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1. DEFINED TERMS

Agreement means this THOUGHTWORKS END USER LICENSE AGREEMENT together with the applicable Order Documents (if any), the license key email received from ThoughtWorks (if any), and the Schedule A attached hereto (if any) (collectively the "Additional Terms").

Agent means, for the product Go, a computer or virtual machine which has the Go agent program installed on it.

Authorized Use means use of the Product in accordance with the terms of this Agreement or as specified in the Additional Terms, if any.

Authorized User means an individual, or number of individuals specified in the Additional Terms, if any, who is/are licensed to use the Product under this Agreement.

Community License is a type of license granted by ThoughtWorks to certain non-profit organizations, academic institutions or open source projects as further defined by the community license page on ThoughtWorks' website, http://www.thoughtworks-studios.com/ , or otherwise determined in ThoughtWorks' sole discretion.

Effective Date means the earlier of the date on which ThoughtWorks and Licensee enter into this Agreement or the date on which ThoughtWorks provides Licensee with the Product.

Go User means any individual who accesses or uses Go through its user interface.

License Key Start Date means the date on which the license key for the Product, if any, is provided to Licensee.

Licensee means a person or entity (real or legal) exercising rights granted by ThoughtWorks under this Agreement. Where Licensee is a legal entity, Licensee includes any currently existing or future entity which controls, is controlled by, or is under common control with Licensee, where "control" means (a) the direct or indirect power to control the management and direction of such entity, whether by ownership, contract, or otherwise, or (b) ownership of fifty percent (50%) or more of the outstanding shares, ownership of a controlling interest, or beneficial ownership of such entity.

Mingle Full Users are Authorized Users that are authenticated for a specific instance of the product Mingle (a "Mingle Instance") and have full permission to utilize the functionality of Mingle on that Mingle Instance.

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Mingle Anonymous Project Access allows Mingle administrators to set up certain Mingle projects as publicly accessible without authentication. This means that anonymous users (not logged in) can access a Mingle project via their internet/intranet and read the contents of that Mingle project without ever entering a user id and password.

Order Documents include (but are not limited to) the following documents: Invoices, Purchase Orders, Requisitions, or other similar documents that memorialize a licensing transaction between Licensee and ThoughtWorks, which specify the price, Product, quantity and type of Authorized Users, and the Term

Product means the computer software program described in the Additional Terms, if any, or in which this Agreement is included, including any updates provided to Licensee by ThoughtWorks, to the extent not provided under a separate agreement, but excluding Third Party Software.

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ThoughtWorks will provide Maintenance and Support to all Licensees in accordance with the applicable terms of this Section 5. For such Maintenance and Support, ThoughtWorks will make reasonable efforts to resolve, via telephone and email, all issues related to malfunctions or errors resident in the Product. ThoughtWorks will not be responsible for errors or malfunctions caused by any of the following: use of the Product on unsupported platforms (such as browser, OS, and networking); use of the Product on hardware/software configurations that do not meet the system requirements specified by ThoughtWorks; use of the Product other than in accordance with this Agreement; failure resulting from misapplication or abnormal use as determined by the user instruction, manual or specification provided by ThoughtWorks or virus introduced by third parties or Licensee, any repair, adjustment, alteration, or modification of the Product without ThoughtWorks' prior

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For **subscription licenses**, subject to Licensee having paid and continuing to pay the applicable License Fees, Maintenance and Support for the Product during the Term of the license will be provided by ThoughtWorks.

For **perpetual licenses**, ThoughtWorks will provide Maintenance and Support for the Product on an annual basis, subject to Licensee having paid the applicable License Fees and the applicable annual Maintenance and Support Fee set forth in the Additional Terms. Annual Maintenance and Support for perpetual licenses will commence on the Effective Date and automatically renew each year unless at least sixty (60) days prior to such renewal date, either party provides to the other party written notice of termination. The Maintenance and Support Fee for such renewal period will be set by ThoughtWorks in accordance with its then-current maintenance and support fees for the Product, but ThoughtWorks will not increase such fees to Licensee by more than twenty percent (20%) from one year to the next. For early termination of the Maintenance and Support no pro-rata refunds will be made.

