

MYSTERY SHOPPER: INDEPENDENT CONTRACTOR AGREEMENT

Please read this document carefully. It describes the terms and conditions of your relationship with ath Power Consulting Corp. and contains an agreement to arbitrate disputes, which is fully described in Paragraph 16.

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 ("Clients") 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 for Clients, as those services are outside the scope of the Company's business and need to be performed by mystery shoppers who operate independently of Company, to ensure the integrity and reliability of the research results. 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. Relationship of the Parties

This Agreement grants Contractor access to opportunities to perform mystery shopping projects ("Projects") for Clients, but it does not create any contractual obligations for either party until such time as Company offers a Project to Contractor, and Contractor agrees to perform the Project. During periods of time in which Contractor is not performing a Project obtained hereunder, this Agreement reverts to an inactive status during which time neither party has any continuing duty or obligation to the other party, except for any outstanding duty or obligation attributable to a Project that Contractor previously accepted.

2. Client Projects

(a) Company offers, from time to time, opportunities to secretly conduct mystery shops at Client establishments that are described in the applicable Project Descriptions, which Contractor, at Contractor's sole discretion, may choose to accept. With respect to any Project that Contractor accepts, Contractor agrees to perform the evaluation and accurately and honestly document and submit his/her findings from the evaluation. The location(s) of the Client establishment to be evaluated in Projects offered hereunder, and all Project parameters, are determined by the respective Clients, but not the Company, and may vary from Project to Project.

(b) In order to receive payment for completing a Project, Contractor needs to provide all deliverable(s) that a Project requires, including Contractor's findings, by the specified Client deadline. Contractor is responsible for curing any deficiency in a submitted Project deliverable, at no additional fee.

(c) Contractor understands that Company does not promise or represent that it will be able to offer Contractor any minimum number of Client Projects, or any at all. Similarly, Contractor has no obligation to accept any minimum number of Projects offered hereunder, or any at all.

(d) Contractor represents and warrants to Company that it does not rely exclusively on Company as its sole source for obtaining Client Projects.

(e) Contractor's sole obligation under this Agreement is to conduct the evaluations it accepts and then complete and submit the corresponding Project deliverables for accepted Projects by the applicable Client 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 performs a Client Project obtained hereunder, as such matters remain within the exclusive control of Contractor.

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

3. Contractor Fees

In exchange for the Projects 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. Contractor is not eligible for, shall not participate in, and shall neither claim nor accept any benefits from, any pension, health, or other benefit plan or program that Company maintains for its employees.

4. 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 the submission of your findings. Project Documentation for a Project is developed by the Client and 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.

5. Hiring, Supervising and Paying Assistants

Contractor retains the right to engage others to assist Contractor in completing a Project and retains exclusive control and responsibility for hiring, supervising, terminating and paying all remuneration owed to such assistants. Contractor indemnifies and holds harmless Company from and against any liability (including legal defense costs and fees) attributable to amounts to which such assistants are entitled or claim to be entitled.

6. Independent-Contractor 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. Contractor's performance of any Client project obtained pursuant to this Agreement will be performed solely on Contractor's own behalf and not as an agent, employee or subcontractor of Company. 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 all 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, self-employment and income taxes, and will be ineligible for unemployment insurance benefits, unless unemployment compensation coverage is provided by Contractor or some other entity.

7. Nonexclusive Relationship

This Agreement is nonexclusive; it does not in any way restrict Contractor from performing services for others, or from engaging other firms to assist Contractor in finding other client opportunities; and it does not in any way restrict Company from offering Client Projects to other self-employed mystery shopping professionals.

8. Indemnification

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 for Clients obtained pursuant to 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.

9. 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 or ordinances applicable to such services.

(b) Contractor warrants that any Project deliverable submitted hereunder shall not contain any material owned by any third party and that Contractor shall have all rights necessary to provide the same to the Company, and the respective Client, and hereby provides to the Company, and the respective Client, the full, unrestricted rights and benefits to all such material as incorporated into the deliverable, including without limitation the final Project findings referenced above.

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

(d) Contractor warrants that Contractor maintains his/her own work premises.

10. 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.

11. Non-Disclosure

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.

12. 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.

13. 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.

14. Termination

Either party may terminate this Agreement upon a material breach by the other party, including but not limited to Contractor's violation of any of the provisions hereof, or Company's failure to disburse Project fees earned hereunder. Following such termination, Company shall not be liable for disbursing any further payments hereunder, other than any outstanding Project fees authorized to be disbursed 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.

15. 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, subject to Paragraph 16 of this Agreement, 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. This provision contemplates that the parties may proceed in court where an arbitrator does not have jurisdiction, a claim cannot be arbitrated as a matter of law, or where there is an action to enforce an arbitral award or an appeal from or relating to arbitration, and does not affect the applicability of Paragraph 16, which requires the parties to submit all claims to binding arbitration. This provision further applies where a party seeks a temporary restraining order or a preliminary injunction ancillary to arbitration proceedings. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES TRIAL BY JURY OF ANY DISPUTE THAT MAY BE BROUGHT IN COURT, REGARDLESS OF WHICH PARTY COMMENCED THE PROCEEDING. NOTHING IN THIS WAIVER IS INTENDED TO IMPLY THAT A DISPUTE IS NOT A PROPER SUBJECT OF ARBITRATION.

