

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (“**Agreement**”) is made and entered into on this day of [REDACTED] (“**Effective Date**”), by and between between WekaIO, Inc., having its principal place of business at 910 E Hamilton Ave, Suite 430 Campbell, CA 95008 (“**Licensor**”), and [REDACTED] (“**Licensee**”).

WHEREAS, Licensee desires to obtain a license from Licensor to use certain Software Products (as defined hereunder); and

WHEREAS, Licensor is willing to grant such rights and licenses on the terms and conditions set forth herein;

NOW, THEREFORE, the parties hereby agree as follows:

1. **Definitions.** For purposes of this Agreement and any exhibits attached hereto, the following capitalized terms shall have the following meaning:
 - 1.1. “**Commercial Terms**” has the meaning ascribed to it under Section 2 below.
 - 1.2. “**Documentation**” means the user’s guides and technical manuals delivered by Licensor to Licensee.
 - 1.3. “**Intellectual Property Rights**” means all intangible legal rights, titles and interests evidenced by or embodied in all: (i) inventions (regardless of patentability and whether or not reduced to practice), improvements thereto, patents, patent applications, patent disclosures, together with all reissuances, continuations, continuations in part, revisions, extensions and reexaminations thereof; (ii) trademarks, service marks, trade dress, logos, trade names, corporate names, together with translations, adaptations, derivations and combinations thereof, including goodwill associated therewith, and applications, registrations, and renewals in connection therewith; (iii) any work of authorship, regardless of copyrightable, copyrightable works, copyrights (including droit morale), and applications, registrations and renewals in connection therewith; (iv) mask works and applications, registrations and renewals in connection therewith; (v) trade secrets and Confidential Information; and (vi) other proprietary rights and any other similar rights, in each case on a worldwide basis, and copies and tangible embodiments thereof, in whatever form or medium.
 - 1.4. “**New Release**” means a new version of the Software Product that includes or adds new functionality or adds substantially new features to the Software Product, including any major enhancements, as designated by a progression of the version number left of the decimal point following the version initially delivered hereunder.
 - 1.5. “**Platform**” means the hardware and any third party’s system software (including but not limited to operating systems and database management software), upon and in conjunction with which the Software Product will operate.
 - 1.6. “**Software Product**” means the object code version of Licensor’s proprietary software as further detailed in **Exhibit A**, related documentation, user manuals, and Updates, and all other written and or electronic materials relating thereto, if provided by Licensor to Licensee in connection therewith.
 - 1.7. “**Updates**” means, with respect to any element of the Software Product, a new version of such element that includes bug fixes and minor enhancements to the Software Product, as designated by a progression of the version number right of the decimal point following the version initially delivered hereunder, and which is made available at no additional cost by Licensor to its customers generally.

2. License Grant.

- 2.1. General License. Subject to the terms and conditions of this Agreement and upon receipt of payment in full by Licensor, Licensor grants to Licensee and Licensee accepts from Licensor, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable, license to use the Software Product for internal use purposes only in accordance with the commercial terms as mutually agreed by the parties in writing from time to time ("**Commercial Terms**").
- 2.2. Notwithstanding the above, in addition to the above license, following the termination or expiration of this Agreement, Licensor hereby grants Licensee a revocable, perpetual non-exclusive, non-transferable, non-sublicensable right to use the Software Product for read-only, Non-Production purposes only ("**Non-Production License**"). "*Non-Production*" means using the Software Product solely for accessing existing data and transferring such data to other systems and for the avoidance of doubt, does not include using the Software Product for running processes or for any commercial advantage or monetary compensation. The Licensee hereby agrees that under the Non-Production License, (i) the Software Product is provided "As-Is" without any warranty (express or implied) whatsoever; (ii) no support will be provided by Licensor; and (iii) Licensor shall have no liability, under any theory of law, for any damages (direct, indirect, consequential, special or punitive) under of the Non-Production License.
- 2.3. To the extent the end user is the U.S. Government, including any of its agencies, departments, bureaus, offices, or divisions, then the Software Product and any derivatives thereof are "Commercial Items" as defined in Federal Acquisition Regulation ("FAR") 2.101, and such use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with FAR 12.211 and 12.212 or, with respect to Department of Defense ("DoD") Government End Users, restricted in accordance with Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7102-2 and 227.7202, as applicable. Consistent with FAR 12.211 and 12.212 (for non-DoD Government End Users) and DFARS 227.7202-1 – 227.7202-4 (for DoD Government End Users), Software, including all related data and documentation, is licensed (a) only as a Commercial Item or as Commercial Computer Software (for DoD End Users), and (b) with only those rights as are granted to all other users pursuant to this Agreement and any related agreement(s), as applicable. Accordingly, End User will have no rights except as expressly agreed to in writing by End User and Licensor.

