

# LABORKEY PER CAP

## End User Agreement



A001 There is no paper service plan or contract other than this END USER AGREEMENT. This Agreement  
A002 must be signed and submitted in order for the LaborKey Per Cap software to be activated. This  
A003 Agreement can be emailed to support@laborkey.com, faxed to 651.450.4549, or it can be mailed to  
A004 LaborKey Corporation, 149 E Thompson Ave, Suite 204, West Saint Paul, MN 55118.

### B001 CLIENT ACCOUNT INFORMATION

B002 ORGANIZATION NAME \_\_\_\_\_

B003 ACCOUNT CONTACT \_\_\_\_\_

B004 eMAIL ADDRESS \_\_\_\_\_

B005 PHONE & EXT \_\_\_\_\_ FAX \_\_\_\_\_

B006 BILLING ADDRESS \_\_\_\_\_

B007 BILLING CITY/ST/ZIP \_\_\_\_\_

### C001 01) LICENSE FEES

C002 There are no fees for the initial data conversion, software configuration, installation, or activation.

C003 A monthly license fee will be invoiced every month around the tenth day of each month. The license  
C004 fee covers a single LaborKey Per Cap database installed on a local network or a local machine, with  
C005 unlimited local stations accessing the database over the local network. The license fee also covers  
C006 unlimited access to all LaborKey Per Cap software updates and upgrades made available on the  
C007 LaborKey website. In addition, if there are "errors" in the software, the license fee covers prompt  
C008 troubleshooting and resolution of the errors. All additional support is covered by the support fees  
C009 detailed in Clause 2 ("SUPPORT FEES") on page 2.

C010 There are five default license fee rates for five groups of states. All states are grouped according  
C011 to ranges of estimated 2010 state populations (based on 2010 state population estimates from the  
C012 U.S. Census Bureau). The five groups of states and their respective default license fee rates are:

- C013 • Group "A" license fee & states: **\$120/mo.** - AK, DE, DC, MT, ND, SD, VT, WY;
- C014 • Group "B" license fee & states: **\$155/mo.** - AR, HI, ID, IA, KS, ME, MS, NE, NV, NH, NM, RI, UT, WV;
- C015 • Group "C" license fee & states: **\$190/mo.** - AL, AZ, CO, CT, KY, LA, OK, OR, SC;
- C016 • Group "D" license fee & states: **\$225/mo.** - GA, IN, MD, MA, MN, MO, NJ, NC, TN, VA, WA, WI; &
- C017 • Group "E" license fee & states: **\$260/mo.** - CA, FL, IL, MI, NY, OH, PA, TX.

C018 THE AGREED TO MONTHLY LICENSE FEE FOR THIS ACCOUNT IS \_\_\_\_\_

C019 THE INITIAL MONTH COVERED BY THIS AGREEMENT IS \_\_\_\_\_ OF \_\_\_\_\_

D001 02) SUPPORT FEES

D002 LaborKey representatives will answer questions by phone or email at no charge. Assistance with  
D003 the initial data conversion, software configuration, installation, and activation will be provided at no  
D004 charge. Additional support, other than training and software customization, will be provided at \$40  
D005 (forty dollars) per half hour, minimum \$40, when representatives are able to provide the requested  
D006 support, and when representatives determine that the request for support is reasonable. Training  
D007 must be negotiated separately. Customization of the LaborKey Per Cap software will be provided  
D008 at no charge when LaborKey representatives determine that the customization is reasonable and  
D009 significantly valuable for multiple clients, and when LaborKey staff have adequate time to perform  
D010 the customization. Otherwise, software customization will be offered on a per quote basis. All fees  
D011 will be billed on the regular monthly invoice.

E001 03) INVOICING AND PAYMENT OF FEES

E002 The Client agrees to pay all fees invoiced by LaborKey Corporation per Clauses 1 and 2 above.  
E003 Invoices will be mailed each month around the tenth day of the month, beginning with the first  
E004 month of incurred fees.

E005 The Client accepts all payment terms on this account as billed by LaborKey Corporation, and agrees  
E006 to make timely payment in compliance with such terms. Current terms are payment in full within  
E007 20 days of invoice date, with an additional grace period of 10 days after which late fees may accrue.