16. Agreement to Arbitrate Disputes

- A.** Subject to Section I of this Paragraph 16, any and all disputes, controversies, or claims arising out of or relating to: (i) this Agreement, including challenges to the scope, interpretation and enforceability of this Paragraph 16; (ii) my provision of services under this Agreement; and (iii) any other dispute, controversy or claim between me and Company, shall be resolved exclusively and finally through binding arbitration, and not by a court or a jury. This Agreement to Arbitrate Disputes excludes any claims that, by law, may not be subject to a pre-dispute arbitration agreement.
- B.** Who Is Bound to Arbitrate: For purposes of this Paragraph 16 Agreement to Arbitrate Disputes, the term "Company" includes not only Ath Power Consulting Corp., but also its officers, directors, agents, parents, subsidiaries, successors, assigns, and employees, to the extent such persons are named as co-defendants with the Company or an affiliated entity that employs them, if applicable. The term "Contractor" or "me" includes me, my heirs, successors, and assigns.
- C.** Commercial Arbitration Rules of the American Arbitration Association: Regardless of any other choice of law provision in this Agreement, Contractor and Company agree that the Commercial Arbitration Rules of the American Arbitration Association, covers the interpretation and enforcement of this Paragraph 16 Agreement to Arbitrate Disputes and proceedings brought pursuant to it.

- D. **Commencing Arbitration:** A party may commence an arbitration proceeding by serving a demand for arbitration on the other party by overnight delivery or First-Class certified U.S. Mail, postage prepaid, to the last known address of the other party. The arbitration shall be held in the jurisdiction in which the services are performed. All claims shall be decided by a single, neutral arbitrator jointly chosen by the parties. If for any reason the parties cannot agree on an arbitrator, either party may apply to a court of competent jurisdiction in the location where the arbitration will be conducted for appointment of a neutral arbitrator. A court-appointed arbitrator shall act under this Agreement with the same force and effect as if selected by the parties.
- E. **Arbitration Proceedings:** Each party shall have the right to take discovery, bring dispositive motions, call witnesses and present evidence as necessary to put forward its claims and/or defenses. Any decision rendered in such arbitration proceeding shall be final and binding on Contractor and Company, and judgment may be entered thereon in any court of competent jurisdiction.
- F. **Costs and Fess:** In all cases where required by law, Company shall pay the arbitrator's and arbitration fees. If under applicable law the Company is not required to pay all of the arbitrator's and/or arbitration fees, such fee(s) will be apportioned between the parties in accordance with applicable law. Each party shall pay the fees of its own attorneys. However, the arbitrator shall have the power to award attorney's fees and costs in accordance with applicable law.
- G. **Class Action Waiver:** Neither Contractor nor Company shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative, class member, or in a class-wide or private attorney general capacity.
- H. **Confidentiality:** Contractor and Company agree that any arbitration hereunder and any documents prepared in connection with any arbitration shall be confidential, and unless otherwise required by law, the existence, content, or result of any arbitration shall not be disclosed to any third party without the prior written consent of both parties.
- I. **Severability:** If any provision or section within this Agreement to Arbitrate Disputes -- other than the Class Action Waiver clause in Section G -- is found to be illegal or unenforceable, that clause will be severed, and the remainder of the Agreement to Arbitrate Disputes will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, however, the entire Agreement to Arbitrate Disputes shall be unenforceable and the dispute shall be decided by a court of competent jurisdiction. Notwithstanding any other provision contained in this Agreement, any claim that all or part of the Class Action Waiver is unenforceable, unconscionable, void, or voidable shall be decided only by a court of competent jurisdiction and not by an arbitrator.
- J. **Opting-Out:** Contractor may opt-out of this Paragraph 16 Agreement to Arbitrate Disputes by submitting by certified mail, return receipt requested, the attached Opt-out Notification to ath Power Consulting Corp., at 9 Bartlet Street, Andover, MA 01810, ATTN: Director, within 30 days from the date of Contractor's execution of this Agreement.

Contractor's decision to opt-out will have no adverse effect on Contractor's relationship with the Company.

If Contractor does not opt out of this Agreement to Arbitrate Disputes within 30 days from the date of execution of this Agreement, then Contractor accepts the terms of this Agreement to Arbitrate Disputes and they will be legally binding.

Contractor has the right to consult with an attorney of Contractor's choosing concerning this Agreement and the Agreement to Arbitrate Disputes. It is understood that neither ath Power Consulting Corp. nor any of its owners, employees or agents, have provided or will provide any legal advice and that no legal representation has been or will be undertaken by any of them.

BY SIGNING THIS AGREEMENT, BOTH COMPANY AND CONTRACTOR KNOWINGLY AND EXPRESSLY WAIVE ANY RIGHTS TO LITIGATE CLAIMS IN A COURT, BEFORE A JURY, AND ON A CLASS-ACTION BASIS, AND TO APPEAL ANY FINDINGS OF THE ARBITRATOR EXCEPT AS MAY BE VACATED UNDER THE COMMERCIAL ARBITRATION RULE OF THE AMERICAN ARBITRATION ASSOCIATION.

OPTIONAL

Opt-Out Notification

Independent Mystery Shopper's/Contractor's Name: _____

Address: _____

I hereby elect to Opt-out of and not be bound by the Agreement to Arbitrate Disputes contained in Paragraph 16 of the MYSTERY SHOPPER: INDEPENDENT CONTRACTOR AGREEMENT.

Signature: _____

Date: _____

To be effective, this Opt-Out Notification must be sent by certified mail, return receipt requested, to ath Power Consulting Corp. at 9 Bartlet Street, Andover, MA 01810, ATTN: Director, within 30 days from the date of Contractor's execution of the MYSTERY SHOPPER: INDEPENDENT CONTRACTOR AGREEMENT.