



# LaborKey Per Cap M.T.C. License Agreement

This Software License and Services Agreement (the "Agreement") is entered into by and between LaborKey Corporation ("L.K. Corp"), a Minnesota corporation, and the Metal Trades Council of the Metal Trades Department, AFL-CIO ("Metal Trades Council") identified in Clause (1) below (the "Licensee").

## RECITALS:

WHEREAS, L.K. Corp provides LaborKey Per Cap software ("LaborKey Per Cap"), including station licenses, software customization, technical support, and associated data services; and

WHEREAS, Licensee desires to obtain licenses to utilize LaborKey Per Cap and receive associated services in accordance with the terms and conditions set forth herein;

## AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, L.K. Corp and Licensee agree to the following terms and conditions:

### (1) LICENSEE ACCOUNT INFORMATION

ACCOUNT CONTACT ★ \_\_\_\_\_

ORGANIZATION NAME ★ \_\_\_\_\_

eMAIL ADDRESS ★ \_\_\_\_\_

PHONE & EXTENSION \_\_\_\_\_ EXT. \_\_\_\_\_

BILLING ADDRESS ★ \_\_\_\_\_

BILLING CITY/ST/ZIP ★ \_\_\_\_\_

★ *These items are required.*

### (2) TERM, TERMINATION AND REACTIVATION

**a. Service Period and Renewal:** The minimum term of service under this Agreement is one (1) month. Licenses for LaborKey Per Cap shall automatically renew on a month-to-month basis unless terminated in accordance with this Clause.

**b. Initial Month of Service:**

THE INITIAL MONTH COVERED BY THIS AGREEMENT IS \_\_\_\_\_ OF \_\_\_\_\_  
LICENSEE REPRESENTATIVE INITIALS \_\_\_\_\_

**c. Notice of Termination:** Licensee may discontinue service by providing written notice of termination to L.K. Corp via email or mail. To avoid being billed for the subsequent month, notice must be received at least three (3) business days prior to the first day of the following calendar month.

**d. Account Standing and Final Billing:** Termination shall not relieve Licensee of the obligation to pay any outstanding account balance. Monthly license fees will continue to accrue and remain payable until the account is paid in full and all termination procedures have been completed.

**e. Reactivation Fee:** Following the termination of LaborKey Per Cap service, should Licensee later request to reinstate the service, Licensee shall pay a non-refundable reactivation fee equivalent to three (3) months of the then-current monthly license fee.

**(3) COVERED SERVICE, LICENSE FEE AND SUPPORT FEE**

**a. Scope of Service:** The base **LaborKey Per Cap** monthly license fee (determined in Paragraphs **b** through **d**) covers one (1) to five (5) concurrent station licenses accessing a single database. L.K. Corp offers diverse deployment options, including local area network (LAN) and secure remote configurations, featuring granular user permissions and role-based access control. LaborKey Per Cap is designed for high-security environments and does not require a persistent internet connection for core functionality. Requirements exceeding five (5) station licenses shall be arranged via a separate Service Addendum.

**b. Fee Structure:** Monthly license fees are determined by the number of "Active Affiliates" in the Licensee's database. However, regardless of the active affiliate count, the monthly fee shall be subject to the **Promotional Period** caps defined in Paragraph **(d)**.

**c. Quarterly Determination:** Monthly license fees are adjusted quarterly based on the active affiliate count as of the last day of the second month preceding the beginning of each quarter (November 30, February 28, May 31, and August 31).

Active Affiliates (as of Nov 30/Feb 28/May 31/Aug 31)	Monthly License Fee
0 – 3	\$0 (Free)
4 – 6	\$5
7 – 10	\$10
11 – 15	\$20
16 – 20	\$25
21 – 25	\$30
26 – 30	\$35
31 – 40	\$45
41+	\$55 (Capped)

**d. Promotional Periods:** Notwithstanding the fee schedule above, the following promotional periods shall apply:

- **Beta Period (Months 1-3):** The monthly license fee is **waived in full (\$0)** for the initial three (3) monthly statements. This period serves as an evaluation phase for the Licensee.
- **Trial Period (Months 4-6):** For the subsequent three (3) monthly statements, the monthly license fee shall be **capped at a maximum of \$20**, regardless of the number of active affiliates.

