

I N D E P E N D E N T   C O N T R A C T O R  
A G R E E M E N T   F O R  
C O N S U L T A N T

This Agreement is made between \_\_\_\_\_ ("Client"), with a principal place of business at \_\_\_\_\_ and Automation Elite ("Contractor"), with a principal place of business at 18810 Blackberry Lane, Meadow Vista, CA 95722.

**1. Services to be Performed**

Consultant agrees to perform the consulting services described in Project Report to be developed.

**2. Payment**

In consideration for the services to be performed by Consultant, Client agrees to pay Consultant according to the rates and terms of payment set forth in the "Automation Elite Service Rate" document.

**3. Terms of Payment**

A 20% Deposit of projected total project cost is due on calendaring of the project commencement date. A minimum deposit for consulting or project work will be deposited to set initial date if total project estimate is not available, at [www.automationelite.com/purchase](http://www.automationelite.com/purchase).

The number of stages remaining in the project will equally divide the balance. Payment will be due at each visit upon completion and testing of each phase of work. See the "Automation Elite Service Rate" document attached for other payment details.

**4. Expenses**

Consultant shall be responsible for all expenses incurred while performing services under this Agreement. This includes license fees, memberships and dues; meals and entertainment; insurance premiums; and all salary, expenses and other compensation paid to employees or contract personnel the Consultant hires to complete the work under this Agreement.

**5. Materials**

Consultant will furnish all materials, equipment and supplies used to provide the services required by this Agreement.

## **6. Independent Contractor Status**

Consultant is an independent contractor, and neither Consultant nor Consultant's employees or contract personnel are, or shall be deemed, Client's employees. In its capacity as an independent contractor, Consultant agrees and represents, and Client agrees, as follows:

- Consultant has the right to perform services for others during the term of this Agreement.
- Consultant has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- Consultant has the right to perform the services required by this Agreement at any place or location and at such times as Consultant may determine.
- Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- The services required by this Agreement shall be performed by Consultant, or Consultant's employees or contract personnel, and Client shall not hire, supervise or pay any assistants to help Consultant.
- Neither Consultant nor Consultant's employees or contract personnel shall receive any training from Client in the professional skills necessary to perform the services required by this Agreement.
- Neither Consultant nor Consultant's employees or contract personnel shall be required by Client to devote full time to the performance of the services required by this Agreement.

## **7. Permits and Licenses**

Consultant has complied with all federal, state and local laws requiring business permits, certificates and licenses required to carry out the services to be performed under this Agreement.

## **8. State and Federal Taxes**

Client will not:

- withhold FICA (Social Security and Medicare taxes) from Consultant's payments or make FICA payments on Consultant's behalf,
- make state or federal unemployment compensation contributions on Consultant's behalf, or
- withhold state or federal income tax from Consultant's payments.

Consultant shall pay all taxes incurred while performing services under this Agreement--including all applicable income taxes and, if Consultant is not a corporation, self-employment (Social Security) taxes. Upon demand, Consultant shall provide Client with proof that such payments have been made.

## **9. Fringe Benefits**

Consultant understands that neither Consultant nor Consultant's employees or contract personnel are eligible to participate in any employee pension, health, vacation pay, sick

pay or other fringe benefit plan of Client.

### **10. Workers' Compensation**

Client shall not obtain workers' compensation insurance on behalf of Consultant or Consultant's employees. If Consultant hires employees to perform any work under this Agreement, Consultant will cover them with workers' compensation insurance and provide Client with a certificate of workers' compensation insurance before the employees begin the work.

### **11. Unemployment Compensation**

Client shall make no state or federal unemployment compensation payments on behalf of Consultant or Consultant's employees or contract personnel. Consultant will not be entitled to these benefits in connection with work performed under this Agreement.

### **12. Term of Agreement**

This agreement will become effective when signed by both parties and will terminate on the earlier of:

- the date Consultant completes the services required by this Agreement
- the date a party terminates the Agreement as provided below.

### **13. Terminating the Agreement**

With reasonable cause, either Client or Consultant may terminate this Agreement, effective immediately upon giving written notice.

Reasonable cause includes:

- a material violation of this Agreement, or
- any act exposing the other party to liability to others for personal injury or property damage.

### **14. Warranties**

Consultant does not guarantee the usability or functionality of any hardware or software beyond the original delivery / installation. The client will verify initial functionality in writing by initialing each stage of the project as it appears on the project report after it is completed and tested.

Any issues arising from compatibility or system requirements not provided to the consultant prior to the start of the project, which lead to additional work outside the scope of the Initial Project Report will be chargeable.

The Consultant does not guarantee the usability or compatibility of any industry specific software beyond the original delivery / installation and configuration at the direction of the software Vendor's instructions or technical support department.

The consultant does not warrant any hardware, software or peripherals purchased on an optional and voluntary basis by the client from consultant recommended vendors. Vendors and Original Equipment Manufacturers warrant their products directly.

The Consultant does not guarantee the functionality and or effectiveness of any Virus Software.

It is the client's sole responsibility to update and maintain his virus solution.

The Client is responsible for the integrity and verification of backup data including but not

limited to users documents, user and e-mail profiles and industry specific data.

## **15. Exclusive Agreement**

This is the entire Agreement between Consultant and Client.

## **16. Modifying the Agreement**

Only a writing signed by both parties may modify this Agreement.

## **17. Confidentiality**

Consultant acknowledges that it will be necessary for Client to disclose certain confidential and proprietary information to Consultant in order for Consultant to perform his/her duties under this Agreement. Consultant acknowledges that any disclosure to any third party or any misuse of this proprietary or confidential information would irreparably harm Client. Accordingly, Consultant will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of Client without Client's prior written permission except to the extent necessary to perform services on Client's behalf.

Proprietary or confidential information includes:

- the written, printed, graphic or electronically recorded materials furnished by Client for Consultant to use
- business or marketing plans or strategies, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind, sales projections, pricing information
- Information belonging to customers and suppliers of Client about whom Consultant gained knowledge as a result of Consultant's services to Client, and
- any written or tangible information stamped "confidential," "proprietary" or with a similar legend, or any information that Client makes reasonable efforts to maintain the secrecy of.

Consultant shall not be restricted in using any material which is publicly available, already in Consultant's possession or known to Consultant without restriction, or which is rightfully obtained by Consultant from sources other than Client.

Upon termination of Consultant's services to Client, or at Client's request, Consultant shall deliver to Client all materials in Consultant's possession relating to Client's business.

## **18. Resolving Disputes**

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in the city of Auburn, Placer County, CA. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit the dispute to a mutually agreed-upon arbitrator in the city of Auburn, Placer County, CA. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to do so. Costs of arbitration, including attorney fees, will be allocated by the arbitrator.

**19. Applicable Law**

This Agreement will be governed by the laws of the State of California.

**20. Notices**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- when delivered personally to the recipient's address as stated on this Agreement
- when sent by fax or telex to the last fax or telex number of the recipient known to the person giving notice; such notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail, or the recipient delivers a written confirmation of receipt.
- when sent by electronic mail and acknowledged by the recipient.

**21. No Partnership**

This Agreement does not create a partnership relationship. Consultant does not have authority to enter into contracts on Client's behalf.

**Signatures**

**Client:**

By: \_\_\_\_\_

Signature

Title:

By: \_\_\_\_\_

Signature

Title:

Date: \_\_\_\_\_

**Contractor:**

Automation Elite

By: \_\_\_\_\_

Signature

Michael J. Alvarez

Title: President

Taxpayer ID Number: TBP

Date: \_\_\_\_\_