



## UBC WageKey License Agreement

This document sets forth the terms and conditions of an Agreement for WageKey software (“WageKey”) licenses, support, optional software customization and other optional data services to be provided by LaborKey Corporation (“LaborKey”) to the labor union office inserted within clause **(1)** below (“Licensee”). When signed by both an officer of LaborKey and a representative of Licensee, this Agreement will constitute our formal written Agreement to the following terms and conditions.

This UBC WageKey License Agreement was formulated specifically for the “UBC Key” configuration of WageKey, which is a customized configuration designed exclusively for regional councils of the United Brotherhood Carpenters (UBC). UBC Key is the most extensive and complex configuration of WageKey, compliant with both the UBC “Area Standards” construction data tracking program and Davis-Bacon survey requirements, and this configuration includes features and services which are not made available to any of the other 14 trade unions.

### **(1) LICENSEE ACCOUNT INFORMATION**

ACCOUNT CONTACT ★ \_\_\_\_\_

ORGANIZATION NAME ★ \_\_\_\_\_

eMAIL ADDRESS ★ \_\_\_\_\_

PHONE & EXTENSION \_\_\_\_\_

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 **6** months. WageKey licenses will be renewed on a month-by-month basis, and at any time following the initial **6** months of service Licensee may discontinue service by sending notice of termination to LaborKey by email or mail at least one full business day prior to the beginning of the month for which WageKey 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. Upon the termination of all WageKey licenses, Licensee shall pay a reactivation fee equivalent to three months of the current WageKey license fees for a single station to reinstate said licenses.

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

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

### (3) COVERED SERVICE, LICENSE FEES AND SUPPORT FEES

a. The base monthly license fee of **\$680** for this UBC WageKey License Agreement covers unlimited WageKey station licenses at a single central office location, all accessing a single WageKey database which tracks and reports construction and prevailing wage data for a single state. The base monthly license fee indicated above also covers up to 4 “**satellite data audit** stations” (remote WageKey configurations which synchronize with the central WageKey database, and which allow data monitoring and reporting, but not data entry; ideal for labor union executives and Davis-Bacon program administrators). Licensee may add additional states for an additional monthly fee of **\$60** per additional state. Licensee may implement additional “**satellite data audit** stations” (beyond 4) for an additional monthly fee of **\$25** per audit station. Licensee may also implement “**satellite data entry** stations” (remote WageKey configurations which synchronize with the central WageKey database, and which facilitate remote data entry) for an additional monthly fee of **\$40** per entry station. This Agreement also covers optional nightly synchronization with the UBC Personify membership database for an additional monthly fee of **\$90**.

NUMBER OF ADD’L STATES TO COVER (*states 2, 3, ... @ \$60 ea. / mo.*) \_\_\_\_\_

NUMBER OF ADD’L SATELLITE DATA AUDIT STATIONS (*stations 5, 6, ... @ \$25 ea. / mo.*) \_\_\_\_\_

NUMBER OF SATELLITE DATA ENTRY LOCATIONS (*\$40 ea. / mo.*) \_\_\_\_\_

IF TO INCLUDE PERSONIFY MEMBERSHIP SYNCHRONIZATION – **YES / NO** (*@ \$90 / mo.*) \_\_\_\_\_

TOTAL INITIAL MONTHLY LICENSE FEE \$ \_\_\_\_\_

**(\$680 + [add’l states × \$60] + [satellite data audit stations × \$25] + [satellite data entry locations × \$40] + [Personify membership integration @ \$90])**

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

b. There are no fees for the initial WageKey installation, activation, configuration and a basic WageKey tutorial. This plan covers all phone, email and web support pertaining to WageKey problems or concerns and all reasonable support calls throughout the term of this Agreement. Additional support, other than formal trainings and WageKey customization, will be provided at an hourly rate of **\$150** 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 WageKey may be provided at no charge when LaborKey representatives determine that the customization is reasonable and beneficial for multiple clients, and when LaborKey staff have adequate time available to perform the customization. Otherwise, WageKey customization will be offered on a per quote basis. All fees will be billed on the regular monthly invoice, per clause **(4)** below.

c. LaborKey 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 2024.

