

**RESELLER AGREEMENT**

This Reseller Agreement (the "Agreement") is entered into by and between LANDESK Software, Inc. d/b/a Shavlik, a Delaware corporation with its principal office located at 698 West 10000 South, South Jordan, Utah 84095 ("Shavlik"), and SIMPLY IT AND ACCOUNTING SOLUTION CC a CLOSED corporation with its principal office located at 11 MUSGRAVE AVENUE MUSGRAVE DURBAN 4001 ("Reseller"). This Agreement is effective as of the 23 day of 11, 2016 (the "Effective Date"). In consideration of the obligations stated herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Appointment.** Shavlik hereby appoints Reseller as an authorized, non-exclusive reseller of Shavlik® Products within the Territory (as defined in Section 2 below). Reseller's rights and obligations hereunder correspond to the Reseller Level set forth below next to the checked box. Where no box is checked, Reseller shall be a Shavlik Certified Partner. Notwithstanding the Reseller Level indicated by the checked box below, in order to qualify as Shavlik Certified Partner and obtain the benefits thereof, Reseller must satisfy the requirements for the specific region where Reseller is located (the "Program Requirements and Benefits") set forth on the following websites:

If Reseller is located in North America: [www.sellingshavlik.com/tiers-north-america/](http://www.sellingshavlik.com/tiers-north-america/)

which are incorporated herein by reference. Reseller is authorized to market and sell Shavlik Products to End Users within the Territory. End Users must enter into a separate agreement (which may include the "click-wrap" end user license agreement) directly with Shavlik for the license or subscription of the Shavlik Products. Reseller operates as an independent entity and not as an agent for Shavlik, and has no authority to enter into obligations on behalf of Shavlik. Unless otherwise directed, Reseller shall purchase Shavlik product through Shavlik's designated distributors.

Initial Reseller Level (Shavlik to mark):  Shavlik Certified Partner  Shavlik Premier Partner  Shavlik Premier Plus Partner

1. **Territory.** Reseller is authorized to sell Shavlik Products only within the following geographic territory: \_\_\_\_\_ ("Territory"). Nothing in this Agreement shall restrict Shavlik's right to operate in or outside the Territory. Shavlik may increase or decrease the number of resellers in the Territory from time to time in its sole discretion.

2. **Shavlik Products.** Subject to the terms and conditions of this Agreement, Reseller is entitled to sell licenses and subscriptions for the then-current version(s) of the Shavlik Products; provided that, Reseller's ability to resell certain Shavlik Products may be limited in Shavlik's sole discretion.

3. **Reseller Level Summary.** The Program Requirements and Benefits detail each particular Reseller level and include the requirements that Reseller must satisfy in order to qualify for a particular Reseller Level. Notwithstanding any provision in this Agreement to the contrary, Shavlik may in its sole discretion, and at any time, modify, eliminate, or add to any or all of the Program Requirements and Benefits. Such changes to the Program Requirements and Benefits shall be effective thirty (30) days after Shavlik provides Reseller with written or electronic notice thereof.


4. **Exhibit** Exhibit A: General Terms and Conditions is attached hereto and incorporated herein.

5. **Execution.** The individuals signing below represent that they are duly authorized to execute this Agreement for the party for which they are signing. This Agreement may be executed in one or more counterparts, each of which shall constitute an enforceable original of the Agreement, and facsimile signatures shall be as effective and binding as original signatures.

6. **Entire Agreement.** This Agreement: (a) constitutes the entire agreement and understanding between the parties and supersedes all other prior and contemporaneous communications, discussions, understandings, negotiations, arrangements and agreements between the parties, whether written or oral, relating to the subject matter of this Agreement; and (b) no vendor, distributor, dealer, retailer, reseller, sales person, or other person is authorized by Shavlik to modify this Agreement or to make any warranty, representation or promise that is different than, or in addition to, the warranties, representations and promises expressly set forth herein.

