

## **SUBSCRIPTION AGREEMENT FOR QUALITY TRAINER®**

**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”).

IF YOU USE THE SERVICE, YOU AGREE TO BE BOUND BY ALL THE TERMS CONTAINED IN THIS AGREEMENT (“AGREEMENT”). IF YOU DO NOT AGREE, DO NOT 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: web-based learning service known as Quality Trainer.

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. Any purchase order submitted by You is for Your convenience only and subject to section 11.9 herein.

### **1. Subscription Information**

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

1.2 System Requirements. You are solely responsible for providing the necessary [System Requirements](#) to access and use the Service.

### **2. Use of Service; General Restrictions**

2.1. Authorized Use. You may permit Your employees, agents, consultants, contractors, vendors, and suppliers authorized by You (“Authorized 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 Authorized User. An Authorized User must be a natural person.

- i. The Service may be used by employees of Your current divisions, subsidiaries or affiliates, domestic or international, controlling, or controlled by or under common

- control with You. For purposes of clarity, the definition of “control” as used herein means either:
- a. the direct or indirect ownership of not less than fifty percent (50%), or the maximum allowed by local law if less, of the voting equity of Your division, subsidiary or affiliate; or
  - b. the right and authority to manage and enforce the terms of this Agreement within the respective division, subsidiary or affiliate.
- ii. Use of the Service by a third-party providing IT services to You for this Service, is permitted if:
    - a. You make every reasonable effort to advise Us of the identity of the third-party; and
    - b. You agree to be responsible for that third-party’s compliance with this Agreement.
  - iii. Use of this Service on a server that allows You access to this Service or any of its functionality via a public network or the Internet without the use of a password-protected secure portal is prohibited, unless permission to do so has been granted through the establishment of a separate license agreement with Us.

2.2. User ID and Password Protection. You shall require that each Authorized User has a single unique User ID and Login password (“User Credentials”). User Credential information is strictly confidential and must not be shared with any unauthorized person. We shall have no liability under this Agreement for actions taken using any of Your User Credentials, including any unauthorized use or access caused by misuse or misappropriation of such User Credentials. You must immediately take all necessary steps, including providing notice to Us, to affect the termination of access for any Authorized User (a) upon the Authorized User’s termination of access rights (whether through termination of employment, cessation of customer relationship, or otherwise), (b) if there is any compromise in the security of passwords, or (c) if unauthorized use is suspected or has occurred.

2.3. Service Availability and Uptime. Our service level commitment to You is set forth in Our published [Service Level Agreement Terms](#) (“SLA”).

2.4. Privacy Policy. Our published [Privacy Policy](#) describes how We collect and use information about You and the systems from which the Service is accessed.

2.5. Service Support. Minitab provides You, at no additional charge, reasonable amounts of technical support in accordance with Our published [Support Policy](#).

2.6. General Restrictions. You shall not, and shall not permit any Authorized User or third party to: (a) modify, copy, duplicate, create derivative works from, frame, mirror, scrape, sell, rent, lease, loan, license, distribute, provide access to, sublicense, or otherwise make available the Service to a third party (except as expressly permitted in accordance with this Agreement) or in a service bureau or outsourcing offering; (b) use the Service to provide, or incorporate any portion of the Service, into any service for the benefit of a third party; (c) access all or any part of the Service in order to build a product or service which competes with the Service; (d) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public

APIs to the Service, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Us); (e) remove or obscure any notices or legends that are placed or embedded by Us in the Service; (f) use the Service in violation of Our published [Acceptable Use Policy](#) (g) interfere with or disrupt the Service, Our systems or any third party systems used to host the Service, or other equipment or networks used to host the Service; or (h) circumvent the Authorized User authentication or security of the Service or any host, network or account related to the Service. You shall use the Service only for lawful purposes and in conformance with this Agreement.

