

TestOptimal License Reseller Agreement

This TestOptimal License Reseller Agreement (the "**Reseller Agreement**") is between the applicable reseller ("**you**" or "**Reseller**"), and TestOptimal LLC (A Minnesota Limited Liability Company, USA). If you are agreeing to this Reseller Agreement not as an individual but on behalf of your company, then "Reseller" or "you" means your company, and you are binding your company to this Reseller Agreement.

This Reseller Agreement is a separate agreement from the agreement that TestOptimal has with its end users at <http://testoptimal.com/TestOptimalLicense.pdf> (as may be modified by TestOptimal from time to time, "**TestOptimal License Agreement**"). For convenience and consistency, however, the definitions of certain terms related to the products and services (namely Software Products and Authorized Users) will be the same as those in the TestOptimal License Agreement.

1. Order Requirements.

You must be pre-authorized by TestOptimal as an active TestOptimal License Reseller and be assigned a TestOptimal reseller id to submit the reseller order. You may order TestOptimal Licenses and other Product and Services for resale by submitting a purchase order through TestOptimal License Reseller Order website at <http://testoptimal.com/reseller>. All of the information on your reseller order must be accurate and complete and must reflect bona fide orders you have received from end users. Upon receiving the purchase order, TestOptimal will respond within 2 business days with an invoice based on the pre-agreed-upon pricing. The quotation is valid for 10 business days and payment must be received by TestOptimal before the invoice expiration date.

2. Limited Right to Resell.

Subject to this Reseller Agreement, we grant you a non-exclusive and non-transferable right to resell TestOptimal end-user licenses to the end user within your assigned non-exclusive reseller territory where you have physical presence during the terms of this Reseller Agreement, solely for use by such end user in accordance with TestOptimal License Agreement.

You agree to use trial/demo licenses, if you were issued such licenses, for the demonstration of TestOptimal products and services only and not to use these licenses for your own benefits.

3. Enforcement of TestOptimal License Agreement.

3.1. End User Terms. All use of the Products by end users is subject to TestOptimal License Agreement, and you may not purport to impose any other terms pertaining to their use of the Products. You are responsible for ensuring that each end user enters into TestOptimal License Agreement (which includes all limitations on Authorized Users and other quantity restrictions applicable to the end user's order) in a manner that is legally binding upon the end user. This may require you to (a) notify each end user that TestOptimal products are subject to TestOptimal License Agreement and that by placing an order with Reseller the end user agrees to TestOptimal License Agreement, (b) include either a copy of or link to TestOptimal License Agreement in each quotation and order form you issue to the end user. You must provide evidence of such acceptance by the end user to TestOptimal upon request.

3.2. Enforcement Cooperation. You agree to immediately notify us of any known or suspected breach of TestOptimal License Agreement or other unauthorized use of the Products and to assist us in the enforcement of the terms of TestOptimal License Agreement.

4. Identification as Reseller.

Subject to this Reseller Agreement, you are permitted to identify yourself as a TestOptimal "Reseller" solely in connection with your resales of TestOptimal Licenses and Products. You may not use any TestOptimal trademark, logo or service mark ("**TestOptimal Marks**") except as permitted in written statement by TestOptimal. All goodwill arising from your use of TestOptimal Marks inures to the benefit of TestOptimal.

5. Payment and Delivery.

5.1. Fees. Your non-refundable, non-cancelable payment to TestOptimal is due when the quotation for your reseller order is issued.

5.2. Delivery. Upon receipt of payment, we will deliver the applicable Software license key, Hosted Services login information, or other information necessary for end users to use or access the applicable Products directly to the delivery contact specified in the Reseller Order in accordance with our standard delivery procedures. If we deliver the license keys or logins to you, you agree that you will, in turn, deliver them directly to the end user specified in the Reseller Order, and not to use or access the Software, Hosted Services, or other Products in any way. You must either delete all license keys promptly thereafter or maintain them in confidence.

