

Quote ID: 0Q04p0000006fLC
Offer valid through: 12/23/2022

WorkTango Order Form

This Order Form sets forth the services ordered by the customer below ("Customer") to be provided by Kazoo, Inc., doing business as WorkTango ("WorkTango") and is effective as of the date of Customer's signature below ("Effective Date").

Contact Information

Customer:	City of Kyle Texas	Primary Contact:	Sandra Duran
Billing Address:	100 W. Center St. Kyle, Texas 78640	Primary Email:	sduran@cityofkyle.com
		Billing Email:	

Order

Initial Subscription Term: 24 months beginning on the Effective Date.

Subscription Service	Maximum Users	Subscription Fees for the first 12-month period
Surveys & Insights	300	\$11,160.00

Maximum User Increases. In the event Customer exceeds the Maximum Users, Customer's Maximum Users will increase in blocks of 25 Users for an additional annualized fee of \$1,023.00 per block (to be increased by 5% each year). Such fee increase will be pro-rated for the remainder of the Subscription Term.

One-Time Services	One-Time Fees
Surveys & Insights Implementation Deliverables <ul style="list-style-type: none"> Platform implementation & support which includes (1) implementation kick-off and design meeting to build alignment and establish goals for each corporate-wide survey type. Up to 10 hours will be allocated for implementation support services. Up to (2) web-based training sessions for Customer Users. 	\$2,000.00

Payment

Payment Terms. Upon execution of this Order Form, WorkTango will invoice Customer the One-Time Fees and the Subscription Fees for the first 12 months of the Initial Subscription Term. Fees do not include applicable taxes and any such taxes are the responsibility of Customer. Payment is due upon receipt of invoice.

Terms & Conditions

This Order Form is governed by the terms of the WorkTango Subscription Service Agreement attached hereto. By executing below, Customer and WorkTango agree to be bound by all terms and conditions of the Subscription Service Agreement and this Order Form (collectively the "Agreement"). Any capitalized terms that are not defined in this Order Form shall have the meaning set forth in the Subscription Service Agreement.

By executing below, the parties represent they are each authorized to enter into this Order Form and hereby agree to its contents.

Customer

Kazoo, Inc., doing business as WorkTango

Signature

Signature

Name

Name

Title

Title

Date

Date

Is a PO required? No _____

Yes _____ PO No. _____

WorkTango Subscription Service Agreement

This Subscription Service Agreement is entered into by and between Kazoo, Inc., a Delaware corporation, with an address for the purposes of this Agreement at 206 E 9th St, Suite 1700, Austin, TX 78701, doing business as WorkTango ("WorkTango") and the customer identified in an Order Form ("Customer") effective as of the date on which that Order Form that references this Subscription Service Agreement is signed by Customer ("Effective Date"). As used herein, references to the "Agreement" means this Subscription Service Agreement, all Order Forms hereunder, subsequent amendments, and such other documents, attachments, addendum, and exhibits that the Parties' authorized representatives mutually agree to in writing.

In consideration of the mutual promises contained herein, the parties agree as follows:

1. DEFINITIONS

- 1.1 "Customer Data" means any data, information, or material provided to WorkTango or submitted by Customer or Users in the course of using the Service.
- 1.2 "Login" means a username and password assigned to an individual for purposes of accessing the Service.
- 1.3 "Maximum Users" means the maximum number of individuals that may be provided Logins as subscribed to by Customer and set forth in one or more Order Form(s).
- 1.4 "Order Form" means WorkTango's standard order form that (i) specifies the Service(s) subscribed to by Customer; (ii) specifies the Maximum Users, subscription fees, and Subscription Term; (iii) is governed by and incorporated by reference into this Agreement; and (iv) is signed by authorized representatives of both parties.
- 1.5 "Service" means the software-as-a-service offering(s) subscribed to by Customer as identified in the Order Form(s), including any updates thereto and as may be made available as a mobile application, together with any training materials provided by WorkTango to support Customer's use of the Service(s).
- 1.6 "Subscription Fee" means the recurring fee paid for access to the Service as set forth in one or more Order Forms.
- 1.7 "Subscription Term" means the duration for which Customer has subscribed to a Service as set forth in the applicable Order Form.
- 1.8 "Third Party Services" means any products and services not provided by WorkTango and used by Customer in conjunction with the Service.
- 1.9 "User" means an individual for whom a Login has been provided.

2. SERVICE

- 2.1. **Provision of Service.** Subject to the terms and conditions of this Agreement, WorkTango will provide Customer with access to and use of the Service for the duration of the Subscription Term. WorkTango will provide support in accordance with WorkTango's current Service Level Agreement (attached hereto as Exhibit A), as may be updated from time to time provided that no such update materially reduces WorkTango's support obligations. WorkTango may, at its sole discretion, modify the Service from time to time without charge to Customer. WorkTango reserves the right to add and/or substitute functionally equivalent services in the event of unavailability or end-of-life of a product or functionality within the Service. WorkTango shall maintain industry-standard or better technical and organizational measures designed to maintain the security of the Service and Customer Data in WorkTango's possession.
- 2.2. **Logins.** Each individual accessing the Service must have a unique Login assigned by Customer. Customer shall not deactivate a User's access to the Service and assign such access to another individual, except when the User is no longer employed by, or performing services for Customer. Customer shall promptly notify WorkTango in the event Customer becomes aware of any unauthorized use of a Login.
- 2.3. **Maximum Users.** The number of Users that have Logins shall be limited to the Maximum Users. In the event Customer exceeds the Maximum Users, Customer's Maximum Users will increase in accordance with the Maximum User Increase pricing and quantities set forth in the relevant Order Form and WorkTango will invoice Customer for such increase. Any increase in the Maximum Users shall be for the remainder of the Subscription Term.
- 2.4. **License Restrictions.** Customer shall not itself or through any employee, contractor, agent, or other third-party i) rent, lease, lend, sell, redistribute, reproduce, offer in service bureau, or sublicense the Service to any third party; ii) copy, decompile, reverse-engineer, attempt to derive the source code of, modify, or create derivative works of the Service, or any part thereof; or iii) access the Service for purposes of building or marketing a competitive product. Customer shall not use the Service in a manner that infringes on the intellectual property, privacy, or other rights of and User or third parties. Customer shall not allow its Users to commit or engage in harassment, fraud, defamation or other torts through the Service. Customer shall not transmit or upload any viruses or malicious code to or via the Service.

