

**Telephone Recorded Evaluations**  
**Employee Notice and Service Agreement**

**Employee Notice**

I, \_\_\_\_\_, an employee of \_\_\_\_\_, acknowledge that my employer has contracted for certain consulting services from The McKenzie Company, a California corporation, in order to improve the employer's profitability and operations. Among those services is a mystery caller that will ask questions of and test any employee that answers the phone for the employer. I further acknowledge and accept that these mystery calls are monitored and recorded on behalf of the employer. The employee answering the mystery phone call will not be given any contemporaneous notice of recording so that the employer may use the recorded call to improve its services to its customers. I hereby waive any notification requirement at the time of the call of that recording, or notice that a test of the employee is taking place. I understand that contemporaneous notice of recording would defeat the purpose of the mystery call and deny my employer the usefulness of the service. By signing below, I agree to the monitoring and recording of the call and my employer may consent to this service on my behalf without any further authorization or notice to me. I further agree to adhere to the terms and conditions of the contract between my Employer and The McKenzie Company for any dispute or claim applicable to that contract.

This Notice to Employee is executed in \_\_\_\_\_ on the date listed below.

\_\_\_\_\_  
(signature of employee)

\_\_\_\_\_  
date

This Website Services Agreement ("Agreement") is made and entered into as of the date certified by the purchase of the evaluations by and between The McKenzie Company, a California Corporation, (the "Company"), and the person(s) or entity acting as Employer who requested the service ("Client"). The Client certifies that he/she/it has read and understood the terms and conditions associated with ordering this website service, and agrees to such terms. In consideration of the mutual promises contained herein, the parties agree as follows:

#### 1. Services

Company agrees to provide a consulting service to Client designed to test the performance of the Client's employees that answer the Client's phone. These tests, performed randomly following the ordering of this service are not disclosed to the employee that answers the phone. The recorded mystery call is for the benefit of Client to determine if the employee tested by this anonymous caller performs that task to the satisfaction of the Client/Employer. The questions asked, as well as any evaluation report produced from this anonymous test of Client's employee will consist of preset questions and is done with Client's consent as Employer.

#### 2. Disclosure of Recording

a. Client recognizes that there are varying Federal and State laws concerning the recording of phone calls without the direct consent of the party recorded. The Client, as Employer, hereby consents to the recording of its employees pursuant to the terms and conditions listed herein. The employee receives no warning of recording at the beginning of the phone call and no notice of recording will be provided during or after the phone call.

b. To ensure the protection of the employee's rights under the law, Client agrees to print out the "Employee Notice" attached and have its employees sign the notice for safekeeping in the files of the Employer. Should Client fail to have its employees sign the Employee Notice as required herein, Client assumes all liability for violation of the employees' rights, if any, under both Federal and State law. Client further agrees to indemnify and hold harmless the Company for all reasonable legal fees, damages or other cost incurred should employee take legal action against the Company or its agents and representatives.

#### 3. Term and Termination

This Agreement commences on the date first authorized by Client when selecting and paying for this service and will continue until the completion of the Service requested. Client may terminate this Agreement prior to the full completion of the service upon the Company receiving written notice of Client's desire to terminate, but there is no refund to Client in the event of early termination. Client's notice of early termination should be sent to the Company's address at 3252 Holiday Court, Suite 110, La Jolla, CA 92037, or such other addresses as either party might notify the other. The notice of termination is effective upon delivery if personally delivered, or seventy-two (72) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

#### 4. Governing Law

This Agreement is interpreted pursuant to the Federal and State laws applicable to the location of Client.

## 5. Entire Agreement

This Agreement is the entire agreement of the parties regarding this service and supersedes any prior agreements between them, whether written or oral. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

## 6. Severability

The invalidity or unenforceability of any provision of this Agreement, or any terms thereof, shall not affect the validity of this Agreement as a whole, which shall at all times remain in full force and effect.

## 7. Sole Remedy Against the Company

Client agrees and acknowledges that its sole remedy against the Company for any dispute Client may have about the service or how the Company performed that service is limited to, at most, a refund of the fee paid by Client for the service. The Company provides no express or implied warranty of merchantability or fitness for purpose, and the Company is not responsible for any consequential or other damages incurred by Client because of this service.

## 8. Attorney Fees / Venue / Binding Arbitration

a. In the event of any litigation or arbitration by Client or Client's employees because of the Company's services, the prevailing party in any such action shall be entitled to reimbursement of reasonable attorney fees, court costs and such other charges incurred because of the litigation or arbitration.

b. Venue for any litigation or arbitration shall be in the County of San Diego, State of California.

c. In the event of any dispute between the Company, Client and Client's employees, all parties agree to submit such dispute to final, binding and judicially enforceable arbitration before an arbiter mutually agreed to by the parties pursuant to the rules applicable to such arbiter, or as otherwise agreed by the parties.

By checking "yes" you have read this agreement and making payment for the service requested, Client accepts all terms for providing this service as listed above.