E008 The Client agrees to pay LaborKey Corporation an 18%, or lower as allowed by law, late fee penalty  
E009 per month for each month payment is late or insufficient according to payment terms specified  
E010 hereinabove. LaborKey Corporation will most likely choose to waive this penalty fee for clients who  
E011 generally make timely payments.

F001 04) CANCELLATION

F002 This END USER AGREEMENT and the license to use LaborKey Per Cap software may be cancelled by  
F003 the Client at any time; however, the account balance must be paid in full at the time of cancellation.  
F004 To cancel this Agreement, the Client should write "CANCEL" prominently on any monthly LaborKey  
F005 Per Cap invoice and return the invoice to LaborKey Corporation by the due date printed on the  
F006 invoice. The Client must pay all invoiced license and support fees in full. If full payment of the  
F007 invoiced balance is not included with the invoice, the account will not be cancelled, and monthly  
F008 license fees will continue to accrue until the account is paid in full and cancelled properly according  
F009 to these terms.

F010 After this Agreement and the LaborKey Per Cap software license have been cancelled, the Client  
F011 agrees to cease using the software for per capita and/or delegate data management, and to  
F012 uninstall the software from all computer stations. The Client should first export account data, per  
F013 capita data, and delegate data with the three LaborKey Per Cap export features before uninstalling  
F014 the software.

F015 After this Agreement and the LaborKey Per Cap software license have been cancelled, reactivation  
F016 of the software license and software service will require payment of a reactivation fee equal to  
F017 three months of license fees. Any fees which are waived during the initial activation of service are  
F018 not waived during subsequent reactivation of service.

G001 05) DATA PRIVACY AND PROTECTION

G002 The LaborKey Per Cap database is implemented locally on the Client's local network or on a local  
G003 computer station. The only time LaborKey staff would gain access to the Client's data would be  
G004 when the Client would request to have LaborKey staff assist in the conversion of original affiliate  
G005 data, per capita data, and delegate data, and when the Client would submit copies of data to  
G006 LaborKey staff for said conversion. LaborKey staff are required to immediately delete all copies  
G007 of the Client's data as soon as the converted data are returned to the Client and successfully  
G008 implemented with the LaborKey Per Cap software. Any remaining copies of client data would be  
G009 an enormous liability for LaborKey Corporation, and LaborKey staff are very careful to make sure

G010 they don't overlook any copies of data. LaborKey is very serious about data privacy and data  
G011 protection, and detailed data protection agreement templates are available for any client who would  
G012 feel more comfortable with a separate more detailed agreement.

## H001 06) SOFTWARE UPGRADES

H002 LaborKey Per Cap software upgrades are available for download from the LaborKey website. This  
H003 Agreement includes access to all upgrades without exception or limitation. There is no additional  
H004 fee to download or install software upgrades. The LaborKey Per Cap software prompts the user to  
H005 download and implement upgrades on a regular basis, because both the Client and LaborKey  
H006 Corporation benefit if the software is updated at a reasonable frequency.

## I001 07) TITLE, COPYRIGHT, & PROTECTION OF CODE

I002 Title, ownership rights, and intellectual property rights in and to the software and its source code  
I003 shall remain with LaborKey Corporation and/or its suppliers. The copyright laws of the United States  
I004 and international copyright treaties protect the software and its source code.

I005 The Client MAY NOT:

- I006 • reverse engineer, decompile, or disassemble the software, except and only to the extent  
I007 that such activity is expressly permitted by applicable law notwithstanding this limitation;
- I008 • create derivative works based on the software or its source code; or
- I009 • distribute copies of the software on terms different than those of this Agreement.

## J001 08) LIMITED WARRANTY AND DISCLAIMER OF WARRANTY

J002 This END USER AGREEMENT does not represent a sale of a software product. This Agreement  
J003 provides for the license to install and use the LaborKey Per Capita software on unlimited stations  
J004 which access a single database available over a local network for as long as the account is  
J005 maintained in good standing. The LaborKey Per Capita software is provided and installed "as is".  
J006 LaborKey Corporation warrants only that the LaborKey Per Cap software, as updated and when used  
J007 in a manner and environment consistent with that of other current clients, will perform adequately  
J008 according to its intended purposes. Certain clients may have unique needs in regards to per capita  
J009 management and/or delegate management which are not accommodated by LaborKey Per Cap  
J010 software, and therefore LaborKey Corporation cannot guarantee that LaborKey Per Cap software will  
J011 adequately satisfy all requirements of all clients.