- 2.5. **Customer Obligations.** Customer is responsible for providing all hardware, software, networking, and communications capabilities necessary for Customer's access to the Service. Customer shall be responsible for the accuracy, quality, and legality of the Customer Data, including but not limited to, where legally required, obtaining each User's consent to the inclusion or use of their personal and employment information in connection with the Service. Customer is responsible for all activities conducted by each User and each User's compliance with the terms of the Agreement.
- 2.6. **Surveys & Insights Responsibilities** (applicable only if Surveys & Insights has been purchased pursuant to the Order Form). Customer is responsible for all activities that occur in User accounts and for Users' compliance with this Agreement. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify WorkTango promptly of any such unauthorized access or use; and (iii) comply with all applicable local, provincial, state, federal and foreign laws in using the Service. In particular, when using the Service, Customer and its Users shall not:
- a. Use the Service to send any communications (that is, Spam) to any Respondent or any other person unless Customer has obtained and maintained the appropriate consents required under applicable laws to send such communications. Spam can be in the form of bulk emails, one to one commercial communications such as email or as otherwise defined by applicable law.
 - b. Provide any Customer Content or any other material (whether text, logos, images, graphics, content or otherwise) through the Service that wasn't created by you, provided for you to use, to which you have the appropriate license for use or that would violate anyone's rights.
 - c. Use any misleading or incorrect names, addresses, email addresses, subject lines, or other information in or through the Service.
 - d. Use an outside unsubscribe process when sending bulk content to an audience hosted in the Service.
 - e. Provide any sensitive personal information through the Service, including without limitation any health information, government identifiers, passwords, security credentials, or similar upload, post, email, transmit or otherwise make available on the Website or through the Service or provide to us for use through the Service:
 1. any material that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful, or racially or ethnically objectionable, encourages criminal behavior, gives rise to civil liability, violates any law, or is otherwise objectionable,
 2. any materials where the use of those materials through the Service would infringe upon the intellectual property rights of a third party or to which you do not hold all necessary rights,
 3. any falsehoods or misrepresentations or create an impression that you know is incorrect, misleading, or deceptive, or any material that could damage or harm any person in any way;
 4. any unsolicited or unauthorized advertising, solicitations for business, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
 5. any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or data or the Website or that of any User or visitor to the Website or that compromises any person's privacy;
 - f. impersonate any person or entity or misrepresent Your affiliation with a person or entity;
 - g. interfere with or disrupt the Website or networks connected to the Website, or disobey any requirements, procedures, policies or regulations of networks connected to the Website or probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures;
 - h. resell the content of the Website, the use of the Website or access to the Website or the content of the Website.
 - i. attempt to identify any User that participated in a confidential survey as part of the Service.
- 2.7. **Surveys & Insights Statement of Work and Pricing** (applicable only if Surveys & Insights has been purchased pursuant to the Order Form). In the event that Customer has purchased Surveys & Insights in an applicable Order Form, WorkTango shall, with the consultation and cooperation of Customer, provide the services detailed in Exhibit B together with any customized consulting services purchased in the Order Form at the pricing detailed in Exhibit C.
- 2.8. **Points, Rewards, and Fulfillment Vendors** (applicable only if Recognition & Rewards have been purchased pursuant to the Order Form). In connection with WorkTango's Rewards and Recognition Service, Customer may set an allocation of points which Users may earn as a form of recognition from Customer and other Users ("Points"). Users may be eligible to redeem Points for items such as, but not limited to, goods, gift cards, experiences, and charitable donations (each, a "Reward") fulfilled by Customer or, at Customer's election, by WorkTango's third-party vendors ("Fulfillment Vendors"). Fulfillment Vendors are subject to change at any time and without notice. In the event a Reward cannot be fulfilled by a Fulfillment Vendor, WorkTango will credit the applicable Points back to the applicable User. Except as expressly set forth herein, WorkTango is not responsible for and makes no representations or warranties with respect to any Rewards or the performance of any Fulfillment

Vendor. Customer shall be responsible for establishing and monitoring rules for Users' redemption of Points. In the event of a fulfillment error with a Reward fulfilled by a Fulfillment Vendor, WorkTango will make commercially reasonable efforts to assist Customer in resolving the error with such Fulfillment Vendor. Points earned by Users have no cash value and cannot be used as a form of payment of any obligation to WorkTango or its Fulfillment Vendors. All Rewards fulfilled by a Fulfillment Vendor are non-returnable and non-refundable.

- 2.9. **Third Party Services.** Customer may elect to use Third Party Services with the Service. Customer's use of Third Party Services is governed by and subject to the terms and conditions of Third Party Services. WorkTango makes no representations or warranties with respect to any aspect of such Third Party Services.