**e. Data Sovereignty & Portability:** L.K. Corp acknowledges the Licensee's absolute ownership of its data. Should the Licensee elect to terminate service during the Beta Period, Trial Period, or any time thereafter, L.K. Corp shall provide comprehensive data extraction assistance at no cost. Licensee retains the right to extract data independently using the software's native export tools for use in third-party products (e.g., QuickBooks®).

**f. Implementation, Training, and Support:** There are no fees for initial data conversion, initial software customization, system installation, or basic training. Access to the full library of technical documentation and video tutorials is included.

- **Standard Support:** This Agreement covers all reasonable phone, email, and web-based technical support regarding the operation of LaborKey Per Cap.
- **Professional Services:** Non-routine technical requests may be fulfilled at a rate of **\$150 per hour**, subject to availability.
- **Strategic Customization:** Reasonable software customizations that enhance the software for the broader labor movement may be provided at no charge at L.K. Corp's discretion. Requests for tailored software enhancements or in-person training sessions are welcomed and will be quoted separately.

**g. Quadrennial Inflation Adjustment:** L.K. Corp may adjust the License Fees and Support Fees (collectively, the "Fees") covered under this Agreement no more frequently than once every four (4) years, and any such increase shall not exceed the cumulative percent change in the Consumer Price Index for All Urban Consumers (CPI-U) over the preceding four (4) years. Permissible adjustments shall be calculated using official U.S. Bureau of Labor Statistics (BLS) data, where the percent increase is the cumulative percent increase between the January CPI-U value for the calendar year four (4) years prior ("Base Month CPI-U value") and the January CPI-U value for the current year. The adjusted Fees shall be rounded to the nearest whole U.S. Dollar. (The BLS CPI Inflation Calculator may be used for reference.) This methodology ensures both parties can calculate and verify predictable, inflation-based adjustments, thereby avoiding periodic fee negotiation. The Base Month CPI-U value for the next adjustment to the Fees shall be the CPI-U value for January of the year of LaborKey Per Cap service activation for Licensee.

#### **(4) TERMS OF PAYMENT**

**a. Agreement to Pay:** By executing this Agreement, Licensee agrees to pay the base monthly license fees as determined in Clause **(3)** above, together with any additional service or support fees incurred.

**b. Invoicing Cycle:** L.K. Corp shall submit an invoice to Licensee on or about the tenth (10th) day of each calendar month. Invoicing will continue on a monthly basis until this Agreement is terminated in accordance with Clause (2) above.

**c. Payment Deadlines and Grace Period:** All invoices are due and payable in full within twenty-five (25) days of the invoice date ("Due Date"). L.K. Corp provides a ten (10) day grace period following the Due Date before an account is considered delinquent.

**d. Late Payment Penalties:** Any payment not received within the grace period shall be subject to a late fee of 5% per month, or the maximum rate permitted by law, whichever is lower. L.K. Corp reserves the right, at its sole discretion, to waive or reduce late fees on a case-by-case basis.

## (5) SALES AND USE TAX

**a. Minnesota Sales Tax:** For Licensees physically located within the State of Minnesota, L.K. Corp shall collect and remit sales tax on all applicable monthly LaborKey Per Cap license and service fees. Tax rates shall be determined based on the Licensee's nine-digit ZIP code using the official Minnesota Department of Revenue Sales Tax Rate Calculator.

**b. Out-of-State Use Tax:** If Licensee is located outside of Minnesota, Licensee acknowledges that it may be solely responsible for reporting and remitting "use tax" or similar transaction taxes to its local state or municipal tax authorities. L.K. Corp makes no representation regarding the taxability of the software in jurisdictions outside of Minnesota.

**c. Tax Exempt Status:** If Licensee is a tax-exempt entity (such as certain non-profit labor organizations), Licensee must provide L.K. Corp with a valid, signed Certificate of Exemption. Until such documentation is received and verified, L.K. Corp will continue to apply all applicable taxes to Licensee's invoices.

