



LETTER OF ENGAGEMENT

February 6, 2020

Julie Guerra | Human Resources Director
Nueces County
901 Leopard, Corpus Christi, TX 78401

RE: Evaluation of professional jobs and compensation at Nueces County

Dear Julie,

We appreciate the opportunity to work with Nueces County in assessing the current job structure and compensation practices. This letter of engagement sets forth our understanding of your needs and the terms and conditions on which our services will be rendered. Korn Ferry US, on behalf of itself and its affiliates and doing business as Korn Ferry, may be referred to as "Korn Ferry", "we", "our", or "us". Nueces County may be referred to as "Client", "you", or "your". Korn Ferry and Client are referred to individually as a "Party" and collectively as the "Parties". This letter of engagement, including Attachments 1, 2, and 3, forms the agreement (the "Agreement") under which we will work together.

Korn Ferry will provide the professional services described in Attachment 1 (the "Services"). Jan Pabbruwe will lead the assignment. We may include other consultants, as needed, to assist in the provision of the Services. Services may be performed by one or more Korn Ferry affiliates.

If this Agreement accurately describes the terms of our engagement, please have an authorized representative of Nueces County sign and return the entire Agreement to me at jan.pabbruwe@kornferry.com. Our receipt of this Agreement signed by you authorizes us to proceed with our Services.

Korn Ferry appreciates the opportunity to be of service to Nueces County. If you have any questions now or during our engagement, please call me at 312-805-7855.

Sincerely,

Korn Ferry US

Jan Pabbruwe

Accepted by:

Korn Ferry US

Nueces County

By:

[Handwritten signature]

By:

Name: Jan Pabbruwe

Name:

Title: Senior Client Manager

Title:

Date: February 6, 2020

Date:

## ATTACHMENT 1 SCOPE OF SERVICES

### **Our Understanding of Your Needs**

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Nueces County is concerned with the current culture and ability to attract and retain talent. In a recent compensation study, salary levels at Nueces County were amongst the lowest of forty counties. Since the overall unemployment rate in the region is low and the organization requires specialized, even scarce, talent, Nueces County has found itself competing with Fortune 50 companies for its professional jobs.

In order to compete with these companies and create transparency in both the employees' salary- and career perspective, Nueces County has requested Korn Ferry to support in assessing the current job structure and competitiveness of current pay practices. Moreover, Nueces County would like Korn Ferry to suggest changes to the organizational structure and compensation design to enhance Nueces County's culture, competitiveness and employee engagement.

### **Our Approach**

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Following our conversation with the County Judge and HR Director on January 15<sup>th</sup>, we have enhanced our detailed approach so that we can spend more time learning the organizational context and job content. The additional investment helps us understand which enhancements could be made to both the organizational/ job structure and the compensation design once we have completed the job analysis and benchmark.

1. Kick-off and alignment with leadership

Before we get started, we would like to schedule a meeting to gain a better understanding of the current and future state of the organization as well as align on the expectations and desired outcome of the study.

2. Job analysis and job evaluation

Together with HR, we will identify up to 30 professional jobs to be discussed with management. Our guiding principles will help HR determine which jobs should be selected. We will study available reference materials (such as job descriptions) before discussing the jobs with managers and team leaders. Following the interviews, our consultants will apply Korn Ferry's proprietary Job Evaluation Methodology and provide HR with technical evaluations supported by concise rationales.

Once the evaluations have been discussed with and validated by Nueces County, the reference framework will serve as the basis for slotting the remaining jobs (approx. 40). Once completed, the job framework will be presented to Nueces County and when this has been validated, reference levels are assigned to the compensation data submitted by Nueces County.

3. Compensation benchmark and reporting

Together with Nueces County, we will identify companies in our database to be included in the reference market for the benchmark. The reference market should represent the County's competitive landscape, i.e. consist of companies that Nueces County competes with for talent. Depending on the availability of data in the region, we will look for suitable alternatives whilst keeping in mind the geographical differentials and/ or industry differentials.

The internal equity (consistency) is assessed by comparing compensation within and across functions based on reference levels. Subsequently, we will benchmark total compensation with similar jobs in the reference market.

We will consolidate and present the results in a single report and discuss our findings with Nueces County Judge. During this meeting, and by interpreting the results, we aim to review the County's compensation philosophy, such as the current and desired state of competitiveness. After we have asserted the 'gaps' and identified the benchmark position, we

will develop a revised salary structure, provide salary administration guidelines such as a merit matrix and calculate potential cost implications. For example, salaries that fall below the minimum salary will need to be increased (possibly over time) to fall within the range.

#### 4. Workshop and recommendations

We will present the new salary structure and impact analyses during a workshop with the Nueces County Commissioners Court. During this workshop, we will also spend time considering the County' philosophy as it relates to career planning, succession and performance management. Korn Ferry experts facilitating the workshop will also provide best practices for the County to consider.