3. INTELLECTUAL PROPERTY.

- 3.1. **Reservation of Rights.** All intellectual property rights in and to the Service remain the sole property of WorkTango and its licensors. Customer hereby assigns to WorkTango any suggestions, ideas, enhancement requests, or other feedback provided by Customer to WorkTango relating to the Service. WorkTango owns all data, software, inventions, ideas, and other technology and intellectual property that it develops in connection with its products and the Service.
- 3.2. **Rights in Data.** As between WorkTango and Customer, Customer shall own all right, title, and interest in and to Customer Data. Customer hereby grants WorkTango, for the duration of the Subscription Term, a royalty-free license to display, host, copy, and use Customer Data to the extent reasonably necessary to provide the Service to Customer. WorkTango reserves the right to (but is not obligated to) remove any Customer Data at any time that, in WorkTango's sole opinion, is in violation of this Agreement or any applicable law. WorkTango may use Customer Data and information about how the Service is used to develop anonymized, hashed, aggregated, or other de-identified data for analytics purposes ("Statistical Data"). Statistical Data shall not contain any information identifying Customer or any individual. WorkTango retains ownership in all Statistical Data, including any analysis performed or conclusions drawn from such data, together with any improvements made to the Service as a result of such data.
- 3.3. **Training Materials.** WorkTango may provide certain materials to support Customer's internal launch and use of the Service. Subject to the terms of this Agreement, WorkTango hereby grants to Customer a non-exclusive license to distribute any such materials in electronic and print format during the Subscription Term solely for internal use for purposes of training and communicating information about the Service to its Users and employees.

4. PAYMENT.

- 4.1. **Fees.** Customer shall pay all fees set forth in all Order Forms. Subscription Fees will be invoiced annually in advance. All processing, shipping, and handling fees for Rewards fulfilled by Fulfillment Vendors will be included in the cost of the Rewards set forth in the Service. Customer will be charged for Rewards via the payment method for Reward fulfillment set forth in the initial Order Form upon approval of redemptions within the Service.
- 4.2. **Fulfillment Funds.** Customer shall pay for Rewards fulfilled by Fulfillment Vendors via a fund established by WorkTango and funded by Customer ("Fulfillment Fund"). Upon execution of the initial Order Form, WorkTango will invoice Customer to fund the Fulfillment Fund and may periodically invoice Customer as may be necessary to maintain sufficient funds in the Fulfillment Fund. Customer is solely responsible for maintaining sufficient funds in the Fulfillment Fund. In the event funds in the Fulfillment Fund are insufficient to pay for Reward redemptions, Rewards fulfilled by Fulfillment Vendors will be suspended until additional funds are received for the Fulfillment Fund.
- 4.3. **Payment Terms.** All invoices will be due and payable upon receipt. All Fees are non-refundable and are payable in USD. Any fees remaining unpaid for more than thirty (30) days past their due date shall accrue interest at a rate of the lesser of one and one-half (1.5%) percent per month or the highest rate allowed by law. WorkTango may also (at its discretion and in addition to other remedies it may have) suspend access to the Service if any invoice remains unpaid for more than 30 days.
- 4.4. **Taxes.** The fees do not include local, state or federal sales, use, value-added, excise or personal property or other similar taxes or duties, and any such taxes shall be assumed and paid by the Customer except those taxes based on the net income of WorkTango. To the extent use or sales tax applies to any Reward redeemed in connection with the Service or a Reward is deemed taxable income or employee compensation under applicable tax law, Customer will be solely responsible for any applicable sales or use tax and income and employment tax withholdings, and will otherwise ensure its and its Users' compliance with applicable tax law. Tax implications of any charitable donations facilitated via the Service will be strictly managed by Customer. WorkTango shall have no liability for any taxes owed by Customer or its Users as a result of use of the Service or redemption of Rewards.

5. WARRANTIES AND DISCLAIMER.

- 5.1. **Mutual Warranties.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement and that it has no outstanding agreement or obligation that conflicts with any of the provisions of this Agreement, or that would preclude it from complying with the provisions hereof.
- 5.2. **LIMITED WARRANTY ON SERVICE.** WORKTANGO REPRESENTS AND WARRANTS, FOR THE DURATION OF THE SUBSCRIPTION TERM, THAT THE SERVICE WILL MATERIALLY PERFORM IN CONFORMANCE



WITH THIS AGREEMENT. AS CUSTOMER'S EXCLUSIVE REMEDY FOR ANY CLAIM UNDER THIS WARRANTY, CUSTOMER SHALL PROMPTLY NOTIFY WORKTANGO IN WRITING OF ANY NON-CONFORMITY AND, PROVIDED THAT SUCH NON-CONFORMITY IS DETERMINED TO BE WORKTANGO'S RESPONSIBILITY, WORKTANGO SHALL (I) CORRECT ANY MATERIAL REPRODUCIBLE NON-CONFORMITY; (II) PROVIDE CUSTOMER WITH A PLAN FOR CORRECTING SUCH NON-CONFORMITY; OR (III) IF NEITHER (I) NOR (II) CAN BE ACCOMPLISHED WITH REASONABLE COMMERCIAL EFFORTS BY WORKTANGO, WORKTANGO OR CUSTOMER MAY TERMINATE THE AFFECTED SERVICE. WORKTANGO'S SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A TERMINATION HEREUNDER SHALL BE TO REFUND A PRORATED AMOUNT OF THE APPLICABLE PREPAID SUBSCRIPTION FEE FOR THE APPLICABLE SERVICE FOR THE PERIOD BEGINNING ON THE DATE OF THE NOTICE OF NON-CONFORMANCE THROUGH THE REMAINDER OF THE SUBSCRIPTION TERM. WORKTANGO IS NOT RESPONSIBLE FOR ANY CLAIMED BREACH OF WARRANTY CAUSED BY: (I) MODIFICATION MADE TO THE SERVICE BY ANYONE OTHER THAN WORKTANGO OR ITS AGENTS; OR (II) CUSTOMER'S USE OF THE SERVICE IN VIOLATION OF THIS AGREEMENT.