5.2. Taxes. Payments made by you under this Reseller Agreement exclude any taxes or duties payable in respect of the Products in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by TestOptimal, you must pay to TestOptimal the amount of such taxes or duties in addition to any fees owed under this Reseller Agreement. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, you will have the right to provide to TestOptimal any such exemption information, and TestOptimal will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

5.3. End User Pricing and Payment; Refunds. You will independently set your own pricing to each end user. You bear all risk of non-payment by end users, and you are solely responsible for all of your costs and expenses. You may not terminate a Reseller Order or receive any refunds due to non-payment by an end user. If TestOptimal provides any refund to an end user under our standard return policy, TestOptimal, at its option, will refund the applicable amounts either directly to the end user or to you for distribution to the end user. You agree to cooperate with TestOptimal in connection with any such refund.

6. Feedback.

If you provide any feedback, comments, suggestions, ideas, description of processes, or other information to us about or in connection with the Products or our Reseller program, including without limitation any ideas, concepts, know-how or techniques contained therein ("**Feedback**"), then you grant us a worldwide, royalty-free, non-exclusive, perpetual and irrevocable license to use, copy, modify and otherwise exploit the Feedback for any purpose, without any compensation to you or any restriction or obligation on account of intellectual property rights or otherwise. For clarity, no Feedback will be deemed your Confidential Information, and nothing in this Reseller Agreement (including without limitation Section 11 (Confidentiality)) limits TestOptimal's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

7. No Use Rights; TestOptimal Reserved Rights.

Only the end user customer of the Products (and its Authorized Users) may use the Products. You are not permitted to use any Products resold under this Reseller Agreement for your own benefit. To the extent that you nevertheless gain any access to the Products, all license restrictions in TestOptimal License Agreement apply to you. Notwithstanding anything to the contrary contained in this Reseller Agreement, except for the limited resale right in Section 2 above, TestOptimal and its suppliers have and will retain all rights, title and interest (including without limitation all patent, copyright, trademark, trade secret and other intellectual property rights) in and to all Products, service descriptions, documentation, and underlying technology ("**TestOptimal Technology**"), and all copies, modifications and derivative works thereof, including without limitation as may incorporate Feedback. You acknowledge that you are obtaining only a limited right to

resell the Products and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Reseller Agreement or otherwise.

8. Reseller Obligations and Liability.

8.1. End User Relationships; Business Practices. You agree not to represent yourself as an agent or employee of TestOptimal and agree that we will have primary control over any end user communication regarding the Products once you submit a Reseller Order. You will not make any representations regarding TestOptimal, on TestOptimal's behalf, or about any Products. You agree not to engage in any deceptive, misleading, illegal, or unethical practices that may be detrimental to TestOptimal or its products and agree to comply with all applicable federal, state and local laws and regulations while operating under this Reseller Agreement, including without limitation the U.S. Foreign Corrupt Practices Act and any similar laws or regulations in any applicable jurisdiction. You further agree to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

8.2. Indemnity. You are fully responsible for all liabilities and expenses of any type whatsoever that may arise on account of your resale of Products. You will indemnify, hold harmless and (at TestOptimal's option) defend TestOptimal from and against any claim, loss, cost, liability or damage, including attorneys' fees, for which TestOptimal becomes liable arising from or relating to: (a) any breach or alleged by you of any term of this Reseller Agreement, (b) the issuance by you of any warranty or representation regarding TestOptimal or its products or services not specified in TestOptimal License Agreement, or (c) any of your other acts or omissions in connection with the marketing or resale of the Products under this Reseller Agreement.

9. Termination.

9.1. Termination. We may terminate this Reseller Agreement if you materially breach any provision in this Reseller Agreement and fail to cure such breach within five (5) days of written notice of such breach. In addition, either party may terminate this Reseller Agreement for any reason or no reason upon thirty (30) days' written notice to the other party. TestOptimal may also terminate this Reseller Agreement immediately upon notice to you if (a) it ceases to offer the current Reseller program or (b) it reasonably believes that continuing hereunder could result in business or legal liability for TestOptimal or otherwise harm TestOptimal or its end users.

9.2. Effect of Termination. You expressly agree that TestOptimal will have no obligation or liability to you resulting from termination or expiration of this Reseller Agreement in accordance with its terms. Upon termination or expiration of this Reseller Agreement: (a) you must immediately cease identifying yourself as an TestOptimal Reseller and using TestOptimal Marks in connection with your resale activities hereunder, and (b) you must destroy all Confidential Information in your possession and certify destruction (unless we request that you return such materials to us).

