as access to discovery, may also be unavailable or may be limited in arbitration.

13. ENTIRE AGREEMENT; AMENDMENT; WAIVER

This Agreement constitutes the entire agreement between Something Happened and the Client with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications, negotiations, promises conditions, and agreements, written or oral, regarding the subject matter hereto. No modification of or amendment or waiver to this Agreement will be effective unless in writing and signed by Something Happened and the Client.

The Authorized Representative hereby represents and warrants that s/he has the authority to enter into this contract on behalf of the Client and to bind Client to the terms of this contract.

AUTHORIZED REPRESENTATIVE/CLIENT

SOMETHING HAPPENED LLC

Business Name: _____

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Position: _____

Position: _____

Date: _____

Date: _____