Agreed and accepted by:

Shavlik  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

  
\_\_\_\_\_  
("Reseller")  
By: SIMPLY IT AND ACCOUNTING SOLUTION CC  
Name: VEESHAL ANWAR  
Title: MR



## **EXHIBIT A: GENERAL TERMS AND CONDITIONS**

1. **GENERAL:** Except to the extent that such terms and conditions are specifically modified in the Program Requirements and Benefits, the terms and conditions set forth in this Exhibit A shall apply to Shavlik and Reseller, regardless of Reseller's Reseller Level.

2. **DEFINITIONS.** Terms in this Agreement with initial capital letters shall have the meaning ascribed to them in this Section 2 and elsewhere in this Agreement.

2.1. **"Shavlik Certified Partner"** means initial reseller level designation as Reseller may be identified in Section 1 on the first page of this Agreement.

2.2. **"Confidential Information"** means any information disclosed or made available, either directly or indirectly, by one party to the other party or by any third party, whether communicated in writing, orally or by inspection of tangible objects (including, without limitation, research, product plans, products, services, customers, markets, software, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing or financial information), which is designated or identified as "Confidential," "Proprietary," or by some similar designation, or which by its nature should reasonably be understood by the receiving party to be confidential. Confidential Information includes the existence, terms, and conditions of this Agreement, any and all information relating to any Shavlik Product and any associated training, Documentation and related materials, regardless of whether or not such materials are marked as "Confidential," "Proprietary," or by some similar designation. Notwithstanding the foregoing, Confidential Information does not include any information that: (i) was or becomes generally publicly available other than as a result of a disclosure by the receiving party in violation of this Agreement; (ii) is in the lawful possession of the receiving party prior to its disclosure by the disclosing party; or (iii) was or becomes available to the receiving party on a non-confidential basis from a third party that is not bound by a similar duty of confidentiality (contractual, legal, fiduciary, or other).

2.3. **"Documentation"** means any End User installation or user guide, manual, and other End User technical information, whether in printed or electronic form, that is provided by Shavlik to an End User of Shavlik Products. Documentation specifically excludes design documentation and any documentation related to any source code proprietary to Shavlik or its licensors, suppliers and vendors.

2.4. **"Effective Date"** means the date set forth on the first page of this Agreement.

2.5. **"End User"** means any entity or person that purchases a license to a Shavlik Product.

2.6. **"Shavlik Products"** means the applicable Licensed Software, Documentation, Support Services and Professional Services.

2.7. **"Shavlik Update"** means an update of an existing release of Licensed Software that is designated by Shavlik as a "Shavlik Update."

2.8. **"Shavlik Upgrade"** means an enhanced, improved, or modified version of the Licensed Software that is designated by Shavlik as a "Shavlik Upgrade."

2.9. **"Licensed Software"** means the specific release of the Shavlik software program(s) in object code form, any Shavlik Update or Shavlik Upgrade provided pursuant to a support agreement between Shavlik and the End User, and any Documentation, including any copies thereof, whether in whole or in part.

2.10. **"List Price or MSRP"** means the price set by Shavlik for each of the Shavlik Products, including any territory, customer (including educational and government pricing) or volume-specific discounts.

2.11. **"Marks"** means the Shavlik trademarks, trade name, service marks, and any other marks belonging to Shavlik, that may be used by Shavlik in the marketing and advertising of Shavlik Products and that may otherwise be posted on the Reseller Website from time to time, including without limitation the following mark: Shavlik®.

2.12. **"Reseller Level"** means any of the following reseller levels that applies to Reseller as set forth more specifically in this Agreement or in the Program Requirements and Benefits, and that establishes Reseller's rights and obligations pursuant to this Agreement: (i) a

Shavlik Certified Partner, (ii) Shavlik Premier Partner, and (iii) Shavlik Premier Plus Partner.