- 5.3. **Disclaimer of Warranties.** EXCEPT AS PROVIDED IN THIS AGREEMENT, CUSTOMER UNDERSTANDS AND AGREES THAT THE SERVICE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IS PROVIDED "AS IS" AND WORKTANGO EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WORKTANGO MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY (i) IN RELATION TO REWARDS OR FULFILLMENT VENDORS, INCLUDING BUT NOT LIMITED TO ANY MERCHANDISE OR PRODUCTS OFFERED BY SUCH FULFILLMENT VENDORS, (ii) THAT THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE, OR (iii) THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.
- 5.4. **Trial or Beta Services.** From time to time WorkTango may invite Customer to try, at no charge, features or functionality that are not generally available to customers ("Trial Services"). Customer may elect to use Trial Services at its discretion. Trial Services are provided for evaluation purposes, not part of the Service until made generally available to customers, may contain bugs or errors, and may be subject to additional terms. TRIAL SERVICES ARE NOT CONSIDERED "SERVICE" FOR PURPOSES OF WORKTANGO'S OBLIGATIONS HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. WorkTango may discontinue Trial Services at any time in WorkTango's sole discretion and may never make them generally available.

6. CONFIDENTIALITY.

- 6.1. **Definition.** "Confidential Information" means any proprietary information, customer information, product plans, inventions, technical data, trade secrets, know-how, the terms of this Agreement, Customer Data, or other non-public business information, in each case designated as "confidential" and disclosed or made available by a party ("Discloser") to the other party ("Recipient"), whether orally or in writing hereunder.
- 6.2. **Non-Use and Non-Disclosure.** The Recipient shall, with respect to Confidential Information of the Discloser: (i) not disclose such Confidential Information to any third party at any time and limit disclosure to its employees, contractors, or its legal, financial and accounting advisors having a need to know and who have agreed to be bound by confidentiality obligations that are at least as restrictive as the terms of this Agreement; and (ii) protect the confidentiality of the Confidential Information with at least the same degree of care as Recipient uses to protect its own Confidential Information of a like nature, but no less than a reasonable degree of care. Notwithstanding the foregoing, Recipient may disclose Confidential Information solely to the extent necessary to comply with a court order or as otherwise required by law or a government body, provided that Recipient must give Discloser prompt written notice and obtain or allow for a reasonable effort by Discloser to obtain a protective order prior to disclosure.
- 6.3. **Exclusions.** The obligations with respect to Confidential Information shall not apply with respect to Confidential Information that (i) is now or becomes publicly available through no fault of Recipient; (ii) is lawfully obtained from a third party without a duty of confidentiality; (iii) is known to Recipient without obligation of confidentiality prior to such disclosure; or (iv) is, at any time, independently developed by Recipient without use of Discloser's Confidential Information.

7. LIMITATION OF LIABILITY

- 7.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOSSES, OR EXPENSES (INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION, LOST BUSINESS, OR LOST PROFITS) EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITIES ARISING OUT OF EITHER PARTY'S BREACH OF SECTION 6 ("CONFIDENTIALITY"), EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, OR CUSTOMER'S BREACH OF SECTION 2.4 ("LICENSE RESTRICTIONS").

- 7.2. IN NO EVENT SHALL WORKTANGO'S AGGREGATE CUMULATIVE LIABILITY HEREUNDER (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY IN TORT OR BY STATUTE OR OTHERWISE) EXCEED THE SUBSCRIPTION FEES PAID BY CUSTOMER TO WORKTANGO HEREUNDER DURING THE TWELVE-MONTH PERIOD PRECEDING THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITIES ARISING OUT OF WORKTANGO'S BREACH OF SECTION 6 ("CONFIDENTIALITY"), OR WORKTANGO'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.
- 7.3. THE LIMITATIONS OF LIABILITY IN SECTIONS 7.1 AND 7.2 ABOVE SHALL APPLY: (A) REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UNDER WHICH THE CLAIM ARISES, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, STRICT LIABILITY, OR OTHERWISE; AND (B) REGARDLESS OF IF THE REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. IF THE LIMITATIONS OF LIABILITY ARE UNENFORCEABLE UNDER APPLICABLE LAW THEN WORKTANGO'S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