10. Changes to Agreement.

From time to time, we may modify this Reseller Agreement. The version of this Reseller Agreement in place at the time you submit each Reseller Order is the version that will govern such order. We will use reasonable efforts to notify you of these changes through our website or other forms of communication, but we also suggest that you bookmark this Reseller Agreement and read it periodically.

11. Confidentiality.

Except as otherwise set forth in this Reseller Agreement, each party agrees that all code, inventions, know-how, business, technical and financial information it obtains (as "**Receiving Party**") from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure.

Any TestOptimal Technology and any performance information relating to the Products shall be deemed Confidential Information of TestOptimal without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of the Receiving Party who had no access to such information; or (v) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

12. TestOptimal Commitments; DISCLAIMER OF WARRANTIES.

For the avoidance of doubt, any and all commitments, indemnities and other terms and conditions offered by TestOptimal with respect to use of the Products are made directly by TestOptimal to the end user in accordance with TestOptimal License Agreement and do not extend to you as a Reseller. We make NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, TO you as a RESELLER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE AND NON-INFRINGEMENT.

13. LIMITATION OF LIABILITY.

13.1. Waiver of Consequential Damages. TO THE FULLEST EXTENT ALLOWED BY LAW, NEITHER TESTOPTIMAL NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, 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.

13.2. Liability Cap. TO THE FULLEST EXTENT ALLOWED BY LAW, TESTOPTIMAL'S AND ITS THIRD-PARTY SUPPLIERS' ENTIRE LIABILITY UNDER THIS RESELLER AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY RESELLER TO TESTOPTIMAL IN RESPECT OF THE RESELLER ORDER THAT IS THE SUBJECT OF THIS RESELLER AGREEMENT.

14. Dispute Resolution; Governing Law

14.1. Dispute Resolution; Arbitration. In the event of any controversy or claim arising out of or relating to this Reseller Agreement, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach a settlement within a period of 60 days, any unresolved controversy or claim arising out of or relating to this Reseller Agreement shall proceed to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce. The parties shall seek to mutually appoint an arbitrator. If the parties cannot agree on a single arbitrator, then there shall be three (3) arbitrators: one selected by each party, and a third selected by the first two. Arbitration will take place in Minneapolis, Minnesota (USA). All negotiations and arbitration proceedings pursuant to this Section 14.1 will be confidential and treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions. The language of the arbitration shall be English.

14.2. Governing Law; Jurisdiction. This Reseller Agreement will be governed by and construed in accordance with the applicable laws of the State of Minnesota, USA, without giving effect to the principles of that State relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding that is not otherwise subject to the arbitration

provisions of Section 14.1 (Dispute Resolution; Arbitration) must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State or Federal court in Minneapolis, Minnesota, USA, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in Minneapolis, Minnesota, USA, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Notwithstanding the foregoing, TestOptimal may bring a claim for equitable relief in any court with proper jurisdiction.

14.3. Injunctive Relief; Enforcement. Notwithstanding the provisions of this Section 14, nothing in this Reseller Agreement shall prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

14.4. Exclusion of UN Convention and UCITA. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Reseller Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Reseller Agreement regardless of when or where adopted.

15. Government End Users.

The Products are commercial computer software. If the user or licensee of the Products is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Reseller Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Products were developed fully at private expense. All other use is prohibited.

16. General.

This Reseller Agreement is the entire agreement between you and TestOptimal relating to the resale of TestOptimal products as described in this Reseller Agreement and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Products or any other subject matter covered by this Reseller Agreement. If any provision of this Reseller Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect. This Reseller Agreement may not be modified or amended except as described in Section 10 (Changes to Agreement) or otherwise with the written agreement of TestOptimal (which may be withheld in its complete discretion without any requirement to provide reasons). As used herein, "including" (and its variants) means "including without limitation" (and its variants). If either party to this Reseller Agreement breaches any provision of this Reseller Agreement relating to Confidential Information or intellectual property rights, there may not be an adequate remedy available solely at law; therefore, an injunction, specific performance or other form of equitable relief or monetary damages or any combination thereof may be sought by the injured party to this Reseller Agreement. No failure or delay by the injured party to this Reseller Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity. The parties are independent contractors. This Reseller Agreement shall not be construed as constituting either party as a partner of the other or to create any other form of legal association that would give on party the express or implied right, power or authority to create any duty or obligation of the other party.

Any questions regarding this agreement, contact us at sales@testoptimal.com.