2.13. **"Reseller Website"** means the Shavlik website on the internet located at [www.sellingshavlik.com](http://www.sellingshavlik.com) and any Shavlik-authored sub-pages thereto, that is designed for access by authorized Shavlik resellers. No third-party web sites shall be deemed to be included in the definition of "Reseller Website" even if a link to such site is provided by Shavlik.

2.14. **"Support Services"** means the level of support services provided by Shavlik to an End User, as identified more specifically in a Shavlik end user license agreement and/or support agreement.

2.15. **"Technical Support"** means the level of support services provided by Shavlik to Reseller as set forth at <http://www.Shavlik.com/support/contact/>.

2.16. **"Term"** has the meaning set forth in Section 13.1 below.

2.17. **"Territory"** has the meaning set forth in Section 2 of the first page of this Agreement.

### **3. RESELLER OBLIGATIONS**

3.1. **Restrictions on Right to Sell.** Reseller shall sell Shavlik Products only to End Users, and shall not sell any Shavlik Products to or purchase any Shavlik Products from any reseller of Shavlik Products (including but not limited to any other authorized Shavlik reseller) without Shavlik's prior written consent.

3.2. **Restrictions on Use.** Except as otherwise expressly provided in this Agreement or by applicable law, Reseller may not use, copy, have copied, modify, have modified, prepare derivative works, license, sublicense, distribute, rent, sell, decompile, disassemble, reverse engineer, or otherwise attempt to derive source code of any Shavlik Product or any prototype, other software or other tangible objects (or any portion of any of the foregoing) provided by Shavlik to Reseller. Reseller acknowledges that any license of a Shavlik Product does not include any license to design or develop or to assist in designing or developing any other product either for itself or for any third party. Reseller shall use commercially reasonable efforts to prevent any unauthorized copying or distribution of the Shavlik Products by Reseller, any third party, or their agents.

3.3. **Reseller Certificate.** For each calendar year during the Term of this Agreement, Reseller shall obtain from the appropriate government agency or agencies, a valid reseller certificate (if any is required by applicable law) and shall provide Shavlik with a copy of such certificate upon Shavlik's request. If Reseller is required by applicable law to obtain a reseller certificate during any calendar year but fails to do so, or if Reseller's reseller certificate is revoked or suspended for any reason, then Reseller shall provide Shavlik with prompt written notice of such failure to obtain, revocation, or suspension.

3.4. **Information.** Reseller represents and warrants that all information provided by Reseller to Shavlik, including any information provided in any applications, marketing plans or Business Development Plan, registering a sales opportunity with Shavlik, or regarding any End User opportunity is true and correct. Reseller further warrants that the foregoing information will continue to be true and correct during the Term of this Agreement. Nevertheless, in the event any such information ceases to be true and correct, Reseller will promptly notify Shavlik in writing giving details of how the information is no longer true and correct, and shall provide updated information that is true and correct.

3.5. **Remarketed Shavlik Products.** Reseller shall not alter the functionality of or remark any Shavlik Product. Reseller shall not use, sell, broker, or promote the sale of remarketed, altered, or counterfeit Shavlik Products.

3.6. **Business Development Plan.** Reseller shall work with their Shavlik Partner sales manager to complete and execute a Shavlik & Partner Business Development Plan. The Plan must be renewed on a yearly basis, or as otherwise indicated in the Shavlik Partner Benefits and Requirements, in order to maintain Shavlik Premier or Premier Plus Partner status.

3.7. **Promotion and Marketing.** Reseller shall use commercially reasonable efforts to meet the needs of its End Users and to diligently



promote and market the Shavlik Products within the Territory, which efforts shall not be less than any efforts that Reseller expends to promote and market any products that compete with any of the Shavlik Products. Reseller shall bear all costs incurred by Reseller in the marketing, promotion, and distribution of the Shavlik Products as well as any costs associated with Reseller's compliance with this Agreement.