8. INDEMNIFICATION.

- 8.1. **By WorkTango.** WorkTango shall defend Customer from and against any claim, demand, or action brought by a third party against Customer, and indemnify and hold Customer harmless from any third party damages, liabilities, losses, costs, and expenses, including reasonable attorneys' and experts' fees, in each case that are finally awarded to the third party by a court of competent jurisdiction or otherwise owed in any settlement, in each case to the extent arising from any allegation that the Service infringes any United States patent, copyright, or trade secret of a third party. Notwithstanding the foregoing, WorkTango will have no liability for any infringement claim of any kind if the claim results from: (i) modification of the Service made by anyone other than WorkTango or its agents; (ii) unauthorized or unlicensed use of the Service; (iii) Customer Data; or (iv) or compliance by WorkTango with designs, plans or specifications furnished by or on behalf of Customer.
- 8.2. **By Customer.** Customer shall defend WorkTango from and against any claim, demand, or action in any form brought by a third party (including without limitation any User) against WorkTango, and indemnify and hold WorkTango harmless from any damages, liabilities, losses, costs, and expenses, including reasonable attorneys' and experts' fees, including in each case any of the foregoing that are finally awarded to the third party by a court of competent jurisdiction or otherwise owed in any settlement, in each case to the extent arising from or related to: (i) use of the Service by Customer or any User in a manner that breaches Section 2.4 ("License Restrictions") of this Agreement; (ii) Customer Data, and (iii) Customer's violation of an applicable law, rule, regulation or agreement to which Customer is subject.
- 8.3. **Rights Upon Infringement.** If Customer's use of the Service, or in WorkTango's opinion is likely to be, enjoined or subject to an infringement claim, WorkTango may, at its sole option and expense: (i) procure for Customer the right to continue using the same under the terms of this Agreement; (ii) replace or modify the Service so that it is non-infringing; or (iii) if options (i) and (ii) above cannot be accomplished despite WorkTango's reasonable efforts, WorkTango may terminate this Agreement and Customer's rights to the Service and refund a pro-rated portion of any pre-paid Subscription Fees for the period beginning on the effective date of termination through the end of the then-current Subscription Term.
- 8.4. **Procedure.** If one party (the "Indemnitee") receives any notice of a claim or other allegation with respect to which the other party (the "Indemnitor") has an obligation of indemnity hereunder, the Indemnitee will promptly give the Indemnitor written notice of such claim or allegation setting forth in reasonable detail the facts and circumstances surrounding the claim. The Indemnitee will not make any payment or incur any costs or expenses with respect to such claim, except as requested by the Indemnitor or as necessary to comply with this procedure. The Indemnitee shall not make any admission of liability or take any other action that limits the ability of the Indemnitor to defend the claim. The Indemnitor shall immediately assume full control of the defense or settlement of such claim or allegation, including the selection and employment of counsel, and shall pay all authorized costs and expenses of such defense. The Indemnitee will fully cooperate, at the expense of the Indemnitor, in the defense or settlement of the claim. The Indemnitee shall have the right, at its own expense, to employ separate counsel and participate in the defense or settlement of the claim. The Indemnitor shall have no liability for costs or expenses incurred by the Indemnitee, except to the extent authorized by the Indemnitor.
- 8.5. **EXCLUSIVE REMEDIES.** THE PROVISIONS OF THIS SECTION 8 SET FORTH WORKTANGO'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

9. Term and Termination.

- 9.1. **Agreement Term.** The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until the expiration or termination of all Order Forms, unless otherwise terminated earlier as provided hereunder.
- 9.2. **Subscription Term and Renewals.** The Initial Subscription Term shall be specified in the relevant Order Form. Unless either party provides the other party with written notice of non-renewal at least thirty (30) days prior to the

expiration of the then-current Subscription Term, the Subscription Term will automatically renew (the "Renewal Term") upon expiration for successive terms equal in length to the Initial Subscription Term or the most recent Renewal Term (whichever is later in time). By way of example, if an Initial Subscription Term set forth in an Order Form is 24 months, the Renewal Term will also be 24 months. If an Order Form has specified an Initial Subscription Term of less than 12 months, the Renewal Term shall be for 12 months. The Initial Subscription Term and any Renewal Term are collectively the "Subscription Term." Other than a Termination for Cause (as detailed below), any notice of non-renewal or termination shall be effective upon the expiration of the current Subscription Term unless otherwise agreed in writing by the parties.

- 9.3. **Subscription Fees for Subsequent Terms.** In the event of an automatic renewal, unless otherwise agreed in an Order Form, upon expiration of the Initial Subscription Term and each Renewal Term, WorkTango may increase the Subscription Fees, provided the per-unit Subscription Fees shall increase by no more than ten-percent (10%) of the per-unit Subscription Fees of the prior Subscription Term during the new Subscription Term. In the event that Customer has opted out of automatic renewals, the foregoing pricing cap shall not apply.
 - 9.4. **Termination for Cause.** Either party may terminate the Agreement immediately upon written notice (i) in the event the other party commits a non-remediable material breach of the Agreement; (ii) the other party fails to cure any remediable material breach within 30 days of being notified in writing of such breach; (iii) the other party becomes insolvent, makes an assignment for the benefit of creditors, becomes subject to control of a trustee, receiver or similar authority, or becomes subject to any bankruptcy or insolvency proceeding.
 - 9.5. **Effect of Termination for Cause.** In the event of termination of this Agreement due to a default by WorkTango, WorkTango shall refund, on a prorated basis, any prepaid fees for the Service for the period beginning on the effective date of termination through the end of the then-current Subscription Term. In the event of a termination of the Agreement due to a default by Customer, Customer shall pay for all amounts due and owing for the Service for the duration of the Subscription Term, and any other fee or charge associated with Customer's use of the Service as set forth in the Agreement.
 - 9.6. **Survival.** Sections titled "Definitions", "Term and Termination", "Fees", "Intellectual Property," "Disclaimers of Warranties", "Limitation of Liability," "Indemnification," "Confidential Information", and "Miscellaneous" inclusive, shall survive any termination of this Agreement.
- 10. Miscellaneous.**
- 10.1. **Compliance with Applicable Law.** Each party agrees to abide by all applicable local, state, national and foreign laws, treaties and regulations, including applicable export control laws, in connection with i) in the case of Customer, Customer's use of the Service; and ii) in the case of WorkTango, WorkTango's provision of the Service. Customer is responsible for compliance with any laws that may apply in connection with Rewards facilitated by the Service, including without limitation any federal, state, or local employment and/or tax laws.
 - 10.2. **GOVERNING LAW AND JURISDICTION.** THE AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS. ANY LEGAL ACTION OR PROCEEDING ARISING UNDER THE AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE FEDERAL OR STATE COURTS LOCATED IN DELAWARE, AND THE PARTIES HEREBY CONSENT TO EXCLUSIVE JURISDICTION OF SUCH COURTS. THE PARTIES EXPRESSLY AGREE TO EXCLUDE THE APPLICATION OF THE U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (1980) TO THIS AGREEMENT.
 - 10.3. **Relationship of Parties.** The parties are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent.
 - 10.4. **Attorneys' Fees.** In any court action at law or equity that is brought by one of the parties to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, in addition to any other relief to which that party may be entitled.
 - 10.5. **Equitable Relief.** Both parties agree that a material breach of the confidentiality provisions of this Agreement or restrictions set forth herein may cause irreparable injury to other party for which monetary damages alone would not be an adequate remedy, and therefore the party shall be entitled to seek equitable relief in addition to any other remedies it may have hereunder or at law, without the requirement of posting bond or proving actual damages.
 - 10.6. **Publicity.** Customer authorizes WorkTango to publicly disclose that Customer is a customer and to use Customer's name and logo to identify Customer as a customer of WorkTango's on its website, in marketing materials or presentations, and in social media posts or on other relevant websites.
 - 10.7. **Force Majeure.** Except for Customer's payment obligations, neither party shall be deemed to have breached any provision of the Agreement as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, terrorism, energy crises, fires, transportation contingencies, interruptions in third party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are beyond such party's reasonable control.