3. **Reservation of Rights; Use Restrictions.** Other than the rights explicitly granted in this Agreement, Licensee shall have no other rights, express or implied, in the Software Product. Without limiting the generality of the foregoing, Licensee agrees and undertakes not to: (i) sell, lease, sublicense or distribute the Software Product, or any part thereof, or otherwise transfer the Software Product or allow any third party to use the Software Product in any manner; (ii) reverse engineer, decompile, disassemble or otherwise reduce to human-perceivable form the Software Product's source code; (iii) modify, revise, enhance or alter the Software Product; (iv) copy or allow copies of the Software Product to be made; (v) use any backup or archival copies of the Software Product, or any part thereof, or allow any third party to use such copies, for any purpose other than to replace an original copy in the event of the destruction of the Software Product components, if the Software Product becomes defective; (vi) use the Software Product other than with Licensee's own computers or for any use other than internal use; and (vii) represent that it possesses any proprietary interest in the Software Products.

- 4. Third Party Software.** Licensee acknowledges and agrees that any third party software that may be provided with the Software Product is provided under the terms of the license attached/linked thereto or, if no such license is attached, such third party software is provided “AS IS”. Licensor is not liable for any losses or damages which may occur resulting from the use of any third party software. Nothing in this Agreement will be deemed to be a representation or warranty by Licensor with respect to any third party software.
- 5. Open Source Licenses.** The Software Product includes certain open source code software and materials as listed in **Exhibit B** (“**Open Source Software**”) that are subject to their respective open source licenses (“**Open Source Licenses**”). Such Open Source Licenses contain list of conditions with respect to warranty, copyright policy and other provisions. By executing this Agreement, Licensee undertakes to strictly comply with the terms and condition of the Open Source Licenses, as may be amended from time to time. In order to comply with the Open Source Licenses, Licensee shall read the respective licenses or notices which are available within the Software Product’s notice file, as may be amended from time to time by Licensor, at its sole discretion. In the event of any inconsistencies or conflicting provisions between the provisions of the Open Source Licenses and the provisions of this Agreement, the provisions of the Open Source Licenses shall prevail. Without derogating from the generality of the foregoing, it is clarified that any Open Source Software is provided on an “AS IS” basis, without warranty of any kind, whether express, implied or statutory, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose, and that in no event shall Licensor or the author(s) of the Open Source Software be liable for any direct, indirect, incidental, special, exemplary, or consequential damages, however caused and on any theory of liability, arising in any way out of the use of the Open Source Software. For clarity, the defense and indemnification obligations of Licensor set forth in Section 10 hereunder and the representations and warranties set forth in Section 8 hereunder shall not apply to any Open Source Software.
- 6. Title & Ownership.** LICENSOR DOES NOT SELL OR TRANSFER TITLE IN THE SOFTWARE PRODUCT, OR ANY PART THEREOF, TO LICENSEE. The Software Product, and/or any copies thereof, including without limitation any derivative works made (regardless of whether such derivative works were made and/or developed pursuant to the request and/or specifications of Licensee, and irrespective of any support and/or assistance Licensor may, will or had received from Licensee, or any third party on its behalf, with respect thereto), as well as any Updates thereto, if provided to Licensee pursuant to this Agreement, shall remain Licensor’s sole and exclusive property. All Intellectual Property Rights evidenced by or embodied in and/or attached/connected/related to the Software Product, or part thereof, are and shall be owned solely and exclusively by Licensor. Nothing in this Agreement shall constitute a waiver of Licensor’s Intellectual Property Rights under any law, or be in any way construed or interpreted as such. It is further agreed that to the extent Licensee provides Licensor suggestions, comments or feedback (whether orally or in writing) with respect to the Software Product (the “**Feedback**”), Licensee acknowledges that any and all rights, including Intellectual Property Rights in such Feedback shall belong exclusively to Licensor and that such shall be considered Licensor's Confidential Information. It is further understood that use of Feedback, if any, may be made by Licensor at its sole discretion, and that Licensor in no way shall be obliged to make use of any kind of the Feedback or part thereof.
- 7. Fees & Payment.**

