

## **SUBSCRIPTION AGREEMENT FOR COMPANION BY MINITAB®**

**IMPORTANT – READ CAREFULLY:** THIS IS A LEGAL AGREEMENT BETWEEN YOU AS EITHER AN INDIVIDUAL OR ACTING ON BEHALF OF A BUSINESS ENTITY (“YOU” OR “YOUR”) AND MINITAB, LLC (“US”, “OUR”, “WE” OR “MINITAB”) GOVERNING YOUR SUBSCRIPTION TO THE SERVICE IDENTIFIED BELOW (“SERVICE”).

MINITAB WILL PROVIDE YOU ACCESS TO THE SERVICE ON A SUBSCRIPTION BASIS ONLY UPON CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS SUBSCRIPTION AGREEMENT (“AGREEMENT”). IF YOU ACTIVATE OR OTHERWISE USE THE SERVICE, YOU AGREE TO BE BOUND BY ALL THE TERMS CONTAINED IN THIS AGREEMENT. IF YOU DO NOT AGREE, DO NOT ACTIVATE OR USE THE SERVICE.

THE INDIVIDUAL ACCEPTING THIS AGREEMENT FOR A BUSINESS ENTITY AFFIRMS THAT HE OR SHE HAS BEEN AUTHORIZED BY THE BUSINESS ENTITY TO ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT ON ITS BEHALF.

SERVICE: The Companion by Minitab web app and support. The Service includes, upon download and local installation, the optional Companion by Minitab desktop app component.

TRIAL PERIOD SUBSCRIPTION: If accepting this Agreement for a trial subscription to the Service, the terms of this Agreement apply, provided, however, that the Service will cease to function at the expiration of Your trial period.

**The terms of this Agreement do not apply if You and Minitab have entered into a separate, written agreement for the Service.**

The term of Your subscription (“Subscription Term”) is listed in the purchase confirmation, receipt, and/or on the invoice You receive from Us.

### **1. Subscription and Restrictions**

1.1. Services. During Your Subscription Term, We will provide You with access and use of the Service for Your internal business purposes.

- i. Along with access to the Service, You have been provided an option to download and locally install the Companion by Minitab desktop app component. You understand and agree that upon download and installation the Companion by Minitab desktop app component becomes part of the Service subject to the terms of this Agreement.

1.2. Authorized Use. If You are a business entity, You may permit Your authorized employees and independent contractors (“Users”) to access or use the Service for Your internal business purposes only. You are responsible for any access or use of the Service by any User.

1.3. Restrictions. You shall not (and shall not permit any third party to): (a) knowingly or intentionally permit access to or use of the Service by anyone other than Users; (b) copy the Service

or any portion thereof; (c) translate, decompile, or create or attempt to create, by reverse engineering or otherwise, the source code from the object code or non-public APIs of the Service; (d) modify, adapt, translate or create a derivative work from the Service; (e) remove any proprietary notices, labels, or marks on the Service; or (f) assign, sublicense, rent, transfer, publish, make available to third parties on a time-sharing or service bureau basis or otherwise make available for the benefit of third parties, all or any part of the Service.

## **2. Subscription Fees**

2.1. Fees and Payment. The subscription fee You pay as set forth on any invoice You receive from Us regarding the Service governs the maximum number of Users permitted for the applicable Subscription Term. The maximum number of Users of the Service may be increased during any Multi-User Subscription Term by paying additional User fees for the time remaining in Your then-current Subscription Term. Except as expressly set forth in this Agreement, all payment obligations are non-cancelable and fees are non-refundable.

2.2. Payment Terms. Payment of Your subscription fee for the applicable Subscription Term is due upon commencement of the Service. You will only receive access to the Service upon Our receipt of Your payment of the subscription fee for the Subscription Term, or, if acceptable to Us, upon Our receipt of a written purchase order or other written or electronic confirmation of Your intent to subscribe or renew the Service and to pay the then-current subscription fee.

