



LaborKey Per Cap License Agreement

This document sets forth the terms and conditions of an Agreement for LaborKey Per Cap software ("LaborKey Per Cap") station licenses at a single office location along with support to be provided by LaborKey Corporation ("L.K. Corp") to the organization inserted within clause 1 below ("Licensee"). When signed by both an officer of L.K. Corp and a representative of Licensee, this Agreement will constitute our formal written Agreement to the following terms and conditions.

(1) LICENSEE ACCOUNT INFORMATION

ACCOUNT CONTACT [★] _____

ORGANIZATION NAME [★] _____

eMAIL ADDRESS [★] _____

PHONE & EXTENSION _____ FAX _____

BILLING ADDRESS [★] _____

BILLING CITY/ST/ZIP [★] _____

[★] *These items are required.*

(2) MINIMUM PERIOD, TERMINATION AND REACTIVATION OF SERVICE

The minimum period of service covered by this Agreement is **1** month. LaborKey Per Cap licenses will be renewed on a month-by-month basis, and at any time Licensee may discontinue service by sending notice of termination to L.K. Corp by email, mail or fax at least one full business day prior to the beginning of the month for which software licenses are to be terminated. Termination requests will be considered invalid if the account balance is not paid in full at the time of the termination request, and monthly license fees will continue to accrue until the account is paid in full and terminated properly according to these terms. After LaborKey Per Cap licenses will have been terminated, reactivation of the software licenses will require payment of a reactivation fee equal to three months of LaborKey Per Cap license fees.

THE INITIAL MONTH COVERED BY THIS AGREEMENT IS _____ OF _____

LICENSEE REPRESENTATIVE INITIALS _____

(3) LICENSE FEES AND SUPPORT FEES

a. The base monthly license fee of \$### for this “LaborKey Per Cap License Agreement” covers 1 to 7 LaborKey Per Cap station licenses at a single central office location, all accessing a single LaborKey Per Cap database.

TOTAL MONTHLY LICENSE FEE \$ _____

LICENSEE REPRESENTATIVE INITIALS _____

b. There are no fees for the initial data conversion and preparation, software installation, software configuration and a basic software tutorial. This Agreement covers all phone, email and web support pertaining to software problems or concerns and all reasonable support calls throughout the term of this Agreement. Additional support, other than formal trainings and software customization, will be provided at an hourly rate of \$90 per hour when representatives are able to provide the requested support, and when representatives determine that the request for support is reasonable. Formal and onsite training must be negotiated separately. Customization of the LaborKey Per Cap software may be provided at no charge when L.K. Corp representatives determine that the customization is reasonable and beneficial for multiple clients, and when L.K. Corp staff have adequate time available to perform the customization. Otherwise, software customization will be offered on a per quote basis. All fees will be billed on the regular monthly invoice, per clause 4 below.

(4) TERMS OF PAYMENT

a. By signing this Agreement, Licensee agrees to the following payment terms.

b. Licensee agrees to pay the monthly license fee inserted above within clause 3, paragraph a. L.K. Corp will submit an invoice to Licensee the first business day of each calendar month, until Licensee chooses to terminate service per clause 2 above.

c. Licensee accepts all payment terms on this account as billed by L.K. Corp, and Licensee agrees to make timely payment in compliance with such terms. Current terms are payment in full within 25 days of invoice date, with an additional grace period of 10 days after which late fees may accrue.

d. Licensee agrees to pay L.K. Corp a 5%, or lower if required by law, late fee penalty per month for each month payment is late or insufficient according to payment terms specified hereinabove. L.K. Corp may choose to waive this penalty fee.

(5) DATA PRIVACY AND PROTECTION

a. The default LaborKey Per Cap configuration covered by this Agreement does not include features or capabilities which (1) permit remote systems to access the local systems or data; (2) compromise or weaken firewall, network or machine security; or (3) submit or post any affiliate, per capita, deposit, delegate or convention data to any off-site system, machine or party. Licensee may choose to have special or custom features enabled which are not included within

the default LaborKey Per Cap configuration, and these special or custom features may access remote servers and submit processed data, software user entries or requests to specific secure remote servers for the purpose of accessing specific data services required by Licensee.

b. If Licensee shall send data files to L.K. Corp for assistance with data processing, L.K. Corp shall only process these data files on systems protected with levels of security which prevent unauthorized persons from accessing these data files. L.K. Corp shall maintain data files for 30 to 60 days, and the data files shall only be used to support Licensee if and when Licensee shall request or require additional assistance with data files. Any files provided by Licensee in the possession of L.K. Corp shall be and forever remain exclusively the property of Licensee.

(6) SOFTWARE UPDATES

All LaborKey Per Cap updates shall be made available to Licensee at no cost for as long as Licensee account shall remain in good standing. Installing, updating or uninstalling LaborKey Per Cap versions will never compromise or damage affiliate, per capita, deposit, delegate or convention data or compromise the configuration of LaborKey Per Cap, unless LaborKey Per Cap data files, resource files or data directories shall be manually removed or altered by another third party process or system.

(7) TITLE, COPYRIGHT, AND PROTECTION OF CODE

Title, ownership rights, and intellectual property rights in and to LaborKey Per Cap software and its source code shall remain with L.K. Corp. The copyright laws of the United States and international copyright treaties protect the software and its source code.

Licensee MAY NOT:

- modify, translate, reverse engineer, decompile, or disassemble the software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
- create derivative works based on the software or its source code; or
- distribute copies of the software outside the scope of this Agreement.