3.7.1 Upon reasonable notice, Reseller shall allow Shavlik to inspect all marketing and other materials which Reseller produces and which refer to Shavlik or the Shavlik Products to ensure compliance with the terms of this Agreement. Reseller shall make any reasonable modifications to such material that may be requested by Shavlik. Such reviews and modification requests shall not be construed to make Shavlik responsible for the contents of such materials, and Reseller remains solely responsible for all such content.

3.7.2 Shavlik may publicly disclose (including without limitation on a publicly available websites), at its sole discretion, Reseller's name, address, and its Reseller Level status. Reseller consents to Shavlik providing a link within such websites to Reseller's website (if any).

3.8. **General Obligations.** Reseller shall comply with all applicable laws and regulations relating to Reseller's performance under this Agreement, including, without limitation, any requirements of any applicable governmental authority in the Territory. Reseller shall conduct all activities relating to its business with Shavlik in accordance with the highest standards of ethics and fairness, and in a manner that reflects favorably on the goodwill and reputation of Shavlik and the Shavlik Products. Except for accurately representing Reseller's status as a Shavlik Reseller, and the requirements Reseller has met to achieve such status, Reseller shall make no claims on behalf of Shavlik or imply that Shavlik endorses Reseller's products or services. Reseller shall not make any representations, warranties, or guarantees to any third party (including but not limited to any End User) regarding the Shavlik Products. Immediately upon notification from Shavlik to Reseller, Reseller shall change or cease representations or business practices pertaining to this relationship found by Shavlik to be misleading or deceptive.

3.9. **Shavlik Operational Correction.** Reseller shall, in the event it receives an operational correction notification from Shavlik with specific instructions for written distribution to End Users, notify End Users who have purchased the Shavlik Products indicated in such notice. The notification shall be in writing and sent to End Users within five (5) days of receipt of notice from Shavlik. Reseller's reasonable out-of-pocket costs incurred to provide such notification shall be reimbursed by Shavlik.

#### 4. TRADEMARK LICENSE

4.1. **Trademark License Grant.** Subject to the terms and conditions of this Agreement, Shavlik grants to Reseller a limited, non-exclusive, non-transferable, revocable license for the Term of this Agreement to use the Marks solely in Reseller's marketing of the Shavlik Products. The rights granted to Reseller in this license will terminate upon any termination or expiration of this Agreement, in which case Reseller will cease all use of any Marks and destroy all material in its possession or control on which any Marks appear.

4.2. **Trademark Guidelines.** Reseller may only use the Marks in accordance with Shavlik's trademark, identity, and logo usage guidelines provided by Shavlik to Reseller or posted on the Reseller Website, as such guidelines may be modified by Shavlik in its sole discretion from time to time.

4.3. **Acknowledgment of Rights.** Reseller acknowledges Shavlik's rights to the Marks and all goodwill associated therewith, and acknowledges that any and all use of the Marks made by Reseller hereunder inures to the sole benefit of Shavlik. Reseller shall not challenge Shavlik's rights in and to the Marks.

4.4. **Registration or Applications.** Without prejudice to the remaining provisions of this Section 4, if at any time Reseller acquires any rights in, or registration(s) or application(s) for the Marks, whether by operation of law or otherwise, Reseller will immediately and at no expense to Shavlik assign such rights, registrations, and/or applications to Shavlik, along with any and all associated goodwill.

4.5. **Restrictions.** Reseller must not use as Reseller's own trademark or service mark any word(s) or design(s) confusingly similar to the Marks. Reseller shall not incorporate any of the Marks into Reseller's own marks, domain name, URL, or telephone number.