**d. Changes in Law:** Licensee agrees to pay any sales, use, or value-added taxes that L.K. Corp is required by law to collect, even if such requirement arises after the execution of this Agreement due to changes in tax legislation or nexus and "marketplace provider" rules.

## (6) DATA SECURITY AND STEWARDSHIP

**a. Local Data Integrity:** The default configuration of LaborKey Per Cap is designed as a local-first application. It does not include features that permit remote services to access data residing on Licensee's local machines or network, nor does it compromise network or machine security services or protocols.

**b. Support Data Handling:** If Licensee provides data files to L.K. Corp for processing assistance or technical support:

- **Security:** L.K. Corp shall process such files only on secured systems with access restricted to authorized personnel.
- **Retention:** L.K. Corp shall retain support data files for a period of thirty (30) to sixty (60) days, after which they will be securely deleted unless ongoing assistance is requested.

- **Ownership:** All data files provided by Licensee remain the exclusive property of Licensee. L.K. Corp acts solely as a temporary custodian of such data for support purposes.

**c. Relationship to Confidentiality:** All data handled under this Clause (6) shall be treated as Confidential Information in accordance with the protections set forth in Clause (9) below.

## (7) SOFTWARE UPDATES AND DATA INTEGRITY

**a. Availability:** L.K. Corp shall provide all LaborKey Per Cap updates and "patches" to Licensee at no additional cost, provided the Licensee's account remains in good standing and all applicable Fees are paid in full.

**b. Data Integrity:** L.K. Corp warrants that the installation or update of LaborKey Per Cap is designed to preserve the integrity of affiliate, per capita, deposit, delegate, and convention data administrated within LaborKey Per Cap. L.K. Corp shall not be responsible for data loss or configuration issues resulting from:

- **Manual Interference:** Unauthorized manual removal or alteration of data files, resource files, or directory structures;
- **Third-Party Processes:** Interference from third-party software, including but not limited to antivirus programs, automated backup utilities, or system maintenance tools; or
- **Environmental Failure:** Hardware failure, power interruptions, or operating system errors occurring during the update process.

**c. Backup Responsibility:** Notwithstanding the protections above, Licensee is responsible for posting regular remote and/or local LaborKey Per Cap backups with built in LaborKey Per Cap backup features.

## (8) INTELLECTUAL PROPERTY AND USE RESTRICTIONS

**a. Ownership and Title:** L.K. Corp retains all rights, title, and interest (including all copyright, patent, trademark, and other intellectual property rights) in and to LaborKey Per Cap, its source code, documentation, and any updates or modifications thereto. LaborKey Per Cap is licensed, not sold, and is protected by United States and International copyright laws and treaties.

**b. Prohibited Actions:** Licensee shall not, and shall not permit any third party to:

- **Reverse Engineer:** Modify, translate, reverse engineer, decompile, or disassemble LaborKey Per Cap, or otherwise attempt to derive its source code, except to the extent such activity is expressly permitted by applicable law notwithstanding this limitation;
- **Create Derivatives:** Create derivative works, adaptations, or localizations based on LaborKey Per Cap or its source code;
- **Bypass Security:** Circumvent or bypass any technological protection measures or license keys intended to restrict access to the software; or
- **Redistribute:** Rent, lease, sublicense, or distribute copies of LaborKey Per Cap to any third party outside the express scope of this Agreement.

**c. Feedback:** If Licensee provides L.K. Corp with suggestions or feedback regarding the software, L.K. Corp may use such feedback without restriction or obligation to Licensee.

## (9) CONFIDENTIALITY

**a. Definition of Confidential Information:** "Confidential Information" means all non-public information disclosed by one party (the "Discloser") to the other (the "Recipient"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

- **L.K. Corp Confidential Information** includes, without limitation: LaborKey Per Cap software, its source code, documentation, pricing, and the terms of this Agreement.
- **Licensee Confidential Information** includes, without limitation: non-public affiliate data, per capita payment and allocation data, affiliate delegate eligibility and voting strength data, individual delegate data, convention data, election and vote data, and other internal data administrated by the software.