### **Deliverables**

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- Job interviews with 12 managers or team leaders to create buy-in and manage stakeholder expectations
- Technical job evaluation of 30 reference jobs based on our proprietary Job Evaluation Method
- Job mapping of remaining jobs (+/- 40)
- Job matrix consisting of the County's jobs and specified by reference level
- Benchmark report consisting of internal and external analyses
- Access to Korn Ferry's Pay platform, compensation reports and analytics (annual subscription)
- Salary structure, salary administration guidelines and impact analyses
- Workshop with leadership to discuss founding principles of philosophy and adjustments to organizational/ job structure

THIS AGREEMENT DOES NOT INCLUDE AN INTELLECTUAL PROPERTY LICENSE TO KORN FERRY'S INTELLECTUAL PROPERTY. USE OF KORN FERRY'S INTELLECTUAL PROPERTY REQUIRES THE EXECUTION OF A SEPARATE INTELLECTUAL PROPERTY LICENSE AGREEMENT.

### **Term**

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Start Date: February 15, 2020

End Date: July 15, 2020\*

\*expected delivery of job-leveling and benchmark results: early- mid June

*Subscription to Korn Ferry Pay for the duration of one year (expiration date: July 15, 2021)*

### **Professional Fees and Expenses**

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- The professional fees for the Services are \$33,945 and the annual subscription fee to Korn Ferry Pay is \$10,296 including gold service level (10% of subscription fee). Korn Ferry assesses an administrative charge equal to twelve percent (12%) of the total fee (\$5,309) for a total of \$49,550. All professional fees are non-contingent, non-transferable, and non-refundable unless specifically stated otherwise in this Agreement. Professional fees will be invoiced as stated below and invoices are due upon receipt. Unless otherwise required by law, Korn Ferry will assess a service charge of one and a half percent (1.5%) per month for past due amounts. Invoices not objected to in writing within thirty (30) days of receipt will be deemed approved.
  - 1<sup>st</sup> instalment: 1/3 of total fee upon start of this Agreement
  - 2<sup>nd</sup> instalment: 1/3 of total fee after 1 month of the start of this Agreement
  - 3<sup>rd</sup> instalment: 1/3 of total fee after 2 months of the start of this Agreement
- Korn Ferry will invoice direct out-of-pocket expenses, including consultant travel\*, accommodation and meals, courier, shipping, reproduction, and videoconferencing, on a monthly basis as incurred.\*
  - Korn Ferry does not expect to incur additional/ out-of-pocket expenses. Travel time and costs have been included in the project scope.

### **Rescheduling or Cancelling**

Korn Ferry will schedule and commit personnel and resources to provide the Scheduled Program Services. Korn Ferry understands that Client’s business conditions may change; however, rescheduling or cancelling on short notice impacts Korn Ferry’s business and its ability to provide outstanding service to all of its customers. Client may reschedule or cancel the provision of the Scheduled Program Services by paying the following fees in addition to the associated fees for any of the Scheduled Program Services rendered. These fees are a genuine pre-estimate of Korn Ferry’s losses as a result of such rescheduling or cancellation, and are reflective of the value of the lost bookings for Korn Ferry for the time scheduled and fees which otherwise have been earned by the team leader, team members and other resources, and are not penalties. If Client fails to provide Korn Ferry with documentation, information, or access to its personnel that impacts Korn Ferry’s ability to meet the completion date or Client otherwise delays the completion date, Korn Ferry reserves the right to charge Client a rescheduling fee as set forth below.

1. If rescheduling or cancelling more than 20 business days before the scheduled program, meeting or session, Client will pay the Actual Expenses incurred as a result of the rescheduling or cancellation.
2. If rescheduling or cancelling 20 or fewer business days before the scheduled program, meeting or session, cancellation/rescheduling fees will be calculated based on the number of business days’ notice provided as shown in the table below, plus Actual Expenses incurred.

		Length of Program		
		Less than 1 day	1-2 days	3-5 days
<b>Notice from Client (business days)</b>	<b>16-20</b>	0	0	25%
	<b>11-15</b>	0	25%	50%
	<b>6-10</b>	0	50%	75%
	<b>3-5</b>	50%	75%	75%
	<b>Less than 3</b>	100%	100%	100%

“**Actual Expenses**” means amounts Korn Ferry pays to others in anticipation of the Scheduled Program Services (e.g., hotels, airlines) that Korn Ferry cannot recover on its termination of the bookings or that Korn Ferry incurs due to changes or cancellations. Korn Ferry will charge Client for costs incurred for any materials Korn Ferry prepares (e.g., for events, workshops, meetings) if the engagement is not rescheduled within two months of the original date.

### **Invoicing Information**

Invoices will be sent to the following address:

Company:	Nueces County
Address:	901 Leopard, Rm 302.02
Address:	Corpus Christi, Texas 78401
Attn (Name, Title):	Julie Guerra

Email, Phone:	<a href="mailto:julie.guerra@nuecesco.com">julie.guerra@nuecesco.com</a> , ( 361-888-0208
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## Accounts Payable Contact:

Company:	
Address:	
Address:	
Attn (Name, Title):	
Email, Phone:	

## Purchase Order:

If Client's internal policies require that a Purchase Order number appear on invoices, Client must provide the Purchase Order Number with or immediately after signing the Agreement. Please indicate below if a Purchase Order Number is required on an invoice and if so, insert the Number. If Client has not provided a Purchase Order Number within 10 business days of signature, Client will accelerate payment of any invoices delayed by Client's failure to provide a Purchase Order Number by the same number of days as the delay.