- i. A Three-Year Multi-User Subscription fee is paid in three equal annual payments beginning at the time of initial or renewal subscription.
  - a. At the time of Your initial purchase or renewal;
  - b. One (1) year after the date of Your initial purchase or renewal; and
  - c. Two (2) years after the date of Your initial purchase or renewal.

2.3. Taxes. Subscription fees are exclusive of any tariffs, duties, or taxes imposed or levied by any government or governmental agency, including any sales, use, GST, value-added, withholding, or similar taxes, whether domestic or foreign, or assessed by any jurisdiction (“Taxes”). You are responsible for paying all Taxes associated with Your purchase of a subscription under this Agreement. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Agreement, You shall pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **3. Subscription Term; Renewal; Termination; Effect of Non-Renewal or Termination**

3.1. Subscription Term. Based on the type of subscription You have purchased subject to this Agreement, Your Subscription Term for the Service is:

- i. For Single-User Annual: One (1) year from the day of purchase of the service. This Subscription Term will automatically renew on an annual basis at the then-current applicable subscription fee, unless You notify Us of Your intention not to renew at least thirty (30) days prior to a renewal.

- ii. For One-Year Multi-Users: One (1) year from the first day of the month following Your purchase of the Service.
- iii. For Three-Year Multi-Users: Three (3) years from the first day of the month following Your purchase of the Service.
- iv. A Multi-User subscription has the option to renew for a One-Year or Three-Year Subscription Term by paying the applicable then-current subscription fee.

3.2. Termination by You. You may terminate the Service for convenience at any time upon written notice to Us. If You elect to terminate use of the Service for convenience:

- i. You will not be entitled to a refund of any portion of the subscription fee You have already paid; and
- ii. You remain liable to pay Us any remaining payments due for a Three-Year Multi-User subscription in accordance with section 2.2.i.

3.3. Termination by Us. We may immediately suspend or terminate the Service, in Our sole discretion, for failure to pay subscription fees or Your material breach of this Agreement.

3.4. Effect of Non-Renewal or Termination. Upon non-renewal of Your subscription or termination of this Agreement:

- i. All rights granted to You will terminate and You shall immediately cease access to and use of the Service;
- ii. You will not be entitled to a refund of any portion of the subscription fee You have already paid;
- iii. You remain liable to pay Us all applicable outstanding fees due as of the date of non-renewal or termination, including any remaining payments due for a Three-Year Multi-User subscription in accordance with section 2.2.i;
- iv. Your Content will be deleted after sixty (60) days unless You have notified Us in writing to arrange for its retrieval (Minitab does not provide an archiving service for Your Content); and
- v. After deletion of Your Content, Minitab shall have no further responsibility or liability to You or any third party with respect to Your Content.

#### **4. Use of Service**

4.1. Your Responsibilities. You are solely responsible for providing the necessary hardware and software environment as defined by the [System Requirements](#) to access and use the Service.

4.2. User ID and Login Security. Each User must have a single unique User ID and Login password (“User Credentials”). You are responsible for maintaining the confidentiality of Your User Credentials and are fully responsible for all activities that occur from use of such User Credentials. You must immediately notify Us of any unauthorized use of such User Credentials or any other breach of security pertaining to Your access to the Service.

4.3. Service Availability and Uptime. Our service level commitment to You is set forth in the [Service Level Agreement Terms](#).

4.4. Service Support. Our [Support Policy](#) sets forth Our technical support for the Service.

4.5. Updated Terms. Minitab may change and update the Service, provided that such updates will not materially decrease the overall functionality of the Service. The Minitab Support Policy, Acceptable Use Policy and DPA may be updated from time to time upon reasonable notice to You (which may be provided through the Service) to reflect process improvements or changing practices, but any such modifications will not materially diminish Minitab’s obligations. If any Minitab update materially increases Your obligations and was not made to enable the parties’ compliance with their respective obligations under this Agreement, then upon Your written objection, the previous version of such policy will govern through the end of Your then-current Subscription Term, and thereafter, any renewal will be governed by the then-current policy. You must object by emailing [legal@minitab.com](mailto:legal@minitab.com) within 10 days of being provided notice of the updated policy or You waive the right to object.

