



MYSTERY SHOPPER: INDEPENDENT CONTRACTOR AGREEMENT

This AGREEMENT is entered into by and between ath Power Consulting Corp. ("Company"), a Massachusetts corporation with a principal place of business in Andover, Massachusetts, and you, Independent Contractor ("Contractor").

BACKGROUND

Company provides strategic cultural direction for service-based companies through its analysis and interpretation of mystery shopping research results, its planning strategies and its integrated training systems. Company seeks to contract with Contractor to conduct mystery shopping projects, as those services are outside the scope of the Company's business. Contractor has expertise in the area of mystery shopping services and is willing to provide such services pursuant to the terms and conditions described herein.

In consideration of the mutual promises more particularly set forth below, the above parties have entered into this Agreement as follows:

TERMS AND CONDITIONS

1. Nature of Work

(a) Contractor will secretly conduct mystery shops at the client establishments that are identified in the mystery shopping projects ("Projects") that Company offers from time to time, and which Contractor, at Contractor's sole discretion, chooses to accept. With respect to any Project that Contractor accepts, Contractor shall accurately and honestly document and submit to Company his/her findings from the evaluation. Contractor shall provide all deliverable(s) that a Project requires, including any final reports, by the specified deadlines. The location(s) of the client establishment to be evaluated in Projects offered hereunder, which are determined by the respective Clients, may vary.

(b) Contractor understands that Company does not promise or represent that it will be able to offer Contractor any minimum number of Client Projects. Similarly, Contractor has no obligation to accept any minimum number of Projects offered hereunder. Contractor represents and warrants to Company that it does not rely exclusively on Company as its sole source for obtaining Client Projects.

(c) Contractor's sole obligation under this Agreement is to complete and submit Project deliverables for accepted Projects by the applicable deadlines. Contractor has no obligation to work any particular hours or days or any particular number of hours or days; Contractor's work hours are solely up to Contractor. Contractor has no duty to report to Company's offices concerning Contractor's performance of any services, and will be solely responsible for providing Contractor's own equipment and materials to fully perform an accepted Project. Company and Contractor agree that Company will have no right to control or direct the details, manner or means by which Contractor accomplishes the results of the services Contractor performs hereunder.

(d) Projects that involve telephone shops may require that the call be recorded. Contractor hereby provides Contractor's consent and authorization for Company or any contractor or agent of Company to record any and all telephone calls in which Contractor participates in connection with an accepted Project.

2. Contractor Fees

In exchange for the services Contractor performs hereunder, Contractor's entire compensation shall consist of a specified fixed fee amount per Project to which Contractor and Company shall agree, on a Project-by-Project basis. Contractor shall not be entitled hereunder to any other compensation in any form or nature.

3. Project Documentation

The term "Project Documentation" as used herein means all of the written document(s) for a Project that identifies (a) the name and location of the establishment to be shopped, (b) pertinent deadlines, and (c) the nature and scope of the applicable deliverables, including any final report. Project Documentation for a Project shall be provided in writing by Company to Contractor prior to Contractor commencing work on the Project. Project Documentation shall be incorporated by reference into this Agreement.

4. Nature of Relationship

The parties agree and acknowledge that Contractor's relationship to Company shall be that of an independent contractor. Contractor will not be considered an employee of Company for any reason or purpose. Company will not be responsible for any automobile accident, on-site Project-related accidents or injuries, workers' compensation of any sort and/or insurance coverage, or any damages whatsoever relating to or arising out of Contractor's performance of services in connection with this Agreement. Contractor agrees to assume sole responsibility for such matters and agrees to indemnify and save the Company harmless from any liabilities, claims or demands (including the costs, expenses, and attorneys' fees on account thereof) that may result from or arise out of Contractor's performance of services hereunder. Company will provide Contractor with an IRS Form 1099 Miscellaneous as required under applicable laws to report Contractor's earnings under this Agreement. Contractor will be responsible for reporting and paying his/her applicable taxes.

Contractor acknowledges that while providing services hereunder Contractor will be treated as an independent contractor (and not an employee) for purpose of federal, state and local taxes, will be solely responsible for all filing and payment obligations associated with such taxes, including but not limited to social security and self-employment taxes, and will be ineligible for unemployment insurance benefits, unless unemployment compensation coverage is provided by Contractor or some other entity

5. Representations and Warranties of Contractor

(a) Contractor warrants to Company that Contractor has secured the necessary licenses and bonds for Contractor's performance of all services under this Agreement. Contractor further warrants that the services Contractor performs hereunder will be in accord with any statutes, regulations, ordinances or contracts applicable to such services and will be performed in accord with ordinary business custom and usage.

(b) Contractor warrants that no Project deliverable submitted hereunder shall contain any material owned by any third party and that Contractor shall have all rights necessary to provide to the Company, and hereby provides to the Company, the full, unrestricted rights and benefits to all such material as incorporated into the deliverable, including without limitation the final report referenced above.

(c) Contractor warrants to Company that Contractor has no criminal record.

(d) Contractor hereby represents and affirms that Contractor is a professional mystery shopper and operates as a self-employed independent contractor.

6. Insurance

Contractor is responsible for carrying his/her own comprehensive automobile liability insurance and for maintaining workers' compensation insurance to cover Contractor and Contractor's personnel to the extent applicable and required by law. Contractor shall furnish Company annually, or sooner upon request, with certificates of insurance evidencing such coverage.

7. Non-Disclosure

Contractor will not disclose or reveal to anyone during a Project that he/she is a Mystery Shopper (also known as Secret Shopper, Customer Service Evaluator or anything of the like). Contractor will not disclose, in whole or part, any confidential or proprietary information of or belonging to Company or a Client to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever, without the express written consent of the person to whom the information pertains.

8. Conflict of Interest and Ethical Practices

To ensure the reliability and integrity of the Project deliverables that Contractor will provide hereunder, if at any time Contractor provides services to, or has a relative or friend who provides services to, a specific client establishment that is the subject of a Project, then Contractor agrees to decline such Project and/or notify Company of such conflict. Contractor represents that he/she is not, and during the term of this Agreement shall not become, a party to any agreement or subject to any obligation which would impede or prohibit Contractor's proper execution and observance of this Agreement.

9. Use of Name

Contractor shall not utilize any information concerning or obtained while performing a Client Project in Contractor's advertisements, marketing materials or other communications, written or oral, without prior written consent of Company, which consent may be withheld for any reason.

10. Termination

Either party may terminate this Agreement upon a material breach by the other party, including but not limited to, Contractor's demonstrated inability to fulfill the objectives of accepted Projects, Contractor's violation of any of the provisions hereof, or Company's failure to pay Project fees owed hereunder. Following such termination, Company shall not be liable for any further payments hereunder, other than any outstanding Project fees owed hereunder, or otherwise and, if damages are caused to Company as a result of Contractor's inability to perform or violation of the provisions of this Agreement, Contractor shall be liable for such damages, including consequential and incidental damages, plus costs and attorney's fees.

11. General

The failure of either party to this Agreement to enforce any right under this Agreement will not be construed to be a waiver of that right, or of damages caused thereby, or of any other rights under this Agreement. This Agreement (including the Project Documentation referenced herein) represents the entire agreement of the parties with respect to its subject matter hereof and there are no other agreements or understandings, either written or oral, with respect thereto. This Agreement may not be modified or amended except in writing signed by both parties. The construction, interpretation and performance of this Agreement, and the transactions under it, shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflict of laws and choice of law rules, and jurisdiction over any action to enforce this Agreement, or any dispute arising from or relating to this Agreement shall be brought solely in the state and/or federal courts located within the Commonwealth of Massachusetts.