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## ATTACHMENT 2

### GENERAL TERMS AND CONDITIONS

**1. Korn Ferry's Responsibilities.** Korn Ferry will perform the Services in a competent and professional manner and in accordance with generally acceptable industry standards. Korn Ferry may remove and replace any of its resources performing the Services; any resource removed will be replaced by a resource of comparable training and experience.

**2. Client's Responsibilities.** Client will timely provide Korn Ferry with the documentation, information, access to its personnel and the cooperation Korn Ferry reasonably requires to provide the Services. The Services are not intended as a substitute for professional judgment. Client will not use the Services, New Materials, or Korn Ferry Materials as the sole source for any decision relating to any of its employees or candidates, including reprimand, termination, compensation, employment status or work opportunities.

**3. Taxes.**

**a.** Client will be responsible for all applicable taxes (excluding taxes imposed on Korn Ferry's net income) imposed by any taxing authority, whether designated as value-added (VAT), goods and services (GST), sales, use, or other similar taxes ("**Transaction Taxes**"), now in effect or hereafter imposed, resulting from the fees arising pursuant to this Agreement. If Client is exempt from Transaction Taxes, Client must inform Korn Ferry of its exemption and provide to Korn Ferry complete and proper documentation evidencing the exemption.

**b.** If Client is required by applicable law to deduct or withhold taxes from any payment due to Korn Ferry, Client will: (i) withhold the legally required amount from payment; (ii) remit the withheld tax to the applicable taxing authority; and (iii) promptly deliver to Korn Ferry original documentation or a certified copy evidencing remittance of withheld tax. If Client does not provide evidence of payment of withheld taxes, Client will reimburse Korn Ferry for the tax withheld from payment to Korn Ferry. Client will comply with all applicable income tax treaties and protocols in determining the amount of tax to withhold.

**4. Representations and Warranties.**

**a.** Each Party represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization, and has full power and authority to perform all of its obligations under this Agreement; and (ii) the person executing this Agreement on its behalf is duly authorized and empowered to bind the Party to this Agreement.

**b.** Client further represents and warrants that: (i) it has provided the required notices and obtained all necessary rights and consents to provide to Korn Ferry, or to permit Korn Ferry to collect on Client's behalf, an individual's Personal Data, for the purposes stated in this Agreement; and (ii) the transfer to, collection of and use by Korn Ferry of Personal Data in accordance with this Agreement does not violate any applicable laws or any third party rights. "**Personal Data**" means any information that Korn Ferry has access to, obtains, uses, maintains or otherwise handles in connection with the performance of the Services that identifies an individual or relates to an identifiable individual.

**c. EXCEPT AS PROVIDED IN THIS AGREEMENT, KORN FERRY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**5. Intellectual Property.**

**a.** Client retains ownership of all materials, and the intellectual property rights in those materials, provided to Korn Ferry by or on behalf of Client ("**Client Materials**"). Subject to Section 5.b., Client will also own copies of reports and analyses Korn Ferry delivers to Client under this Agreement ("**New Materials**"). Client may use the New Materials in the form provided for its internal purposes only; Client may not use the New Materials for any other purpose or to extent allowed by law permit any other person, firm or entity to use the New Materials.

**b.** The performance of the Services and creation of the New Materials will require the use of Korn

Ferry Materials. **“Korn Ferry Materials”** include methodologies, preexisting programs, instruments, models, proprietary information, patents, registered and unregistered trademarks, trade names, trade secrets, copyrights, prototypes, inventions, algorithms, designs, compilations, computer software programs, tools, databases, evaluation guides, report forms, scoring guides, scoring algorithms, scoring instructions, scoring software and norms. Korn Ferry may customize, modify, translate, or expand Korn Ferry Materials to apply to Client’s unique requirements (collectively, a **“Customization”**). Any Customization will be Korn Ferry Materials exclusive of any Client Materials include therein. Korn Ferry owns Korn Ferry Materials at all times, and Korn Ferry reserves all rights not expressly granted under this Agreement. Licenses to Korn Ferry Materials must be procured through a separate license agreement. This Agreement will not be construed as a license to copy, modify, create derivative works from, publish, disclose or otherwise use Korn Ferry Materials. Client will not download, copy, publish, disclose, create derivative works of, disassemble, decompile or otherwise attempt to reverse engineer Korn Ferry Materials, nor will Client permit any other person to do so. Client will be liable for all violations of these restrictions by its employees, subcontractors, or agents.

c. If a Customization includes Client Materials, Client grants to Korn Ferry a non-exclusive, limited, non-transferable license to use the Client Materials solely to provide the Services. Client represents and warrants that it has all the necessary rights to include the Client Materials in the Customization.