## **5. Proprietary and Ownership Rights; Data Rights; Data Privacy**

5.1. Ownership. The Service is the sole and exclusive property of Minitab, including, without limitation, all copyright, trademark, patent, trade secret, database, and other intellectual property and proprietary rights inherent therein or belonging thereto. This Agreement does not constitute a sale of the Service and no title or proprietary rights to the Service are transferred to You under this Agreement. Minitab is the exclusive owner of all rights in any copy, translation, modification, adaptation, or derivation of the Service, including any improvement or developments thereof suggested by You.

5.2. Your Content. You warrant that You are the owner of, or have obtained applicable permission to have and use, all the data and content that You enter or upload using the Service (collectively, “Your Content”). You are responsible for entering or uploading all of Your Content in a format consistent with the Service documentation (or as otherwise specified by Us). Errors in loading Your Content into the Service due to defective media, erroneous data or failure to meet format requirements may cause Your Content to be rejected by the Service and We have no responsibility for any related impact on Your ability to access or use the Service. You acknowledge that Minitab is not responsible for and does not give any assurances to You or any other entity or person regarding the accuracy, quality, integrity, legality, reliability, appropriateness, validity, value, usefulness, or copyright of Your Content.

5.3. Your Content – Health Information. If You are a Covered Entity under the Health Insurance Portability and Accountability Act (as amended and supplemented, “HIPAA”), You shall not

upload to the Service any patient, medical or other protected health information regulated by HIPAA or any similar federal, national or state laws, rules or regulations (“HIPAA Data”). Minitab has no liability under this Agreement for HIPAA Data, notwithstanding anything to the contrary in this Agreement or in HIPAA or any similar federal, national, state laws, rules or regulations.

5.4. Usage Data. We collect statistical data, trends, and usage information from use of the Service by You (“Usage Data”). Usage Data is only used by Us for purposes of evaluating improvements and enhancements to the Service and We are the sole and exclusive owner of any collected Usage Data.

5.5. Data Privacy. Your use of this Service is also governed by Our [Privacy Policy](#), which describes how We collect and use information, including personal information about You and information about the systems on which the Service is accessed.

## **6. Data Processing; Acceptable Use**

6.1. Processing of Your Content. You shall not use the Service in any manner that violates the rights of any third party. You hereby grant Minitab and its subcontractors a royalty free, irrevocable, non-exclusive, worldwide right to store, transmit, reproduce, distribute, display, and make available Your Content to You in whole or in part solely to the extent necessary to provide the Service, or as may be required by law. Minitab shall not use Your Content in any other manner except as expressed described in this Agreement (and any related data processing addendum, if applicable).

6.2. Control of Your Content. You acknowledge and agree that You are the controller of Your Content, including any personally identifiable information therein, and Minitab is the processor of Your Content. You acknowledge that Minitab specifically disclaims that it is a “data controller” and agree that Minitab is not acting as a “data controller” of any of Your Content under any data protection laws in which such definition of “data controller” or similar capacity may be found.

6.3. Location of Data Processing. Your Content may be transferred to, and processed in, the United States or any other country in which We or Our affiliates or subcontractors maintain facilities. You appoint Us to perform any such transfer of Your Content to any such country and process Your Content in order to provide the Services in compliance with the terms of this Agreement.

6.4. Data Processing Addendum. When applicable, Our [Data Processing Agreement](#) (“DPA”) applies to and governs all activities concerning the processing of personal data (as defined in the DPA) included in Your Content.