- 10.8. **Assignment.** Neither party may assign its interest in this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may transfer and/or assign some or all of this Agreement by operation of law due to a merger or change of control, without prior notice to the other party or the other party's consent, provided that the Agreement is not assigned to a direct competitor of the other party. This Agreement is binding upon and inures to the benefit of, the parties and their respective permitted successors and assigns.
- 10.9. **Severability.** The invalidity or unenforceability of any provision hereof, or any terms thereof, shall not affect the validity of the Agreement as a whole, which will at all times remain in full force and effect.
- 10.10. **Waiver.** The failure of either party to enforce at any time the provisions of the Agreement, the failure to require at any time performance by the other party of any of the provisions of the Agreement, or the express waiver by either party of any provision, condition or requirement of the Agreement shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either party to enforce each and every such provision thereafter.
- 10.11. **Notices.** All notices required or permitted under the Agreement will be in writing and delivered by courier or overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth in the in the Order Form or to such other address as may be specified by either party to the other in accordance with this Section.
- 10.12. **Entire Agreement.** This Agreement and the associated Order Forms and Exhibits constitute the entire agreement of the parties with respect to the subject matter contemplated herein, and supersedes any prior representations, agreements, negotiations, or understandings between the parties, whether written or oral, with respect to the subject matter hereof. This Agreement may not be modified except by written instrument signed by both Parties and referring to the particular provisions to be modified. All terms, conditions, or provisions on a purchase order shall be of no force and effect notwithstanding the acceptance of such purchase order after the date of this Agreement. In the event of a conflict between the terms of this Agreement and an Order Form, the terms set forth in the Order Form shall control.

EXHIBIT A SERVICE LEVEL AGREEMENT

This Service Level Agreement ("SLA") describes the level of support WorkTango provides to its customers (each a "Customer") pursuant to Customer's subscription to WorkTango's software-as-a-service offerings ("Service"). This SLA is subject to the terms and conditions of the agreement for Service(s) between Customer and WorkTango ("Agreement"). Terms capitalized but not defined herein have the meanings set forth in the Agreement.

General Support

WorkTango customer support hours are 8 a.m. to 6 p.m., US Central Time, Monday through Friday (excluding holidays). All customer support shall be in English.

Communication Methods

Phone: 1-877-44-WORKTANGO or 512-522-1973

Email: support@WorkTango.com

Online Support Ticket: Customer may submit a support ticket within the Service.

Online Resources: WorkTango may provide Users with support resources within the Service, including articles, FAQs, best practices, and other content to assist with use of the Service.

Maintenance

Scheduled Maintenance Windows: WorkTango may perform routine maintenance between the hours of 9 p.m. and 6 a.m. U.S. Central Time. Scheduled Maintenance will be up to 12 hours per calendar quarter.

Emergency Maintenance: WorkTango may perform maintenance outside of the Scheduled Maintenance Windows provided WorkTango gives reasonable advance notice to Customer's administrators.

Severity Levels and Response

WorkTango will use commercially reasonable efforts to respond to issues in accordance with the table below.

Severity Level	Severity Level Description	WorkTango Response
1 (Critical)	Complete outage of production instance of Service	Initial response within 1 business hour. WorkTango will work continuously on rectifying the outage until the Service is available.
2 (Major Defect)	Error causing critical functionality to be unusable for multiple Users	Initial response within 1 business hour. WorkTango will triage the error and work towards providing a workaround or hotfix depending on the severity of the error.
3 (Minor Defect)	Error that does not materially impact the usability of the Service	Initial response within 8 business hours. WorkTango will triage the issue and will provide a fix in a future production release at its discretion.
4 (Minor Bug or Feature Request)	Bug with no identifiable business impact; desired look and feel; or desired functionality	Initial response within 2 business days. WorkTango may provide an update in a future release at its discretion.