For Community Licenses, no Maintenance and Support is provided by ThoughtWorks unless specifically agreed otherwise in the Additional Terms, if any.

6. LICENSEE'S OBLIGATIONS

Licensee will ensure its compliance with this Agreement and prevent unauthorized use and distribution of the Product. Licensee shall keep exclusive possession of and control over the Product. Licensee shall ensure that the Product is used only by Authorized Users for the Authorized Use. Licensee shall take reasonable security measures to prevent any prohibited activities under Section 3 of this Agreement.

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a) ThoughtWorks will defend or settle, at its expense, any action brought against Licensee based upon the claim that the Product, when used in accordance with this Agreement, knowingly and directly infringes an issued U.S. patent or registered copyright; provided, however, that: (i) Licensee notifies ThoughtWorks promptly in writing of any such claim; (ii) Licensee does not enter into any settlement related to any claim without ThoughtWorks' prior written consent; (iii) ThoughtWorks has sole control of any claim and all related settlement negotiations; and (iv) as requested, Licensee provides ThoughtWorks with all information and assistance necessary to settle or defend the claim. (b) If the Product becomes, or may, in the opinion of ThoughtWorks, become the subject of a claim of infringement of any third party intellectual property right, ThoughtWorks may, at its option, and as Licensee's exclusive remedy: (i) procure the right for Licensee to use the Product; (ii) replace or modify the Product to make it non-infringing; or (iii) refund any license fees for the Product paid by Licensee. (c) Licensee will defend or settle, at Licensee's expense, any action brought against ThoughtWorks based upon the claim that any modifications Licensee makes to the Product or any combination of the Product with software or other items not approved by ThoughtWorks infringes or violates any third party intellectual property right; provided, however, that ThoughtWorks comply with the same requirements outlined in subsections (i)-(iv) of Subparagraph (a). (d) Notwithstanding anything herein to the contrary, ThoughtWorks shall have no obligation to defend Licensee or to pay Licensee's costs,

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This Agreement can be terminated by ThoughtWorks in the event of breach by Licensee. Breach by Licensee includes: 1) the failure to prevent unauthorized use or distribution of the Product; 2) accessing, using, modifying, or distributing Third-Party Software independently of the Product and without permission; 3) nonpayment, or 4) any other activity that violates this Agreement. ThoughtWorks may terminate this Agreement immediately upon giving notice to Licensee if after giving Licensee written notice that it is in breach of the Agreement, Licensee fails to cure the breach within seven (7) days of receipt of the notice; except that in the case of Licensee's failure to pay License Fees or comply with Section 3, ThoughtWorks reserves the right to terminate this Agreement immediately and without notice or opportunity to cure. In the event of termination of this Agreement: a) all outstanding License Fees and any other amounts owed by Licensee are immediately due and payable; and b) all license rights (including without limitation the perpetual license) granted to Licensee under this Agreement and in relation to the Product are revoked and the Licensee must destroy all copies of the Product.

Subscription based Licensees may not terminate this Agreement during the Term but may terminate any renewal period under this Agreement by providing ThoughtWorks with written notice of termination at least sixty (60) days prior to the applicable renewal date.

Perpetual Licensees may elect not to renew the annual Maintenance and Support period by providing ThoughtWorks with written notice of non-renewal at least sixty (60) days prior to the annual renewal date.

11. TAX

Licensee is responsible for all taxes, other than taxes levied on ThoughtWorks' income. License Fees do not include any applicable taxes. If ThoughtWorks is required to pay any sales, use, goods & services, value added, or other taxes in relation to Licensee's purchase, those taxes will be billed to and paid by Licensee.

12. EXPORT

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13. ASSIGNMENT

Licensee may not assign its rights under this Agreement except in the case of a change in control of Licensee, including merger or sale. Licensee must give ThoughtWorks 60 days written notice of any such assignment. ThoughtWorks may assign its rights and obligations under this agreement for any reason and without the consent of Licensee.