6.5. Acceptable Use. You shall use the Service only for lawful purposes and in conformance with this Agreement. You are solely responsible for compliance with all applicable laws, including, without limitation, all applicable export, import, and data protection laws and regulations relating to Your Content. Your use of this Service is also governed by Our [Acceptable Use Policy](#).

## **7. INDEMNIFICATION**

7.1. **Minitab Indemnity.** Minitab shall defend or settle at Our expense any third party claim brought against You alleging that the Service, when used as authorized under this Agreement, infringes such third-party's copyright, patent or trademark and We shall indemnify and hold You harmless from and against any damages and costs awarded against You or agreed in settlement by Minitab (including reasonable attorneys' fees) resulting from such claim, provided that You immediately notify Us of such claim, allow Us to control the defense, litigation or settlement of such claim, and cooperate with Us in the investigation, defense, and/or settlement of such claim. If any infringement claim with respect to Your access to, or use of, the Service may be or has been asserted, Minitab shall, at its option and expense, (a) procure the right to continue accessing and using the Service, (b) replace or modify the Service to eliminate the infringement while providing functionally equivalent performance, or (c) if neither of (a) and (b) are reasonably feasible, terminate this Agreement and provide a pro-rata refund of any prepaid fees for the remaining then-current Subscription Term. Minitab has no indemnity obligation to You to the extent any infringement or misappropriation claim results from (i) a correction or modification to the Service not provided by or on behalf of Minitab, (ii) materials provided by You in connection with requested customizations or modifications of the Service, (iii) Your Content, or (iv) use, combination, or incorporation of the Service with products or services not provided by Minitab. You acknowledge that the indemnification in this section states Your exclusive remedy and Minitab's sole liability in connection with any claim of infringement.

7.2. **Your Indemnity.** You shall defend Us from and against any claim by a third party arising from or related to any of Your Content or any product or service offered by You in connection with or related to the Service, and shall indemnify and hold harmless Minitab from and against any damages and costs awarded against Minitab or agreed in settlement by You (including reasonable attorneys' fees) resulting from such claim.

## **8. LIMITED WARRANTY**

We warrant the Service will operate in substantial conformity with the applicable Service documentation. We will use commercially reasonable efforts to correct a reported non-conformity, at no charge to You, or if We determine that remedy to be impracticable, either party may terminate the subscription and Minitab will refund any fees for prepaid but unused Service. The preceding sentence is Your sole and exclusive remedy for any breach of the warranty set forth in this Section. This warranty will not apply: (a) unless You make a claim within 30 days of the date on which You first noticed the non-conformity, or (b) when the non-conformity was caused by misuse, unauthorized modifications, or third-party hardware, software, or services.

## **9. DISCLAIMER OF WARRANTIES**

EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SERVICE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND. THE LIMITED WARRANTY CONTAINED IN THIS AGREEMENT IS IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE CONCERNING MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE,

AND NONINFRINGEMENT, OR ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. MINITAB DOES NOT WARRANT THAT THE USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY OR ALL ERRORS OR REPORTED NON-CONFORMITIES IN THE SERVICE WILL BE CORRECTED. MINITAB SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO ANY THIRD PARTIES WITH WHOM YOU SEPARATELY CONTRACT. YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, ARE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

## **10. LIMITATION OF LIABILITY**

10.1. Consequential Damages Waiver. EXCEPT FOR A PARTY'S OBLIGATIONS UNDER SECTION 7 (INDEMNIFICATION), NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, COSTS OF DELAY, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. SOME STATES AND JURISDICTIONS, INCLUDING MEMBER COUNTRIES OF THE EUROPEAN ECONOMIC AREA, DO NOT ALLOW FOR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OR ALL OF THE FOREGOING LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