- 7.1. Fees.** Licensee shall pay the license fees and the maintenance fees as set forth in the Commercial Terms (“**License Fees**” and “**Maintenance Fees**” respectively).
- 7.2. Payment Terms.** Without derogating from any other remedy available to Licensor, any payment or part of a payment that is not paid by Licensee to Licensor when due shall bear interest at the **rate** of 1.5% per month or any part thereof (but in no event more than the maximum rate allowed by applicable law), and shall constitute sufficient cause for Licensor to immediately suspend its performance hereunder and terminate this Agreement and the License. All payments shall be made in U.S. Dollars by wire transfer to an account designated by Licensor.
- 7.3. Taxes.** Licensee is solely responsible for payment of any taxes (including, without limitation, sales or use taxes, Value Added Taxes, employee-related taxes, intangible taxes, and property taxes, and only excluding taxes related to Licensor’s income) resulting from the acceptance of the License, from the possession and use of the Software Product or the receipt of the Support and Maintenance Services. To the extent that Licensor shall be required to pay any such taxes then such taxes shall be billed to and paid by Licensee. If any taxes are required to be withheld, Licensee shall pay an amount to Licensor such that the net amount payable to Licensor after withholding of taxes shall equal the amount that would have been otherwise payable under this Agreement. Licensee agrees to indemnify and hold harmless Licensor from all claims and liabilities arising from Licensee’s failure to report or pay any such taxes.
- 8. Warranties.** Licensor warrants that, to the best of its knowledge, it has the right to grant Licensee the License. LICENSOR REPRESENTS AND WARRANTS THAT THE SOFTWARE PRODUCT WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH DOCUMENTATION FOR A PERIOD OF NINTEY (90) DAYS FROM THE DATE OF DELIVERY (THE “**WARRANTY PERIOD**”). LICENSOR DOES NOT WARRANT, HOWEVER, THAT LICENSEE’S USE OF THE SOFTWARE PRODUCT WILL BE UNINTERRUPTED OR THAT THE OPERATION OF THE SOFTWARE PRODUCT WILL BE ERROR-FREE. Licensor’s sole liability for any breach of this warranty shall be, at Licensor’s sole discretion: (i) to replace or repair the Software Product or the applicable portion thereof; or (ii) to refund the price paid for the Software Product. The foregoing warranties are contingent upon Licensee’s proper use of the Software Product, and shall not apply to damage caused by abuse, misuse, alteration, neglect or unauthorized repair or installation, or by the use or attempted use of software other than that supplied and supported by Licensor. The foregoing constitutes Licensee’s sole and exclusive remedy for breach by Licensor of any warranties made under this Agreement.
- 9. Disclaimer of Warranty.** THE WARRANTY SET FORTH ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SOFTWARE PRODUCT, MAINTENANCE SERVICES OR ANY OTHER ITEMS PROVIDED HEREUNDER.
- 10. Indemnification.**
- 10.1.** Subject to the limitation of liability under Section 12 below, Licensor shall defend or settle at its expense any action, claim or proceeding, brought against Licensee to the extent based upon a third party claim that the Software Product licensed by Licensee infringes any third party's patent or copyrights registered in the US or the EU. Licensor agrees to pay Licensee reasonable attorneys’ fees and expenses, incurred in investigation or defense of such claims, and all damages and liabilities