### **3. Subscription Term; Renewal; Termination**

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

- i. For a period of months, according to the length of the term You have purchased for a Term Subscription;
- ii. One (1) year from the first day of the month following Your purchase of the Service for a One-Year Subscription; or
- iii. For a period of three (3) years from the first day of the month following Your purchase of the Service for a Three-Year Subscription.
  - a. A Three-Year Subscription fee is fixed during the three (3) year Subscription Term, and is paid in three (3) equal payments:
    1. At the time of Your initial purchase;
    2. One (1) year after the date of Your initial purchase; and
    3. Two (2) years after the date of Your initial purchase.
  - b. You will only receive continued access to the Service upon payment of the subscription fee in accordance with section 3.1.iii.a above.
- iv. You will receive notice of Your upcoming Renewal no less than 90 days prior to the expiration of Your then-current Subscription Term.
- v. You will only receive continued access to the Service if prior to expiration of a Subscription Term:
  - a. We receive Your payment of the then-current subscription fee in accordance with the invoice We send You; or
  - b. We receive a purchase order or other written or electronic confirmation, acceptable to Us, of Your intent to pay the then-current subscription fee in accordance with the invoice We send You.
- vi. A late renewal of a subscription after expiration of a Subscription Term will be assessed a reactivation fee of 2% of the then-current subscription fee for the renewed Subscription Term or \$750.00 USD, whichever is higher, and added into the renewal invoice We send You.
- vii. A subscription has the option to renew for a One-Year or Three-Year Subscription by paying the applicable then-current subscription fee.

3.2 Suspension of Service. We may immediately suspend Your access and use of the Service, in Our sole discretion, for (a) violation of section 2.6, (b) failure to pay subscription fees, or (c) Your material breach of this Agreement in accordance with section 3.4.

3.3 Termination for Convenience. 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 (a) You will not be entitled to a refund of any portion of the subscription fee You have already paid, and (b) You remain liable to pay Us any remaining payments due for a Three-Year Subscription in accordance with section 3.1.iii.

3.4 Termination for Cause. Either You or We may terminate this Agreement and Your use of this Service for any material breach of this Agreement if such breach is not cured within thirty (30) days following notice to the breaching party. Upon such termination:

- 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 pro-rata refund of any portion of the subscription fee You have already paid, unless We are the breaching party;
- iii. You remain liable to pay Us all applicable outstanding fees due as of the date of termination, including any remaining payments due for a Three-Year Subscription in accordance with section 3.1.iii, unless We are the breaching party.

#### **4. Subscription Fees**

4.1. 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 Authorized Users permitted for the applicable Subscription Term. The maximum number of Authorized Users of the Service may be increased during any 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.

4.2. Payment Terms. Payment of Your subscription fee for the applicable Subscription Term is due upon commencement of the Service.

4.3. 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.

## **5. Ownership Rights; Your Content; Confidential Information**

5.1. Ownership. You acknowledge that We retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Service and related underlying technology and documentation, and any derivative and transformative works, modifications, or improvements of any of the foregoing. This Agreement does not constitute a sale of the Service. We are 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. Confidential Information. Each Party (as “Receiving Party”) shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (a) not use any Confidential Information of the disclosing Party (the “Disclosing Party”) for any purpose outside the scope of this Agreement, and (b) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment.

## **6. Data Processing**

6.1. Processing of Your Content. 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 You the Service, or as may be required by law. Minitab shall not use Your Content in any other manner except as expressly described in this Agreement.

6.2. Control of Your Content. You are the controller of Your Content, including any personal data therein, and Minitab is the processor of Your Content. You are also solely responsible for compliance with all applicable laws, including, without limitation, all applicable export, import, and data protection laws and regulations applicable to You and Your Content.

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 of Personal Information in Your Content. Our [Data Processing Agreement](#) (“DPA” for personal information not subject to GDPR) or our [Data Processing Agreement with Standard Contractual Clauses](#) (“DPA-SCC” for personal information subject to GDPR) applies to and governs all activities concerning the processing of personal data (as defined in the DPA or DPA-SCC) included in Your Content. By accepting this Agreement, each party is deemed to have signed the DPA or DPA-SCC, as “Controller” in the case of You, and as “Processor” in the case of Us.