14. PUBLICITY

Licensee grants ThoughtWorks the right to identify Licensee as a user in Product promotional material. At any point, Licensee can submit a written request via email to studiospublicity@thoughtworks.com to have ThoughtWorks remove Licensee's name, within thirty days, from any future promotional material.

15. SEVERABILITY

Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof. Any invalid or unenforceable provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular provisions(s) held to be invalid or unenforceable and so as to effect the original intent of the parties hereto.

16. GOVERNING LAW

This Agreement shall be deemed executed in the State of Delaware, U.S.A., and shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to choice of law or conflict of law principles. For purposes of enforcement of arbitration awards, equitable relief, or if for any other reason litigation is permissible under this agreement, each party hereby irrevocably agrees to the exclusive personal jurisdiction and venue of any court located in the State of Delaware.

17. NO WAIVER

No failure or delay by either party in exercising any right, power, or privilege granted under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege granted under this Agreement. The knowing waiver of a Breach of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

18. SURVIVAL

The provisions of Sections 2, 6, 7, 8, 9, 12, 14, 15, 16, 18, 19 and 20 shall survive the cancellation or termination of this Agreement. All other provisions of this Agreement, which by their terms or import are intended to survive such cancellation or termination, shall survive.

19. NO THIRD-PARTY BENEFICIARIES

This Agreement may only be enforced by the parties hereto and their respective successors and assigns and there are no third-party beneficiaries to this Agreement.

20. AUDIT RIGHTS

Licensee agrees at all times during the term of this Agreement, and for three (3) years after cancellation or termination of this Agreement, to permit ThoughtWorks or its authorized representative, upon reasonable notice, access to inspect all facilities (including systems, work stations and other hardware and storage devices) where Licensee has deployed the Product, to ensure compliance with the terms and conditions of this Agreement.

21. AMENDMENT

This Agreement can only be modified by mutual written assent of the parties. The parties agree that the terms on either party's purchase order, invoice or other business forms are not binding on the other party and shall not be of any effect whatsoever and may not affect, alter, or modify the terms and conditions of this Agreement unless they are expressly incorporated into a formal written agreement signed by both parties.

22. U.S. FEDERAL PROCUREMENT REQUIREMENTS

PURSUANT TO FAR 52.212-5(E) AND/OR FAR 52.244-6, FOR ANY ORDER DOCUMENTS REFERENCING A SPECIFIC U.S. GOVERNMENT PRIME CONTRACT, ALL APPLICABLE PROCUREMENT REGULATIONS REQUIRED BY FEDERAL STATUTE OR REGULATION TO BE INSERTED IN U.S. GOVERNMENT SUBCONTRACTS APPLY, INCLUDING BUT NOT LIMITED TO 52.203-13, CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT, FAR 52.203-15, WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, FAR 52.219-8 - UTILIZATION OF SMALL BUSINESS CONCERNS, FAR 52.222-26 -

EQUAL OPPORTUNITY, FAR 52.222-35 - EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS, FAR 52.222-36 - AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES, FAR 52.222-39 - NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES, FAR 52.222-41 - SERVICE CONTRACT ACT OF 1965, FAR 52.222-50 – COMBATING TRAFFICKING IN PERSONS, FAR 52.222-51, EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT – REQUIREMENTS, FAR 52.222-53, EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR CERTAIN SERVICE – REQUIREMENTS, FAR 52.222-54, EMPLOYMENT ELIGIBILITY VERIFICATION, FAR 52.226-6, PROMOTING EXCESS FOOD DONATION TO NONPROFIT ORGANIZATIONS, FAR 52.247-64 - PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (AS REQUIRED IN ACCORDANCE WITH PARAGRAPH (D) OF FAR CLAUSE 52.247-64. THESE PROVISIONS HAVE THE SAME FORCE AND EFFECT AS IF THEY WERE STATED IN THEIR FULL TEXT.

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24. ENTIRE AGREEMENT

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