Reseller shall not use any Marks in a manner implying Reseller is anything other than a reseller of Shavlik Products. Reseller will not use the Marks in any way to disparage Shavlik, its products or services, or in any manner which would diminish or otherwise damage Shavlik's goodwill, including, but not limited to, uses which could be deemed to be obscene, pornographic, excessively violent, or otherwise in poor taste or unlawful, or which purpose is to encourage unlawful activities. Reseller shall not challenge or assist others in challenging the Marks or the registrations or applications thereof, or attempt to register any trademarks, service marks, trade names, or other marks confusingly similar to those of Shavlik.

4.6. **Enforcement.** In the event that Reseller becomes aware of any unauthorized use of the Marks by a third party, Reseller shall promptly notify Shavlik in writing and shall cooperate fully, at Shavlik's expense, in any enforcement of Shavlik's rights against such third party. The right to enforce Shavlik's rights in the Marks rests entirely with Shavlik and shall be exercised in Shavlik's sole discretion.

4.7. **DISCLAIMER TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SHAVLIK MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE MARKS, INCLUDING THE VALIDITY OF SHAVLIK'S RIGHTS IN THE MARKS, AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES THAT MIGHT OTHERWISE BE IMPLIED BY APPLICABLE LAW.**

#### 5. PRICING

5.1. **List Prices.** Shavlik reserves the right to change at any time on written or electronic notice the List Prices and any discounts offered to distributors or Resellers.

5.2. **End User Pricing.** Reseller shall determine its own resale prices to End Users.

#### 6. PURCHASE OF SHAVLIK PRODUCTS

6.1. **From Distributors.** Resellers are to purchase Shavlik products through Shavlik authorized distributors. Shavlik publishes MSRP but the price / discount structure of Reseller purchases from Distributors are solely between the Reseller and Distributor.

6.2. **Direct.** Where Shavlik consents and permits Reseller to purchase Shavlik products directly from Shavlik, the following shall apply.

6.2.1 **Request to Purchase Products.** Reseller shall ensure that any Reseller employee, agent or representative placing an order with Shavlik is fully authorized to bind and commit Reseller for such order. Each order must comply with all Shavlik requirements. Each and every purchase order or request to purchase that is made by Reseller is non-refundable and non-cancelable by Reseller.

6.2.2 **Acceptance of Purchase Request.** Shavlik shall have the right to accept or reject, in its sole discretion for any or no reason, any request by Reseller to purchase Shavlik Products, and no request to purchase shall be binding on Shavlik unless and until it is accepted by Shavlik. Transactions may be conducted through electronic methods, as specified by Shavlik.

6.2.3 **Terms of Purchase Orders Not Binding.** Reseller agrees that the terms and conditions of any purchase order or other document submitted by Reseller to Shavlik in connection with any order that are in addition to, different from or inconsistent with the terms and conditions of this Agreement or the order requirements specified by Shavlik are not binding on Shavlik and are ineffective as between Shavlik and Reseller. The payment terms in this Agreement supersede any payment terms from any purchase order or separate agreement between the parties unless such other payment terms are agreed to in writing by Shavlik.

6.3. **Sale of Shavlik Products.** Notwithstanding the rights given to Reseller hereunder or to any other authorized Shavlik reseller or Reseller by separate agreement, Shavlik reserves the right to sell licenses for Shavlik Products and third party products directly to End Users without using any reseller or distributor. End Users are free to purchase the Shavlik Products from whomever they choose, and nothing in this Agreement creates an exclusive relationship between Reseller and a particular End User.

6.4. **Payment for Shavlik Products.**



6.4.1 **To Distributors.** Reseller to submit payment directly to Shavlik authorized distributors for Shavlik products.

6.4.2 **Direct.**

6.4.2.1 **Payment in Advance.** Except as provided below in Section 6.4.2.2 of this Exhibit A, payment hereunder is due in advance of delivery of the Shavlik Products by Shavlik. Delivery of Shavlik Products shall be accomplished either by physical delivery of an authorization code and the media containing the applicable Shavlik Product(s), or by transmission of an authorization code to Reseller or its End User with instructions on how the Shavlik Products can be accessed by an End User. Notwithstanding the provisions of Section 6.4.2.2 of this Exhibit A, payments made in advance must be made either (a) by approved credit card or (b) by wire transfer (as set forth below in Section 6.4.2.4).