Actual Availability. Supplier shall make the SaaS Actually Available in accordance with the service levels set forth below:

Target Description	Actual Availability	Measured
Percentage of time SaaS must remain Actually Available	99.7%	Monthly

Remedy for Failure to Achieve Actual Availability. Customer may notify Supplier of any lack of Actual Availability. Supplier shall promptly investigate such claimed lack of Actual Availability and shall either (i) provide information satisfactory to Customer that no lack of Actual Availability in fact occurred or (ii) at no additional charge to Customer, promptly take such action as may be required to restore Actual Availability. In the event the Actual Availability target is not met in a given month, Supplier will provide Customer with a credit per the terms set forth in the table below, subject to the terms set forth in this Section. To obtain a credit for Supplier's failure to meet the Service Availability, Customer must request such credit in writing no later than the last business day of the calendar month following the month of the Service unavailability giving rise such credit. Such credit(s) may be applied by Customer to any of Supplier's subsequent invoices. Any unused Service credits shall expire upon termination of this Agreement.

Service Availability	Credit (Percentage of monthly subscription fee)
99.0% - 99.7%	5%
98.0% - 98.9%	10%
95% - 97.9%	15%
90% - 94.9%	30%
89.9% or less	50%

Exceptions

Company will not be responsible for correcting a Problem arising from any of the following:

- (a)** Problems resulting from any modifications to the Hosted Service made by the Customer;
- (b)** incorrect use by the Customer of the Hosted Service; or
- (c)** to the extent the relevant environment is not within Company's control, any fault in the equipment or in any programs used in conjunction with the Hosted Service.

The Technical Response times for Category 1 and 2 Problems as set forth in the section above will be extended by the length of any delay in the time to fix attributable to any acts or omission of Customer or any of its employees, agents or subcontractors.

4. HOSTING AND DATA

Customer Data is backed-up daily and stored by Company and its third-party service providers. On termination of this Agreement for whatever reason, Customer Data will be made available to Customer as requested for electronic retrieval for a period of ninety (90) days.

EXHIBIT B

STATEMENT OF WORK (Surveys & Insights only)

WorkTango will provide the Platform and the following Services for the Customer based on purchased services outlined in the Order Form and Exhibit C:

Implementation Services, Platform Configuring, and Enablement:

- One (1) Implementation Kick-Off and Design meeting to build alignment and establish goals for each corporate-wide survey type (i.e. Engagement Survey, Diversity, Equity & Inclusion Survey). Additional corporate-wide initiatives that require design and implementation services from WorkTango are available and detailed in Exhibit C.
- WorkTango will provide a single point of contact to manage project planning from initiation to completion as a dedicated account manager
- Support configuring the Platform including questions, and uploading or integrating employee attributes and organizational hierarchy
- WorkTango will allow for unlimited employee attributes that will be accessible for slicing and filtering on the Platform
- Expert and Advisory support to support defining approach, developing the survey, and designing unlimited custom questions
- User access and one web-based training session for key Customer project team that can deploy and configure surveys.
- Ensure employee experience, library questions, and WorkTango's assessments are offered in two languages.
 - Translation requirements for custom questions not in WorkTango recommended assessments or communication tools can be offered by the Customer or at additional cost through WorkTango translation partners.
- Up to 10 hours allocated for implementation support services

Platform Use and Engagement:

- Deploy mobile-optimized surveys to employees accessible on any device
- Access to the WorkTango library of questions and ability to create custom questions

Reporting and Insights:

- Deliver real-time reporting through the Platform to be viewed by custom attributes provided by Customer
- Unlimited User access to Platform for self-service reporting based on pre-defined reporting view (i.e. all employees, by an employee attribute – i.e. department, by hierarchy, and direct reports)
- Dynamic reporting with the ability to slice, filter, and compare by any employee attribute provided by Customer
- Access to full dashboard of survey results
- Ability for administrator users or leaders to download one-click PowerPoint Summary Reports for each survey
- Up to two (2) web-based training sessions for Customer Users
 - User access can be provided to any Customer staff to view reporting for the entire company, or view data for specific hierarchies or employee attributes (i.e. department, location, etc.)
- One (1) Executive Deck offered to Customer per year highlighting key insights from the survey, thematic analysis of open-ended comments (if applicable); and recommended focus areas; includes the option for (1) one live presentation to Customer
 - Executive Decks follow WorkTango's standard analysis and best-practice presentation structure.

Additional Support Services:

- User Support - access to one point of contact, and administrative support for any User via phone, email and live chat
- Team of support professionals available to Customer employees by email and by phone

EXHIBIT C – PRICING (Surveys & Insights only)

Other Optional Consultative Services:

The Company helps the Customer evolve their Surveys & Insights program to collect the most valuable and authentic feedback. The Company's consulting offering includes everything stated in Exhibit B, but also offers the Customer custom services upon request. Those services may include the services detailed below:

Please Note: Price ranges differ between size of company given the amount of data and complexity. All prices in this Exhibit C are exemplative, and subject to change.

OPTIONAL DELIVERY SERVICES

Costs for additional services available to WorkTango customers in **designing your survey strategy or implementation**.