finally awarded against Licensee or paid in a settlement and arising out of such third party claims. Licensor's indemnity obligation shall not extend to claims based solely on: (i) an unauthorized modification or use of the Software Product made by any third party other than Licensor, where the Software Product, without such modification or unauthorized use, would not be infringing; (ii) the combination of non infringing items with any items not supplied by Licensor; or (iii) the use by Licensee of any version which is not the latest available version of the Software Product. As a condition to the defense set forth above, Licensee shall give Licensor prompt notice of any such claim made against it, and grant Licensor sole control of the defense of any such claim, suit or proceeding, including appeals, negotiations and any settlement or compromise thereof. If the Software Product or part thereof becomes, or in Licensor's opinion may become, subject to any claim of infringement of any duly issued patent or copyright or asserted trade secret right and its use is thereby enjoined, Licensor's sole liability shall be, at Licensor's option, to either: (a) procure for Licensee the right to continue using the Software Product; (b) replace or modify the Software Product, so that it is non-infringing; or (c) if neither of the foregoing alternatives is reasonably practical, Licensor shall refund a portion of the License Fees paid to Licensor for such Software Product based on a pro rata straight line thirty six (36) month depreciation basis, upon the return or destruction (and certification of destruction) of the Software Product, provided that if the License is granted for a limited designated term, the above pro rata straight line depreciation basis shall be the said designated term.

- 10.2.** In the event the End-User is an agency, branch, department, office, or other unit of the United States Government, the indemnification requirements applicable to End-User herein shall be deemed null and void.

11. Limitation of Liability.

- 11.1.** IN NO EVENT WILL LICENSOR BE LIABLE FOR, LOST PROFITS, LOSS OF USE, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR TO ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, WHETHER OR NOT LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LICENSOR'S LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT, EXCEED THE AMOUNT PAID BY LICENSEE TO LICENSOR HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT.

- 11.2.** NOTWITHSTANDING THE ABOVE, LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR SHALL HAVE NO LIABILITY WHATSOEVER UNDER THIS AGREEMENT, AND LICENSEE SHALL HOLD LICENSOR HARMLESS, FROM ANY TYPE OF DAMAGES WHICH MAY ARISE, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY)), (I) IN THE EVENT THAT LICENSEE CONTINUED TO USE A SPECIFIC VERSION OF THE SOFTWARE PRODUCT FOLLOWING A NOTICE BY LICENSOR TO LICENSEE TO UPGRADE THIS SPECIFIC VERSION OF THE SOFTWARE PRODUCT DUE TO A PROBLEM WITH SUCH SPECIFIC

VERSION OF THE SOFTWARE PRODUCT; OR (II) FOR ANY USE OF THE LICENSEE BEYOND WHAT IS STATED IN THE COMMERCIAL TERMS..

12. Confidentiality

- 12.1. Confidential Information. Each party (“**Disclosing Party**”) may from time to time during the term of this Agreement disclose to the other party (“**Receiving Party**”) certain information regarding the Disclosing Party’s business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information (“**Confidential Information**”). The Disclosing Party will mark all Confidential Information in tangible form as “confidential” or “proprietary” or with a similar legend. The Disclosing Party will identify all Confidential Information disclosed orally as confidential at the time of disclosure. Regardless of whether so marked or identified, however, any information that the Receiving Party knew or should have known, under the circumstances, was considered confidential or proprietary by the Disclosing Party, will be considered Confidential Information of the Disclosing Party.
- 12.2. Protection of Confidential Information. The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.
- 12.3. Exceptions. The Receiving Party’s obligations under this Section, with respect to any Confidential Information of the Disclosing Party, shall not apply to and/or shall terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party’s Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party’s reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

13. Term and Termination

- 13.1. Term. This Agreement shall commence on the Effective Date, and shall continue during the term set forth in the Commercial Terms. Except as otherwise expressly set forth in the Commercial Terms, the term of this Agreement and the license hereunder and under the Commercial Terms shall begin upon the earlier of use in production mode by Licensee of the Software Product or 90 days from the date of the applicable purchase order executed by the parties.