## 6. Confidential Information.

a. One Party (**“Discloser”**) may disclose Confidential Information to the other Party (**“Recipient”**) in connection with this Agreement. **“Confidential Information”** means all oral or written information concerning the Discloser, including the Discloser’s business and business activities (past, present and future), financial information, technical information, customer information, intellectual property, methodologies, strategies, plans, documents, drawings, designs, tools, models, inventions, and patent disclosures, whether or not marked or identified as “confidential,” that may be obtained from any source as a result of this Agreement. Confidential Information does not include information, technical data, or know-how that: (i) is or becomes a matter of public knowledge through no fault of Recipient; (ii) was lawfully in Recipient’s possession or known by it prior to its receipt from Discloser; (iii) was rightfully disclosed to Recipient by another person without restriction; (iv) Recipient independently develops without use of Discloser’s Confidential Information; or (v) Discloser approves in writing for release.

b. Recipient will not use any Discloser Confidential Information for any purpose other than to perform its obligations under this Agreement. Recipient will not disclose any Discloser Confidential Information to third parties or to its employees, other than employees or third parties who are required to have the Confidential Information to perform obligations under this Agreement and who are bound by confidentiality terms substantially similar to those in this Section. Recipient and Discloser will each be responsible for any breach of this Agreement by its representatives. Recipient will protect Confidential Information from disclosure to others using the same degree of care it uses to protect its own confidential information, but in any case no less than a commercially reasonable degree of care. If Recipient is required by law, regulations, or court order to disclose any of Discloser’s Confidential Information, Recipient, where legally allowed, will promptly notify Discloser in writing prior to making any disclosure. Discloser may, at its sole expense, seek a protective order or other appropriate remedy from the proper authority.

c. Services may include coaching services (**“Coaching Services”**) for specific individual(s)(each a **“Coachee”**). Korn Ferry and the Coachee must have open and frank communications for the Coaching Services to be effective. Communications between Korn Ferry and a Coachee will be, so far as is reasonably possible, confidential. Korn Ferry will not be asked or allowed to disclose information provided to Korn Ferry in confidence by a Coachee, except information which Korn Ferry in good faith believes is in one of the following categories: (i) information that the Coachee or some other person is, has, or may become engaged in illegal activity; (ii) information that the Coachee or some other person is, has, or may become a danger or health & safety risk to himself or herself or third persons; (iii) information that the Coachee authorizes Korn Ferry to release; (iv) information that generally informs Client of the scope, nature and timing of any activity, the goals in the development and coaching plan for the Coaching Services, or the progress being made in attaining the established goals or as otherwise

required in connection with the engagement; or (v) information that may have a material or adverse effect on Client, the Korn Ferry coach or Korn Ferry. Korn Ferry and the Korn Ferry coach may obtain information from the Coachee's supervisors, co-workers and other persons concerning the Coachee's work performance. This information, including the identity of any person providing the information, is and will remain so far as is reasonably possible confidential and neither Client nor the Coachee will have access to this information. The Coachee will be advised of these coaching rules prior to participating in the coaching assignment. If any information arising from the Coaching Services is required to be disclosed by any subpoena or other court order, under any applicable law or regulation, Korn Ferry will be entitled to make any required disclosure. Korn Ferry will undertake to notify Client or the Coachee prior to disclosing the Confidential Information, unless prohibited by the terms of the order or legal requirement.

**d.** Nothing in this Agreement prohibits, or is intended in any manner to prohibit, Recipient from reporting possible violations of federal law or regulations to any governmental agency or entity, including the Department of Justice, the Securities and Exchange Commission, Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulations. Recipient does not need Discloser's prior authorization to make any protected reports or disclosures; nor is Recipient required to notify Discloser that protected reports or disclosures have been made. Without limiting the foregoing, nothing in this Agreement is intended to interfere with or restrain the immunity provided under 18 U.S.C. Section 1833(b) for confidential disclosures of trade secrets to government officials or lawyers, solely to report or investigate a suspected violation of law or included in a sealed filing in court or other proceeding.

**e.** Upon request, Recipient will destroy Discloser's Confidential Information in its possession, but Recipient may: (i) retain copies of Confidential Information that it is required to retain by law or regulation; (ii) retain copies of its work product that contain Confidential Information for archival purposes or to defend its work product; and (iii) store copies made as part of routine back up of its information technology systems but the Confidential Information must continue to be handled in accordance with this Section 6.

## **7. Personal Data.**

**a.** Korn Ferry will not disclose to Client an individual's item level responses to assessments and surveys or composite components and intermediate data points (e.g., intermediate numeric scores, ratings, evaluation guides, integration grids, or interview/simulation notes), including Personal Data, that Korn Ferry collects in providing the Services, and upon which the New Materials will be based (the "**Raw Data**"). Korn Ferry will use Raw Data to provide the Services as specified in this Agreement or as otherwise instructed and permitted by Client. The Parties agree that the Services include archiving the Raw Data and using de-identified and aggregated Raw Data for research, studies, development, benchmarking, statistics, analytics, and to develop, improve, and enhance Korn Ferry's products and services. Any published end product will not identify, or include any results attributable to, Client or a specific individual. Raw Data will be treated in accordance with Korn Ferry's Global Privacy Policy, which is available on Korn Ferry's website and incorporated into this Agreement by reference. Where legally allowed, Korn Ferry will promptly notify Client of any legally binding request from a law enforcement authority for disclosure of Personal Data before making any disclosure and will reject all non-legally binding requests.