6.4.2.2 **Credit Terms for Approved Credit Application.** Subject to Shavlik's having given written approval of Reseller's Credit Application (that has not been revoked by Shavlik), Reseller shall pay Shavlik all fees within thirty (30) days of the date due, or if no due date is specified, then within thirty (30) days of the date of the applicable Shavlik invoice. Notwithstanding Shavlik's approval of Reseller's Credit Application, Shavlik reserves the right to require payment in advance (or other payment terms) with respect to any request to purchase Shavlik Products hereunder.

6.4.2.3 **Claim for Adjustment of Invoice.** Any Reseller claim for adjustment of a Shavlik invoice is deemed to be waived if Reseller fails to present such claim within thirty (30) days from the date of the Shavlik invoice. No claims, credits, or offsets may be deducted from any Shavlik invoice.

6.4.2.4 **Payment Method.** Payments due to Shavlik pursuant to Section 6.4.2 will be paid by Reseller in United States Dollars, Euros, or British Pound Sterling by wire transfer, as directed by Shavlik. Payments will be made to:

Account Name: LANDesk Software, Inc.  
Account Number: 4122327281  
Bank Name: Wells Fargo Bank, N.A.  
Bank address: San Francisco, CA

SWIFT Code: WFBUS6S  
ABA Number: 121000248

Notwithstanding the foregoing, upon written notice to Reseller, Shavlik may designate any other payment method and payment address.

6.4.3 **Invoices.** Any invoice containing a material mistake will be corrected and the new invoice will be re-issued to Reseller. Reseller shall pay the corrected invoice within thirty (30) days of the date thereof.

6.5 **Failure to Pay in Timely Manner.**

6.5.1 **Interest.** All payments to Shavlik are non-refundable and any overdue amount shall bear interest at the lesser of one and one half percent (1.5%) per month, or the maximum rate allowed by law. Costs of conversion, outside collection, bank charges, and legal fees and expenses incurred to collect payments due shall be paid by Reseller.

6.5.2 **Credit Hold.** If Reseller fails to make payment when due, Shavlik, in its sole discretion, may place Reseller on a "Credit Hold," meaning that Reseller will not be able to purchase any Shavlik Products until Reseller has paid all past-due amounts and Shavlik notifies Reseller in writing that it is no longer under any "Credit Hold."

6.5.3 **Suspension or Discontinuance of Performance.** Shavlik may suspend or discontinue performance, or suspend, withhold or discontinue any benefit or discount arising under this Agreement, in Shavlik's sole discretion, if Reseller fails to pay any sum when due, or if Reseller fails to perform its obligations under this Agreement and has not cured such failure within ten (10) days of receiving written notice thereof from Shavlik. In addition, Shavlik may, in its sole discretion, remove, redistribute or re-assign any current or future sales opportunities or leads during any period that Reseller is in breach of this Agreement.

6.5.4 **Set Off.** Shavlik shall have the right to set off or apply any and all amounts owed by Reseller (including its subsidiaries and affiliates) against any and all amounts owed or which may subsequently be owed by Shavlik to Reseller (including its subsidiaries and affiliates), or their successor in interest.

6.6 **Taxes.** Sales and use taxes, stamp taxes, value added taxes, property taxes, and other taxes or duties (excluding taxes on Shavlik's net income) imposed by any taxing authority on or with respect to this Agreement, if any, shall be borne by Reseller. If Reseller is required to pay any withholding tax, charge or levy in respect of any payments due to Shavlik hereunder, Reseller shall gross up payments actually made such that Shavlik shall receive sums due hereunder in full and free of any deduction for any such withholding tax, charge or levy. In the event that such taxes or duties are imposed initially on Shavlik or Shavlik is later assessed such taxes or duties by any taxing authority, then Shavlik will be promptly reimbursed by Reseller for such taxes or duties, plus any interest and penalties suffered by Shavlik.