J012 LaborKey Corporation makes no representation or warranty that the software or any associated  
J013 documentation are "error-free", or meet any user's particular standards, requirements, or needs.  
J014 The entire risk as to the quality and performance of the software in the Client's environment is borne  
J015 by the Client. Should the software prove defective, LaborKey Corporation will address the proven  
J016 defect in an appropriate manner so as to eliminate the defect.

J017 This warranty is a limited warranty and it is the only warranty made by LaborKey Corporation. To  
J018 the maximum extent permitted by applicable law, LaborKey Corporation disclaims all other warranties  
J019 and conditions, either expressed or implied, including but not limited to, implied warranties of fitness  
J020 for a particular purpose, title, and non-infringement, with regard to the software, and the provision  
J021 of or failure to provide support services. Some states/jurisdictions do not allow exclusions of an  
J022 implied warranty, so the disclaimer may not apply to the Client and the Client may have other legal  
J023 rights.

J024 No LaborKey agent or representative is authorized to make any modifications or additions to this  
J025 limited warranty. If the Client makes any modifications to the software during the warranty period;  
J026 if the software is subjected to accident, abuse, or improper use; or if the Client violates the terms  
J027 of this END USER AGREEMENT, then this warranty shall immediately be terminated. This limited  
J028 warranty shall not apply if the software is used on or in conjunction with hardware or software other  
J029 than the unmodified version of hardware and software with which the software is intended to  
J030 operate or interface with.

K001 09) LIMITATION OF LIABILITY

K002 Under no circumstances and under no legal theory, tort, contract, or otherwise, shall LaborKey  
K003 Corporation, its related companies, or its suppliers be liable to the Client or any other person or  
K004 entity for any indirect, special, incidental, or consequential damages of any character (including  
K005 damages of data, damages for loss of goodwill, work stoppage, loss of profit, computer failure or  
K006 malfunction, U.S. Post Office charges, other third party data processing fees, or any and all other  
K007 commercial damages or pecuniary losses) arising out of the use of or inability to use the software  
K008 product or the provision of or failure to provide support services. In no event will LaborKey  
K009 Corporation's liability for any damages to the Client and any other party exceed the total of the  
K010 preceding 12 months of paid LaborKey Per Cap service fees (specific to the Client in question)  
K011 regardless of the form of the claim, even if LaborKey Corporation shall have been informed of the  
K012 possibility of such damages. Some states do not allow the exclusion or limitation of incidental or  
K013 consequential damages, so this limitation may not apply to the Client.

K014 The Client is solely responsible to any third party entity either using the software or to any third  
K015 party entity receiving information or data from the Client's installation of the software.

L001 10) MISCELLANEOUS

L002 If any provision of this END USER AGREEMENT is found void or unenforceable for any reason, such  
L003 provision shall be reformed only to the extent necessary to make it enforceable, and the remainder  
L004 will remain valid and enforceable according to its terms. If any remedy provided is determined to  
L005 have failed to meet its intended purpose, all limitations of liability and exclusions of damages as  
L006 described in the limited warranty shall remain in effect.

L007 This END USER AGREEMENT shall be governed by, interpreted, and construed under Minnesota law  
L008 as such law applies to agreements entered into and to be performed within Minnesota, except as  
L009 governed by United States Federal law.

L010 LaborKey Corporation reserves all other rights and restrictions not specifically granted in this END  
L011 USER AGREEMENT.

M001 11) AGREEMENT EXPIRATION

M002 If this Agreement is submitted after December 31st, 2012, it will most likely be accepted by  
M003 LaborKey Corporation. However, LaborKey might require that the Client submit a more current  
M004 version of this END USER AGREEMENT, and render this older version null and void.

N001 12) ACCEPTANCE

N002 The persons whose signatures appear below are authorized to submit this Agreement for the  
N003 respective parties, and to bind the parties to the terms contained herein.

N004 LABORKEY REPRESENTATIVE \_\_\_\_\_

N005 SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

N006 CLIENT REPRESENTATIVE \_\_\_\_\_

N007 REPRESENTATIVE'S TITLE \_\_\_\_\_

N008 SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_