**b.** Where Korn Ferry processes Personal Data as a data processor, or equivalent under applicable data protection law, on Client's behalf in its performance of the Services, the Privacy and Data Protection Attachment 3 ("**DPE**") will apply. Where the Parties process Personal Data as independent data controllers, or equivalent under applicable data protection law, the Parties will comply with applicable law and maintain adequate security controls relevant to the Personal Data processed.

**8. Security.** Having regard to the available technology, cost of its implementation, the nature, scope, context and purposes of the Personal Data processing, and taking into account the harm that might result from accidental loss, destruction, disclosure or damage of Personal Data, Korn Ferry will implement appropriate technical and organizational measures designed to prevent any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data.

## 9. Indemnification.

**a. By Client.** Client will indemnify and defend to extent allowed by law without establishing a sinking fund Korn Ferry, its parent, affiliates, and their respective directors, officers, partners, employees, shareholders and agents and their respective successors and permitted assigns, from and against all third party suits, claims, actions, and proceedings and all related liabilities, losses, judgments, damages, costs and expenses (including interest, penalties, fines, legal fees and other litigation expenses) that are or are alleged to arise from: (i) Client's decision to take any employment action with regard to any individual identified, evaluated, assessed, or coached by Korn Ferry; (ii) Korn Ferry's use of Client Materials in accordance with this Agreement; or (iii) Client's breach of its representations and warranties.

**b. By Korn Ferry.** Korn Ferry will indemnify and defend Client, its parent, affiliates, and their respective directors, officers, partners, employees, shareholders and agents and their respective successors and permitted assigns, from and against all third party suits, claims, actions, and proceedings and all related liabilities, losses, judgments, damages, costs and expenses (including interest, penalties, fines, legal fees and other litigation expenses) that are or are alleged to arise from: (i) Korn Ferry's gross negligence, willful misconduct, or fraud; (ii) Korn Ferry's breach of its representations and warranties; or (iii) intellectual property infringement. Korn Ferry has no obligation regarding any infringement claim based upon services or materials which are modified, combined, operated, or used with any product, data, apparatus, software, or program not provided by Korn Ferry or authorized by Korn Ferry in writing, or which are a result of Client's design specifications. If an infringement claim is made relating to the New Materials, Korn Ferry Materials, or Services (the "**Infringing Content**"), Korn Ferry will: (w) procure for Client the right to continue to use the Infringing Content; (x) replace the Infringing Content with non-infringing materials; (y) modify the Infringing Content to make it non-infringing; or (z) terminate this Agreement and refund all pre-paid amounts paid by Client for which Client has not received Services.

**10. Limitations of Liability. NEITHER PARTY WILL BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY TYPE, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION, RELATING TO THIS AGREEMENT. KORN FERRY'S MAXIMUM TOTAL LIABILITY FOR ANY CLAIMS RELATING TO THIS AGREEMENT IS LIMITED TO THE FEES PAID BY CLIENT TO KORN FERRY UNDER THIS AGREEMENT. THIS SECTION 10 APPLIES REGARDLESS OF THE LEGAL THEORY ASSERTED AND EVEN IF THE PARTY KNOWS THAT THESE DAMAGES MIGHT OCCUR.**

**11. Relationship of the Parties.** Korn Ferry is at all times an independent contractor. Korn Ferry Employees remain in Korn Ferry's employ and will not be deemed Client's agents or employees. Neither Party is authorized to bind or commit the other Party in any respect or to accept legal process on the other Party's behalf. Neither Party will be liable to any agent, subcontractor, supplier, employee, or customer of the other Party for any commission, compensation, remuneration, or similar benefit of any nature whatsoever. This Agreement is not intended to, and does not, create or impose any fiduciary relationship between the Parties.

**12. Subprocessing.** Client grants Korn Ferry a general authorization to use subprocessors, including Korn Ferry affiliates, in connection with the provision of the Services. Processing activities may include accessing, storing, handling or otherwise using Personal Data. Korn Ferry remains responsible for the work and activities of its subprocessors to the same extent Korn Ferry would be liable if performing the Services. Korn Ferry is responsible for all payments to its subprocessors. Korn Ferry has entered into a written agreement with subprocessors containing equivalent data protection obligations as in this Agreement. An inclusive list of Korn Ferry's current subprocessors is available on its corporate website at <https://cdn.kornferry.com/privacy/subprocessor.pdf>. The published list is incorporated into this Agreement by reference. Client may subscribe for notifications of changes to subprocessors through Korn Ferry's corporate website at <https://www.kornferry.com/privacy/security>. Client will be deemed to have approved changes to subprocessors where Korn Ferry notifies Client via the subscription service and no written objection is received from Client within fifteen (15) days of written notification. If Client objects (on commercially reasonable grounds) in writing within fifteen (15) days of written notification, Korn Ferry may cease to provide or Client may agree not to use, on a temporary or

on-going basis, the particular Service that would involve the use of the new subprocessor. Suspension of Services or partial termination by either Party subject to this Section 16 will not be deemed a breach of the Agreement. If the Standard Contractual Clauses, as defined in Attachment 3, apply, this Section 12 constitutes Client's prior written consent pursuant to Clause 5(h) of the Standard Contractual Clauses.