## **7. INDEMNIFICATION**

7.1. Indemnification by Us. We 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 Us (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, We shall, at Our option and expense, (a) procure the right to continue accessing and using the Service or (b) replace or modify the Service to eliminate the infringement while providing functionally equivalent performance. If neither of (a) and (b) above are commercially feasible as determined in Our sole discretion, We may terminate this Agreement and Your subscription and refund to You the pro-rata amount of any prepaid fees for Your remaining then-current Subscription Term. We have 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 Us, (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, or improvements thereto, with products or services not provided by Us. You acknowledge that the indemnification in this section states Your exclusive remedy and Our sole liability in connection with any claim of infringement.

7.2. Indemnification by You. You shall indemnify and hold harmless Us from and against any damages and costs awarded against Us or agreed in settlement by You (including reasonable attorneys' fees) from and against any claim by a third party arising from or relating to (a) Your Content or any product or service offered by You in connection with or related to Your use of the Service; (b) Your use, combination, or incorporation of the Service, or improvements thereto, with products or services not provided by Us; or (c) Your violation of any applicable law or regulation protecting the intellectual property rights or data protection rights of others.

## **8. LIMITED WARRANTY**

We warrant the Service will operate in substantial conformity with the applicable Service documentation. We may change and update the Service (in which case We may update the applicable documentation accordingly), provided that such updates will not materially decrease the overall functionality of the Service. 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 or commercially unreasonable, 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 Your misuse, unauthorized modifications, or third-party hardware, software, or services.

## **9. WARRANTY DISCLAIMER**

EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8, 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, OR 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. 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), OR WILLFULL MISCONDUCT, GROSS NEGLIGENCE, OR FRAUD, 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), OR WILLFULL MISCONDUCT, GROSS NEGLIGENCE, OR FRAUD, 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. Independent Contractors. The Parties are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the Parties. Neither Party shall have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent.

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. 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, We shall not be liable for failure to perform hereunder due to the inability of You, Us, 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, sabotage, acts of God or nature, or any other cause beyond Our control or exercise of Our rights under this Agreement.

11.4. 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.

11.5. 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. Severability. 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. 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.

11.8. Waivers. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the Party claimed to have waived.

11.9. Priority. In the absence of a separate, written agreement, or alternative terms set forth on the invoice You receive from Us, 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. Updated Terms. We may update the SLA, Minitab Support Policy, Privacy Policy, Acceptable Use Policy, DPA, and DPA-SCC (collectively, "Minitab Policies") from time to time to reflect evolving laws, regulations, process improvements or changing practices. If any update materially diminishes Our obligations to You or materially increases Your obligations to Us, we will provide reasonable notice to You (which may be provided through the applicable Service). If You object to an update on the basis that it materially diminishes Our obligations to You, materially increases Your obligations to Us, or was not made to enable the Parties' compliance with their respective obligations under this Agreement or applicable law, then upon Your written objection, You may terminate the Service, subject to the terms of this Agreement. Upon any termination in accordance with this section, We will refund to You the pro-rata amount of any prepaid fees for the remaining then-current term of the Service. You must notify Us of any request for termination in accordance with this Section by providing notice in compliance with Section 11.12 (Notice) and also by emailing Legal@minitab.com within 10 days of Our providing notice of the updates to the Minitab Policies and such termination will be effective 10

days after receipt of Your notice. Your continued use of the Service after We give notice regarding any updates to the Minitab Policies constitutes Your acceptance of the updated terms of the Minitab Policies.

11.11. Entire Agreement; Amendments. This Agreement and any terms located at a URL referenced herein, including without limitation the Minitab Policies, and any purchase and/or renewal confirmation or invoice You receive from Us, 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.

11.12. 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.

11.13. Survival. All provisions that should survive, including Sections 3.3, 3.4, 4 (to the extent fees are due and owing), 5, 7, 9, 10 and 11 survive the termination of this Agreement.

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