#### **(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. LaborKey will submit an invoice to Licensee on the tenth day or nearest business day to the tenth 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 LaborKey, 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 LaborKey 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. LaborKey may choose to waive this penalty fee. The inclusion of this late fee is a precautionary measure for extreme circumstances.

#### **(5) SALES & USE TAX**

If Licensee is physically located in Minnesota, LaborKey will be required to apply sales tax against all regular monthly WageKey license fees and service fees at a rate associated with the 9-digit ZIP code of 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.

## **(6) DATA PRIVACY AND PROTECTION**

a. The default WageKey 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 union member or contractor data to any off-site system, machine or party, with the exceptions of electronic WD-10 survey submissions and any deliberate data synchronizations and posted backups (both compressed & encrypted with passwords) initiated by WageKey users. Licensee may choose to have special or custom features enabled which are not included within the default WageKey configuration, and these special or custom features may access remote servers and submit processed data, WageKey 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 LaborKey for assistance with data processing, LaborKey shall only process these data files on systems protected with levels of security which prevent unauthorized persons from accessing these data files. LaborKey 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 LaborKey shall be and forever remain exclusively the property of Licensee.

## **(7) SOFTWARE UPDATES**

All WageKey updates shall be made available to Licensee at no cost for as long as the Licensee account shall remain in good standing. Installing, updating or uninstalling WageKey versions will never compromise or damage construction or prevailing wage data or compromise the configuration of WageKey, unless WageKey data files, resource files or data directories shall be manually removed or altered by another third party person, process or system.

## **(8) TITLE, COPYRIGHT, AND PROTECTION OF CODE**

Title, ownership rights, and intellectual property rights in and to WageKey and its source code shall remain with LaborKey. The copyright laws of the United States and international copyright treaties protect WageKey and its source code.

Licensee MAY NOT:

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

## **(9) CONFIDENTIALITY**

**a.** The licensed WageKey software and this Agreement contain confidential and proprietary information and trade secrets of LaborKey. As used in this Agreement, "Confidential Information" means (1) the licensed WageKey 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 LaborKey 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 **(9)**, 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 **(9)**. Notwithstanding the foregoing, LaborKey and any independent contractors which it uses to support the licensed WageKey software may exchange information in connection with this Agreement so long as such independent contractors are subject to obligations of confidentiality.

## **(10) LIMITED WARRANTY AND DISCLAIMER OF WARRANTY**

**a.** Certain end users may have unique needs which are not accommodated by WageKey, and therefore LaborKey cannot guarantee that WageKey will adequately satisfy all requirements of all users.

**b.** LaborKey makes no representation or warranty that WageKey or any associated documentation are "error-free", or meet any user's particular standards, requirements, or needs. Should WageKey prove defective, LaborKey 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 LaborKey. To the maximum extent permitted by applicable law, LaborKey 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 WageKey, 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 LaborKey agent or representative is authorized to make any modifications or additions to this limited warranty. If Licensee makes any modifications to WageKey; if WageKey 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.** Under no circumstances, except in the case of LaborKey's willful misconduct, and under no legal theory, tort, contract, or otherwise, shall LaborKey, 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 WageKey. Except in the case of LaborKey's willful misconduct, in no event will LaborKey's liability for any damages to Licensee and any other party exceed the total of the preceding 12 months of paid WageKey license fees (specific to Licensee in question) regardless of the form of the claim, even if LaborKey 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 WageKey or to any third party entity receiving information or data from Licensee's installation of WageKey.

## **(12) 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 **(10)** and **(11)** 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.** LaborKey reserves all other rights and restrictions not specifically granted in this Agreement.

**d.** When signed by both an officer of LaborKey and a representative of Licensee, this Agreement shall supersede and replace any and all previous agreements and understandings (whether written or oral) between LaborKey and Licensee.

### **(13) ACCEPTANCE**

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

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

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

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

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

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