**13. Assignment, Subcontracting.** Neither Party may sell, assign, or transfer this Agreement, without the other Party's written consent, but no consent is required if the assignment: (a) results from the assignor's merger, consolidation, spin-off, split-off or acquisition, but the assignment must be limited to the assignor's survivor, subsidiary or successor; or (b) is to an affiliate capable of performing the assignor's duties and obligations under this Agreement. Subject to the foregoing, this Agreement will inure to the benefit of and will be binding upon Korn Ferry, Client and their respective successors and permitted assigns. Korn Ferry will not subcontract Services without Client's prior consent. This provision applies to subcontractors engaged specifically to provide Services for Client.

**14. Governing Law.** This Agreement will in all respects be governed by and construed in accordance with the laws of the State of Texas, excluding any choice of law provisions and without effect to principles of conflicts of law, regardless of the place of making or performance. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement requires Korn Ferry to do any act or refrain from doing any act which would result in Korn Ferry violating (or becoming subject to any penalty under) any laws to which it is subject. The Parties disclaim the applicability of the United Nations' Convention on the International Sale of Goods.

**15. Non Waiver.** A Party's failure at any time to enforce any of the provisions of, or any right or remedy available to it under, this Agreement or at law or in equity, or to exercise any option provided, will not constitute a waiver of that provision, right, remedy or option or in any way affect the validity of this Agreement. A Party's waiver of any default by either Party will not be deemed a continuing waiver, but will apply solely to the instance to which that waiver is directed.

**16. Severability; Interpretation.** Every provision of this Agreement will be construed, to the extent possible, to be valid and enforceable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, that provision will be deemed severed from this Agreement, and all other provisions will remain in full force and effect.

**17. No Third Party Beneficiary Rights.** This Agreement is not intended to be for the benefit of any person other than Client and Korn Ferry. No other person, including any candidates or prospective candidates, will be considered a third party beneficiary of or otherwise entitled to any rights or benefits arising in connection with this Agreement.

**18. Force Majeure.** Neither Party will be considered in default as a result of its delay or failure to perform its obligations under this Agreement when the delay or failure arises out of causes beyond that Party's reasonable control. Causes may include acts of God or a public enemy, acts of the state or the government in its sovereign or contractual capacity, fires, floods, epidemics, strikes, and unusually severe weather; in every case, delay or failure to perform must be beyond the reasonable control of and without the fault or negligence of the Party claiming a force majeure event to excuse its performance.

**19. Entire Agreement; Conflicts.** This Agreement contains the entire agreement between the Parties regarding the subject matter hereof and supersedes any prior representations, advertisements, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter. The Parties will not be bound by any representation, promise, or condition not expressly set forth in this Agreement. Preprinted terms and conditions on any purchase order issued by Client, or terms and conditions included in Client's vendor set up process, under this Agreement are superseded in their entirety by this Agreement and without force or effect, even if Korn Ferry signs the purchase order or acknowledges such terms to be set up as a vendor in Client's systems and whether such signature or acknowledgement occurs prior to or after the execution of this Agreement. Under no circumstances will Korn Ferry's acknowledgement of any such terms be considered an amendment to this Agreement. All purchase orders must include a reference to this Agreement. Neither Party has

been induced to enter into this Agreement by any representations or statements, oral or written, not expressly contained in this Agreement. This Agreement may only be modified by the written agreement of both Parties.

## **20. Compliance with Legal and Regulatory Requirements.**

**a.** Each Party represents and warrants that it:

i. will comply with all applicable legal and regulatory requirements in connection with this Agreement, which include: (a) information privacy and data protection laws and regulations relating to the protection, disclosure and use of individuals' personal data including the General Data Protection Regulation (GDPR) and other laws and regulations that mandate the protection of personal data; and (b) anti-bribery, anti-corruption, anti-money laundering, and international trade laws and regulations ("Sanctions") of the US, EU, UK, UN and any other governmental or supranational body with jurisdiction over this Agreement or either party;

ii. is not a subject of Sanctions;

iii. is not owned or controlled by any person or entity subject to Sanctions; and

iv. is not located or organized in, or owned or controlled by persons or entities in a jurisdiction subject to Sanctions (including Cuba, Iran, North Korea, Syria, and the Crimea Region of the Ukraine).

**b.** Client further represents and warrants that it will not transfer, provide access, or use the Services or work product (including tools and intellectual property): to or for the benefit of any Specially Designated National (as designated by the U.S. Department of the Treasury's Office of Foreign Assets Control), to or in any jurisdiction subject to Sanctions, or to any other party if such transfer, access, or use would constitute a violation of Sanctions.

**c.** Any breach of this Section 21 is a material breach of this Agreement and grounds for immediate termination by the non-breaching Party.