- 13.2.** Termination for Breach. Either party may terminate this Agreement at any time by giving written notice to the other party if the other party is in breach or default of any material provision of this Agreement, and the breaching party fails to cure the breach or default, within thirty (30) days after being given written notice, specifying details of the breach or default and requiring the same to be remedied. Should Licensee terminate this Agreement due to Licensor's breach, Licensee is entitled to a refund of all prepaid fees paid as of the date of the breach.
- 13.3.** Termination in the Event of Default. Either party may terminate this Agreement immediately, in the event the other party: (i) is judged bankrupt or insolvent; (ii) makes a general assignment for the benefit of its creditors; (iii) a trustee or receiver is appointed for such party or for any of its property; or (iv) any petition by or on behalf of such party is filed under any bankruptcy or similar laws.
- 13.4.** Consequences. Upon expiration or termination of this Agreement, Licensee will: (i) except for the license provided under Section 2.2 above, immediately cease use of the Software Product; (ii) return the Software Product and all copies thereof, as well as the Documentation to Licensor; (iii) erase or otherwise destroy all copies of the Software Product in its possession, which is fixed or resident in the memory or hard disks of its and/or its Subsidiaries' computers; (iv) return to Licensor any and all Confidential Information then in its possession; and (v) certify in writing to Licensor that all copies and partial copies of the Software Product and related Documentation have been either returned to Licensor or otherwise erased or destroyed and deleted from any computer libraries or storage devices and are no longer in use by Licensee.
- 13.5.** Survival. The provisions of Sections 2.2 3, 6, 10, 11, 12, 13, 14 and 16 shall survive the termination, expiration or other ending of this Agreement. Additionally, any terms or conditions of this Agreement which by their nature require performance by either party after the termination or expiration of this Agreement shall survive.
- 13.6.** If End User is the U.S. Government, including its agencies, departments, branches, offices or other units, then termination will be governed by FAR Clause 52.212-4.

14. Export Compliance. Licensee shall not transfer, export or re-export any Software Product or part thereof, except in full compliance with applicable export controls and use restrictions.

15. General Terms

- 15.1.** Governing Law & Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without giving effect to the principles of conflict of laws. Both parties hereby consent to the exclusive jurisdiction of, and venue in, the state courts in Santa Clara County in the State of California (or in the event of exclusive federal jurisdiction, the courts of the Northern District of California) in connection with any dispute related to this Agreement.
- 15.2.** Independent Contractor. Licensor undertakes the furnishing of the License and performance of its obligations under this Agreement as an independent contractor. There shall be no employer-employee relationship between Licensor's employees and Licensee, and Licensee's employees and Licensor.
- 15.3.** Waiver. No waiver of rights arising under this Agreement shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No failure or delay by either party in exercising any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy and/or prejudice any rights of such party.

- 15.4.** Notices. Legal notices given by the parties to one another in connection with this Agreement shall be provided by writing, prepaid mail, receipted courier service, or hand delivery to the party to be notified, at the address stated at the outset of this Agreement.
- 15.5.** No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the parties. In no event will any third party have any rights in relation to this Agreement or any right to enforce the terms hereof.
- 15.6.** Force Majeure. Licensor is excused for any delays, losses or damages due to causes beyond its control, including without limitation, fire, explosion, power irregularities or surges, acts of God, earthquakes, rains, floods, lightning, labor unrest, strikes, strife or any other cause that was not reasonably foreseeable on the date of signing of this Agreement.
- 15.7.** Subcontracting and Assignment. Licensee shall not assign and/or subcontract any of its rights and obligations under this Agreement, except with Licensor's prior written consent. Licensor may assign any of its rights and/or obligations hereunder at Licensor's sole discretion.
- 15.8.** Severability. If any provision under this Agreement is determined by a court to be unenforceable, that provision will be deemed to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted, and the remainder of the Agreement will continue in effect.
- 15.9.** Entire Agreement. The parties have read this Agreement, and agree to be bound by its terms, and further agree that it constitutes the complete and entire agreement of the parties and supersedes all previous communications between them, oral or written, relating to the subject matter hereof. No representations or statements of any kind made by either party that are not expressly stated herein shall be binding on such party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives as of the Effective Date.

WekaIO Inc.

Licensee:

By & Title:
Date:

By & Title:
Date:

EXHIBIT A

WekaIO File System

EXHIBIT B

Latest open source list is available in

<https://wekaio.lightning.force.com/lightning/articles/Knowledge/Open-Source-software-used-by-Weka-IO>