10.2. Liability Cap. EXCEPT FOR A PARTY'S OBLIGATIONS UNDER SECTION 7 (INDEMNIFICATION), EACH PARTY AND ITS AFFILIATES' ENTIRE LIABILITY TO THE OTHER PARTY OR ITS AFFILIATES (FOR DAMAGES OR LIABILITY OF ANY TYPE) SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID (OR WITH RESPECT TO CLAIMS FOR FEES DUE, PAYABLE) BY YOU TO MINITAB UNDER THIS AGREEMENT ATTRIBUTABLE TO THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10.3. Failure of Essential Purpose. The limitations specified in this Section 10 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## **11. Miscellaneous**

11.1. Relationship of the Parties. The relationship between You and Minitab remains at all times non-exclusive, and nothing contained herein shall render or constitute the parties as joint ventures, partners, or agents of each other. No person or entity not a party to this Agreement has any right of action hereunder.

11.2. Assignment. This Agreement and access to the Service may not be resold, assigned or otherwise transferred by You to another person or entity without Our written consent, which consent shall not be unreasonably withheld.

11.3. Waivers. No failure by either party to enforce a provision of this Agreement, and no waiver by either party of its rights under any provision thereof, will be deemed a waiver of subsequent breaches.

11.4. Force Majeure. If a party cannot comply with this Agreement because of an event beyond its reasonable control (except for a failure to pay fees), then its performance under this Agreement (to the extent affected) will be suspended while the event occurs. In addition, Minitab shall not be liable for failure to perform hereunder due to the inability of You, Minitab, or any other person to connect to the Internet, or any other failure or unavailability of the Service or Internet connectivity due to fiber optic cable cuts, interruption or failure of digital transmission links, hacker attacks, acts of God or nature, or any other cause beyond Our control or exercise of Our rights under this Agreement.

11.5. Governing Law. This Agreement is governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, USA, expressly excluding the application of conflicts of laws provisions. Venue will be exclusively in the state or federal courts located in the Commonwealth of Pennsylvania, USA. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

11.6. Partial Invalidity. If any provision of this Agreement is held invalid or unenforceable by competent authority, such provision shall be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it then appears. The total invalidity or unenforceability of any particular provision of this Agreement will not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

11.7. Government Use. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). Manufacturer/Contractor/Licenser is: Minitab, LLC, Quality Plaza, 1829 Pine Hall Road, State College, Pennsylvania 16801, USA.

11.8. Injunctive Relief. You acknowledge that the Service comprises unique, confidential and valuable assets and trade secrets of Minitab, and We have the right to obtain all equitable and legal redress that may be available for the breach or threatened breach of this Agreement or Our rights in the Service, including, without limitation, injunctive relief.

11.9. Priority. In the absence of a separate, written agreement, this Agreement controls over any additional or conflicting terms contained in a purchase order for the Service submitted by You, or contained in any terms and conditions submitted by You, and such additional or conflicting terms



are expressly rejected unless they have been specifically accepted and agreed to in writing by Minitab.

11.10. Entire Agreement; Amendments. This Agreement and any terms located at a URL referenced herein, including without limitation, the Service Level Agreement Terms, the Support Policy, the Privacy Policy, DPA, and Acceptable Use Policy, and any purchase confirmation, constitute the entire agreement between the parties respecting Your use of the Service, and supersede any prior written or oral agreements between the parties. Any variation in the terms and conditions of this Agreement, in any document not signed by You and Minitab, will be of no force or effect.

11.11. Notice. Except as otherwise provided in this Agreement, all notices must be in writing and will be deemed given upon: (a) personal delivery; (b) when received by the addressee if sent by a recognized overnight courier (receipt requested); or (c) the second business day after mailing. All notices must be directed to Minitab at Minitab, LLC, Attention: Legal Department, Quality Plaza, 1829 Pine Hall Road, State College, Pennsylvania 16801, USA or to You at the e-mail address You have provided to Minitab or to such other address either party may, from time to time, provide to the other party in accordance with this notice provision.

11.12. Survival. All provisions that should survive, including Sections 2 (to the extent fees are due and owing), 3.4, 5, 7, 9, 10 and 11 survive the termination of this Agreement.

LAV: 10.01.20