Service Type	Cost	Description
Languages & Translations	<ul style="list-style-type: none"> New languages: \$500/language Translations: \$0.30/word 	<ul style="list-style-type: none"> Optional service: Customer can offer translation at no additional cost WorkTango to offer our partner services to develop translations
Kiosk, SMS, Paper Survey Delivery	<ul style="list-style-type: none"> Paper surveys: Printing: \$1 per survey (for every 10 pages); Mail (envelopes, shipping, fees); \$3-\$7 in North America (custom outside of NA) SMS: \$250 set-up; annual cost for text messages (\$.05 per employee) Kiosk: STANDARD: no additional cost CUSTOM url's: \$100 for url & custom development work 	<ul style="list-style-type: none"> The WorkTango platform can distribute surveys to participants beyond email: Paper: Employee fill out a paper survey with a return-mail envelope to WorkTango for processing SMS: employees can receive their unique survey link via SMS to click on and submit survey (similar process and link to email) Kiosk: employees can go to a WorkTango generated or Custom URL to fill out the survey by entering one identifiable piece of information (i.e., employee ID) to access the survey. This can be accessed on a company computer/kiosk, by going to the url on any device in or out of the office, and also be accessed via a QR code.
Data Migration	One-time only \$1,000 - \$5,000	<ul style="list-style-type: none"> Data migrated from previous vendors to maintain trending of previous survey data. To be custom quoted based on 1) Size of company; 2) Number of surveys & complexity

OPTIONAL DESIGN SERVICES

Costs for additional services available to WorkTango customers in **designing your survey strategy or implementation**.

Service Type	Cost	Description
New Corporate-Wide initiative implementation support fee	\$1,000 - \$5,000	For new initiatives outside of the Scope of Work in Exhibit B we offer Design support for survey question analysis and recommendations and new project management & project plan. (based on employee size: <500 = \$1000; 501-2,500 = \$2,000; 2,501-5,000 = \$3,000; 5,001-10,000 = \$4,000; 10,000+ = \$5,000)



Additional Platform Training Sessions	\$350/session	Additional training webinars or sessions with administrators then what is identified in Exhibit B

OPTIONAL INSIGHTS & ANALYSIS SERVICES

Costs for additional services available to WorkTango customers **for extra analysis, focus groups and workshops**

Service Type	Cost	Description
Additional Corporate-Wide Executive Reports not defined in Exhibit B – Scope of Work	Standard Reports \$750 - \$2,500 Custom Reports: Custom price	Standard decks: Standard WorkTango deck highlighting key insights from the survey, thematic analysis of open-ended comments (if applicable); and recommended focus areas. (based on employee size: <500 = \$750; 501-2,500 = \$1,250; 2,501-5,000 = \$1,750; 5,001-10,000 = \$2,000; 10,000+ = \$2,500) Custom decks: customization of Standard Decks or new custom decks can be offered based on client needs. Customizations are limited to (1) one revision, additional hours can be purchased for additional revisions and requested changes.
Leader / Department Enablement Reports	Standard Reports \$350 Custom Reports: custom price	If you prefer to not offer platform access directly for leaders to pull their own reports, WorkTango can support leader buy-in and access to their results. Leaders will be provided a summary of their key challenges and benefits, support for communication to their employees and how to understand their results, whether on the WorkTango platform or within their own distributed set of results.
Comment Review / Thematic Analysis	\$0.30 per word: dependent on number of comments	WorkTango will offer themes from open-ended comments in corporate-wide executive reports and the sentiment and theme feature in the platform. If you need more support understanding your open-ended comments, WorkTango can help you dig deeper into your employee feedback and a thematic analysis.
KPI / Scorecard Correlative Analysis	\$1,000 - \$5,000 (depending on number of financial statements and surveys)	Engagement implicitly drives financial benefits for an organization. By leveraging your survey results and financial results, WorkTango's can run statistical analyses to identify the relationship between your engagement scores and financial outcomes, as well as the strength of these relationships (if applicable).

ACTION SERVICES

Costs for additional services available to WorkTango customers **for extra analysis, focus groups and workshops**

Service Type	Cost	Description
Predictive Insights and Statistical Analysis	\$750 - \$1,500	Each employee has their own set of personal values and priorities. Using various statistical techniques, WorkTango can identify key drivers of what you're measuring and questions to help you identify what matters most to your employees and the effectiveness of the survey. (based on employee size: <2,500 = \$750; 2,500+ = \$1,500)
Employee Focus Groups	Individual Session: \$2,000 Recommended: 5 sessions \$9,000	To dig deeper into results and the employee experience, having a third party understand your employees' honest needs and feedback at a small group (6-10) of employees can be offered by our team.

	<i>(includes 5 sessions, 1 report and 1 presentation)</i> <i>Additional Sessions: \$1,500</i>	WorkTango will discuss results with employees, understand deeper feedback about the results, and provide a presentation with themes and recommended actions from employee conversations. <i>Standard length: 75 minutes each</i>
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Custom Optional Consultative Services:

WorkTango's consulting offerings listed above include standard services, however, additional custom services can also be provided and priced to the Customer accordingly upon request. Examples of additional services include:

- **Employee Voice Strategy Consulting** - help build your employee voice strategy and help companies through the journey of annual survey practices to a more Active Listening approach. Included in this offering is our Design Workshop where we walk you through findings on past survey data (if applicable) and recommendations.
- **Survey Analysis & Design** - whether it is validating custom questions or offering our recommendations for your vision, our survey experts recommend the right practices for you beyond just 'best practices'.
- **Developing communication** plans and custom communication collateral
- HRIS/employee **data clean up**
- Custom **action plan development**
- People Analytics services to correlate survey data to external business data: to uncover new insights, and assess the effectiveness of people practices, programs, and processes

Below are the hourly rates for custom work outside the scope of this agreement. WorkTango will obtain written approval prior to engaging in Consulting Services outside of Services in Exhibit B.

Resource Type	Rate
Graphic Design	\$150 per hour
Project Manager	\$150 per hour
Analyst	\$175 per hour
Training and Development	\$175 per hour
Data Scientist	\$250 per hour
Organizational Development or I/O Psychologist	\$350 per hour