**21. Miscellaneous.** No provision of this Agreement will be construed against or interpreted to the disadvantage of any Party because that Party has or is deemed to have drafted the provision. All section headings and captions are for the Parties' convenience only, are not part of the text, and will not be deemed in any way to limit or affect the meaning of this Agreement. When used in this Agreement, "including" means "including without limitation." Client permits Korn Ferry to include Client's company name as a participant in products and services. The Parties may execute this Agreement in any number of counterpart copies, which may be delivered by PDF or other electronic means, each of which will be deemed an original, but which taken together constitute a single instrument. Either Party may terminate this Agreement immediately if: (i) a Party is in breach, the non-breaching Party has provided the breaching Party with a written notice and the breaching Party has failed to cure the breach within thirty (30) days of its receipt of notice; or (ii) the other Party enters into bankruptcy proceedings, becomes insolvent, or there is an appointment of a receiver for the benefit of creditors, or cessation of business. Except as expressly provided in this Agreement, all remedies available to either Party for breach of this Agreement or at law or in equity are cumulative and may be exercised concurrently or separately. Those sections of this Agreement that are intended by their nature to survive termination or expiration of this Agreement will survive.

### Attachment 3 Privacy and Data Protection Exhibit

This Attachment 3 is governed by and subject to the Letter of Engagement between the parties.

#### 1. INTERPRETATION

1.1 Capitalized terms used but not defined in this Exhibit have the meanings given to them in the Agreement unless the context requires otherwise.

1.2 In this Exhibit:

**Agreement** means the Letter of Engagement to which this Exhibit is attached;

**Approved Subprocessors** means the subprocessors that have been approved by Client in accordance with Section 12 of the Agreement;

**Data Protection Legislation** means any law, enactment, regulation, regulatory policy, by law, ordinance or subordinate legislation relating to the processing of Personal Data, as applicable to Client, Korn Ferry and/or the Services, including, but not limited to the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (GDPR), and any corresponding or equivalent national laws or regulations, in each case, as in force and applicable, and as may be amended, supplemented or replaced from time to time;

**Data Subject** means any person in respect of whom Personal Data is processed;

**Personnel** means officers, employees, workers or independent contractors.

**Standard Contractual Clauses** means the standard contractual clauses issued pursuant to the European Commission Decision 2010/87/EU of 5 February 2010 (notified under document C(2010)593), pre-signed by Korn Ferry as the data importer available on Korn Ferry's corporate website at <https://www.kornferry.com/privacy/security>.

1.3 Any conflicts between Attachment 2 and this Exhibit will be resolved in favor of Attachment 2.

#### 2. SCOPE AND PURPOSE

2.1 Where Korn Ferry processes Personal Data on Client's behalf as a data processor or equivalent under applicable data protection law, Korn Ferry will process Personal Data: (i) in the manner and for the purposes set out in this Exhibit and as documented in the Agreement; (ii) upon other specific reasonable documented instruction of Client; or (iii) as needed to comply with law. The foregoing constitutes Client's written instructions for purposes of Clause 5(a) of the Standard Contractual Clauses, if applicable. Korn Ferry certifies its understanding that it is restricted from selling, or disclosing in exchange for consideration, Personal Data to a third party. This Attachment does not apply where the Parties process Personal Data as independent data controllers, or equivalent, under applicable data protection law.

2.2 The types of Personal Data that may be processed by Korn Ferry are those provided by Client through its use of the Services, including Personal Data comprising business contact information of Client employees and contact information, survey responses and assessment evaluation data of Client-nominated assessment participants, including information on race, ethnic origin, sexual orientation, disability and veteran status, if requested by Client. Personal Data will be processed for the purposes of communication, assessment, analysis and generating reports in the course of providing the Services. The duration of the processing will be until the deletion of the Personal Data in accordance with Section 9 of this Exhibit.

2.3 Client hereby:

2.3.1 instructs Korn Ferry to take such steps in the processing of Personal Data on behalf of Client as are reasonably necessary for the provision of the Services;

- 2.3.2 ensures that all fair processing notices have been given (and/or, where necessary, valid consents have been obtained and not withdrawn) and are sufficient in scope and kept up-to-date in order to enable Korn Ferry to process the Personal Data in accordance with the Data Protection Legislation; and
  - 2.3.3 authorizes Korn Ferry to provide to the Approved Subprocessors and on behalf of Client instructions that are equivalent to the instructions set out in Section 2.3.1.
- 2.4 Where either party is responsible for collecting and transferring Personal Data for the purposes of the provision of the Services, it shall use its reasonable endeavors to ensure that it is not subject to any prohibition or restriction which would prevent the other party from processing that Personal Data in the manner reasonably necessary for Korn Ferry to perform, or Client to benefit from, the Services.
- 2.5 Korn Ferry will inform Client if it believes that any Client instructions regarding Personal Data processing would violate the GDPR.

### **3. CONFIDENTIALITY AND SECURITY**

- 3.1 Korn Ferry undertakes to treat all Personal Data as confidential. Korn Ferry will ensure that persons authorized to process Personal Data are bound by obligations of confidentiality consistent with those imposed upon Korn Ferry under this Exhibit and under the Agreement.
- 3.2 Where legally allowed, Korn Ferry will promptly notify Client of any legally binding request from a law enforcement authority or others for disclosure of Personal Data before making any disclosure and will reject any non-legally binding requests.
- 3.3 Refer to Sections 7 and 8 of the Agreement for further security requirements.