(8) CONFIDENTIALITY

a. The licensed software and this Agreement contain confidential and proprietary information and trade secrets of L.K. Corp. As used in this Agreement, "Confidential Information" means (1) the licensed software and this Agreement; (2) all other proprietary, confidential or trade secret information which is clearly labeled or designated in writing as confidential, proprietary or the like by the disclosing party; (3) information disclosed orally with a designation of such information as secret, confidential or proprietary prior to or during the oral disclosure and a subsequent reduction of such information to a writing labeled confidential, proprietary or the like and sent to the party to whom the disclosure was made within 15 days after the oral disclosure; and (4) any other information that, although not designated as such by the disclosing party, is of a type and nature that a reasonable person would expect that it be treated as

confidential and/or proprietary. Notwithstanding the foregoing, information shall not be considered Confidential Information to the extent that such information: (i) can be demonstrated to be already known to the receiving party free of any restriction at the time it is obtained from the other party; (ii) is subsequently learned from an independent third party free of any restriction and without breach of this Agreement or any other agreement; or (iii) required to be disclosed by applicable law.

b. Each of L.K. Corp and Licensee agree that it will not, during the term of this Agreement and without regard to when or for what reason this Agreement shall terminate, disclose to any other person or entity any Confidential Information received from the other, except as strictly necessary (1) in connection with its performance under this Agreement, (2) in connection with any pending action related to this Agreement, or (3) as required by a court of competent jurisdiction. Notwithstanding the provisions of this clause **8**, the parties may disclose Confidential Information to their respective affiliates, accountants, attorneys, and other similar professional advisors with a need to know such information as long as the entity or person to which Confidential Information is disclosed is subject to obligations of confidentiality with the same effect as those specified in this clause **8**. Notwithstanding the foregoing, L.K. Corp and any independent contractors which it uses to support the licensed software may exchange information in connection with this Agreement so long as such independent contractors are subject to obligations of confidentiality.

(9) LIMITED WARRANTY AND DISCLAIMER OF WARRANTY

a. Certain end users may have unique needs which are not accommodated by LaborKey Per Cap, and therefore L.K. Corp cannot guarantee that LaborKey Per Cap will adequately satisfy all requirements of all users.

b. L.K. Corp makes no representation or warranty that LaborKey Per Cap software or any associated documentation are "error-free", or meet any user's particular standards, requirements, or needs. Should the software prove defective, L.K. Corp will address the proven defect in an appropriate manner so as to eliminate the defect.

c. This warranty is a limited warranty and it is the only warranty made by L.K. Corp. To the maximum extent permitted by applicable law, L.K. Corp disclaims all other warranties and conditions, either expressed or implied, including but not limited to, implied warranties of fitness for a particular purpose, title, and non-infringement, with regard to the software, and the provision of or failure to provide support services. Some states/jurisdictions do not allow exclusions of an implied warranty, so the disclaimer may not apply to Licensee and Licensee may have other legal rights.

d. No L.K. Corp agent or representative is authorized to make any modifications or additions to this limited warranty. If Licensee makes any modifications to the software; if the software is subjected to accident, abuse, or improper use; or if Licensee violates the terms of this Agreement, then this warranty shall immediately be terminated. This limited warranty shall not apply if the software is used on or in conjunction with hardware or software other than the unmodified

version of hardware and software with which the software is intended to operate or interface with.

(10) LIMITATION OF LIABILITY

- a.** Under no circumstances, except in the case of L.K. Corp's willful misconduct, and under no legal theory, tort, contract, or otherwise, shall L.K. Corp, its related companies, or its suppliers be liable to Licensee or any other person or entity for any indirect, special, incidental, or consequential damages of any character (including, without limitation, damages of data, damages for loss of goodwill, work stoppage, loss of profit, computer failure or malfunction, U.S. Post Office charges, other third party data processing fees, or any and all other commercial damages or pecuniary losses) arising out of the use of or inability to use the software product. Except in the case of L.K. Corp's willful misconduct, in no event will L.K. Corp's liability for any damages to Licensee and any other party exceed the total of the preceding 12 months of paid LaborKey Per Cap license fees (specific to Licensee in question) regardless of the form of the claim, even if L.K. Corp shall have been informed of the possibility of such damages. Some states do not allow the exclusion or limitation of incidental or consequential damages, so this limitation may not apply to Licensee.
- b.** Licensee is solely responsible to any third party entity either using the software or to any third party entity receiving information or data from Licensee's installation of the software.

(11) MISCELLANEOUS

- a.** If any provision of this Agreement is found void or unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and the remainder will remain valid and enforceable according to its terms. If any remedy provided is determined to have failed to meet its intended purpose, all limitations of liability and exclusions of damages as described in clauses **9** and **10** above shall remain in effect.
- b.** This Agreement shall be governed by, interpreted, and construed under Minnesota law as such law applies to agreements entered into and to be performed within Minnesota, except as governed by United States federal law.
- c.** L.K. Corp reserves all other rights and restrictions not specifically granted in this Agreement.

(12) SALES & USE TAX

If Licensee is physically located in Minnesota, L.K. Corp will most likely be required to apply sales tax against all regular monthly software license fees and service fees at a rate associated with the 9-digit ZIP code of the Licensee's billing address – determined using the Minnesota Department of Revenue ZIP code "Sales Tax Rate Calculator". If Licensee is not located in Minnesota, Licensee may be required to report and remit use tax to appropriate state and/or local tax authorities.

(13) ACCEPTANCE

The persons whose signatures appear below are authorized to submit this Agreement for L.K. Corp and Licensee, and to bind the parties to its terms and conditions.

LABORKEY CORP REPRESENTATIVE _____

SIGNATURE _____ DATE _____

LICENSEE REPRESENTATIVE _____

REPRESENTATIVE'S TITLE _____

SIGNATURE _____ DATE _____