**b. Exclusions:** Confidential Information does not include information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation; (iii) is received from a third party without breach of any obligation; or (iv) was independently developed by the Recipient.

**c. Protection of Confidential Information:** The Recipient shall use the same degree of care it uses to protect its own confidential information (but not less than reasonable care) to:

- Limit access to Confidential Information to those employees, affiliates, accountants, attorneys, and contractors who need such access for purposes consistent with this Agreement and who are bound by confidentiality obligations at least as protective as those herein; and
- Not disclose any Confidential Information to any third party except as permitted by this Agreement or as required by law (subject to providing the Discloser with prompt notice of such requirement, if legally permitted).

**d. Compelled Disclosure:** If the Recipient is compelled by law or court order to disclose Confidential Information, it must provide the Discloser with prior notice (to the extent legally permitted) to allow the Discloser an opportunity to contest the disclosure or seek a protective order.

## (10) LIMITED WARRANTY AND DISCLAIMER

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

**b. Disclaimer of Warranties and Jurisdictional Rights:** 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 LaborKey Per Cap, and the provision of or failure to provide support services. To the extent that any state jurisdiction does not allow the exclusion or limitation of implied warranties, the above disclaimers may not apply to Licensee. In such cases, Licensee may have additional legal rights and remedies that vary by jurisdiction.

**c. Authorized Modifications and Warranty Termination:** No agent or representative of L.K. Corp is authorized to modify or expand this limited warranty. If Licensee makes any modifications to LaborKey Per Cap; if LaborKey Per Cap is subjected to accident, abuse, or improper use; or if Licensee violates the terms of this Agreement, then this warranty shall immediately be terminated.

## **(11) LIMITATION OF LIABILITY**

**a. Exclusion of Indirect Damages:** Except in the case of L.K. Corp's willful misconduct, and regardless of the legal theory (contract, tort, or otherwise), L.K. Corp and its suppliers shall not be liable to Licensee for any indirect, special, incidental, or consequential damages. This exclusion includes, but is not limited to:

- Loss of profits, revenue, or goodwill;
- Work stoppage or computer failure;
- Loss or corruption of data; and
- Third-party costs, including U.S. Post Office charges, or data processing fees.

**b. Liability Cap:** Except for L.K. Corp's willful misconduct, L.K. Corp's total aggregate liability for all claims arising out of this Agreement or the use of LaborKey Per Cap shall not exceed the total license fees paid by Licensee to L.K. Corp during the twelve (12) months immediately preceding the event giving rise to the claim. This limit applies even if L.K. Corp has been advised of the possibility of such damages.

**c. Statutory Rights:** Some state jurisdictions do not allow the exclusion or limitation of certain damages. In such jurisdictions, the liability of L.K. Corp shall be limited to the maximum extent permitted by applicable law.

## **(12) MISCELLANEOUS**

**a. Severability and Survival of Limitations:** 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 **(10)** and **(11)** above shall remain in full force and effect.

**b. Governing Law and Jurisdiction:** This Agreement shall be governed by, interpreted, and construed in accordance with the laws of the State in which the Licensee is headquartered and the federal laws of the United States applicable therein. The parties agree that any legal proceedings arising out of this Agreement shall be brought in the courts of such State.

**c. Reservation of Rights:** L.K. Corp reserves all other rights and restrictions not specifically granted in this Agreement.

**d. Entire Agreement and Supersedence:** This Agreement, once executed by authorized representatives of both parties, constitutes the entire agreement between L.K. Corp and Licensee regarding its subject matter. It supersedes and replaces all prior or contemporaneous agreements, understandings, and communications, whether written or oral, relating to such subject matter.

### **(13) ACCEPTANCE AND AUTHORIZATION**

**Authorized Signatories:** Each party represents and warrants that the individual signing this Agreement on its behalf is duly authorized to execute this Agreement and to legally bind such party to its terms and conditions.

LABORKEY CORP REPRESENTATIVE \_\_\_\_\_

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

LICENSEE REPRESENTATIVE \_\_\_\_\_

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

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