### **4. SECURITY BREACH**

Korn Ferry will provide Client with written notice as soon as reasonably possible upon becoming aware of any actual breach of security that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, any Personal Data processed by Korn Ferry (a Security Breach). Korn Ferry shall assist or support Client at Client's request in complying with Client's notification obligations regarding a Security Breach.

- 5. **SUBPROCESSING.** Refer to Section 12 of the Agreement.

### **6. CROSS-BORDER TRANSFERS OF PERSONAL DATA**

Korn Ferry may transfer Personal Data to various locations, which may include locations both inside and outside of the European Economic Area. Korn Ferry will ensure that any cross-border transfers of Personal Data comply with applicable Data Protection Legislation. At Client's request, Korn Ferry and any relevant Korn Ferry affiliate will enter into an appropriate data processing agreement or the standard contractual clauses with the Client to allow Client to transfer Personal Data to Korn Ferry and any Korn Ferry affiliate. The Standard Contractual Clauses are incorporated by reference and apply to Personal Data that is transferred outside of the European Union, European Economic Area (EEA), and Switzerland, either directly or via onward transfer, to any country not recognized by the European Commission as providing an adequate level of protection for Personal Data. Notwithstanding the foregoing, the Standard Contractual Clauses will not apply if Korn Ferry has adopted an alternative recognized compliance standard for the lawful transfer of Personal Data outside the EEA. For the purpose of the Standard Contractual Clauses and this Attachment 3, Client and its affiliates established in the European Union, EEA, and Switzerland are deemed "data exporters." Korn Ferry and its affiliates established outside of the European Union, EEA, and Switzerland are deemed "data importers."

### **7. AUDIT**

- 7.1 **General Audit Terms.** Client may conduct audits as described in this Section 7. Permitted audits will be completed in a professional and ethical manner which does not, in Korn Ferry's reasonable judgment, compromise the integrity of Korn Ferry's (or its other customers') data,

system security, or operational performance. Client will notify Korn Ferry in writing at least twenty (20) business days prior to any audit taking place. Audits will be conducted during Korn Ferry's normal business hours. Client will bear all costs and expenses relating to each audit. Client and its agents must keep confidential all information learned during any audit. Korn Ferry may require outside auditors to sign an appropriate confidentiality agreement. Korn Ferry will not provide Client or its agents with access to proprietary or confidential information concerning its other customers. All information learned or acquired by Client during any audit is Korn Ferry Confidential Information.

7.2 **Security and Compliance Audit.** Client may conduct one security and compliance audit in any rolling 12-month period. Client may perform an assessment, audit, inspection, examination, or review of relevant security controls and processing activity in Korn Ferry's physical and technical environment in relation to Client's Personal Data processed by Korn Ferry pursuant to this Agreement and as is reasonably necessary to demonstrate Korn Ferry's compliance with the Agreement. Requests to conduct security and compliance audits must be made in writing to [Security@kornferry.com](mailto:Security@kornferry.com). Korn Ferry will provide access, at Korn Ferry's discretion, to relevant documentation, knowledgeable personnel, physical premises, summary audit reports, ISO 27001 and 27018 annual certifications, and infrastructure and application software that process Client's Personal Data. Client may not perform or disclose any of the following security testing of the system environment or associated infrastructure without first signing Korn Ferry's Audit Compliance Agreement: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing, service denial attack or other testing which by its application may cause impact to Korn Ferry's data, its customers' data, its operations or security. If security testing is permitted, Client assumes sole and total responsibility and risk for any damages or liabilities arising directly or indirectly as a result of the testing.

7.3 **Security Questionnaire.** Upon Client's written request but no more than once in any rolling 12-month period, Korn Ferry will complete Client's written information security questionnaire regarding Korn Ferry's processing of Client's Personal Data.

## 8. KORN FERRY ASSISTANCE

Taking into account the nature of the Personal Data processing and the information available to Korn Ferry will assist Client with Client's obligation to respond to Data Subjects' requests to exercise their rights under the GDPR; and, at Client's request, using appropriate technical and organization measures, assist Client in meeting its compliance obligations regarding carrying out privacy and data protection impact assessments and related consultations of data protection authorities. Korn Ferry may charge a reasonable fee to Client for such requested assistance, to the extent permitted by applicable law and as agreed to by the Parties.

## 9. DESTRUCTION OF PERSONAL DATA

Upon request from Client, Korn Ferry will destroy all Personal Data processed by Korn Ferry on behalf of Client that is in the possession or under the control of Korn Ferry. In the event that the Client does not make such request, Korn Ferry will destroy all Personal Data in accordance with its business practices. Korn Ferry shall be entitled to retain such back-ups of Personal Data to the extent is not technologically feasible to delete such Personal Data provided that if it becomes technologically feasible, Korn Ferry will delete such information. Korn Ferry will provide certification of deletion of Personal Data as described in Clause 12(1) of the Standard Contractual Clauses to Client only upon Client's written request. For the avoidance of doubt, the foregoing specifically excludes information provided by Korn Ferry to Client regarding candidates in connection with an executive or professional search.