6.7 **Records.** For the Term of this Agreement, and for a period of four (4) years thereafter, Reseller shall make available and maintain, to the extent necessary and in accordance with generally accepted accounting principles, sufficient books, records, and accounts to calculate and verify payment of all fees, costs, and expenses due hereunder.

6.8 **Audit Rights.** At Shavlik's discretion and upon reasonable notice to Reseller, Shavlik or its agent shall be given prompt access during normal business hours to Reseller's records, inventory records, and other books and records of account pertaining to Shavlik Products and Shavlik marketing or sales programs which are necessary, in Shavlik's sole discretion, to verify and audit Reseller's compliance with this Agreement and the terms and conditions of Shavlik's marketing or sales programs, if applicable. Shavlik's right to conduct audits under this Agreement will survive the termination or expiration of this Agreement for four (4) years beyond the date of termination or expiration. Any and all information obtained by Shavlik or Shavlik's designated agent during an audit shall be deemed Confidential Information.

7 **SHAVLIK PRODUCT AVAILABILITY.**

7.1 At any time and from time to time in its sole discretion, Shavlik may develop and sell new products or discontinue or change the functionality, design, specifications, or manufacturing processes of any Shavlik Product or remove any Shavlik Product from its price list. Shavlik will use commercially reasonable efforts to provide Reseller with notice of such changes.

7.2 The provision of any Shavlik Update or any Shavlik Upgrade to any End User is contingent upon full payment by Reseller of any fees, costs, or expenses to Shavlik. In the event that an End User makes a claim to Shavlik that it has right to any Shavlik Product for which Shavlik does not in good faith believe it has been paid, Shavlik may release to the End User such information as is reasonably required to demonstrate to the End User such nonpayment.

8 **NO WARRANTY. THE ACCURACY, COMPLETENESS OR PERFORMANCE OF ANY SHAVLIK PRODUCT, CONFIDENTIAL INFORMATION OR OTHER MATERIALS PROVIDED TO RESELLER UNDER THIS AGREEMENT (INCLUDING INFORMATION MADE AVAILABLE ON THE RESELLER WEBSITE) ARE PROVIDED 'AS IS' AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. FURTHERMORE, SHAVLIK DOES NOT WARRANT THE ACCURACY OR COMPLETENESS OF ANY OF THE FOREGOING. IN ADDITION, SHAVLIK MAY MAKE CHANGES TO ANY OF THE FOREGOING WITHOUT NOTICE. SHAVLIK MAKES NO COMMITMENT AND ASSUMES NO OBLIGATION TO UPDATE ANY OF THE FOREGOING. RESELLER MAY NOT OFFER OR TRANSMIT ANY WARRANTY OR REPRESENTATION RELATED TO THE SHAVLIK PRODUCTS EXCEPT AS EXPRESSLY SPECIFIED IN THE LICENSE AGREEMENT BETWEEN THE END USER AND SHAVLIK.**

9 **LIMITATIONS OF LIABILITY**

9.1 **DIRECT DAMAGES ONLY.** LIABILITY ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES AND NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY OR A THIRD PARTY FOR ANY INDIRECT OR SPECULATIVE DAMAGES (INCLUDING, WITHOUT LIMITING THE FOREGOING, CONSEQUENTIAL, INCIDENTAL AND SPECIAL DAMAGES), INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTIONS, AND LOSS OF PROFITS, IRRESPECTIVE OF WHETHER THE PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF ANY SUCH DAMAGES;



PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT APPLY TO ANY BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH BELOW IN SECTION 16 OF THIS EXHIBIT A, ANY VIOLATION OF RESELLER'S OBLIGATIONS WITH RESPECT TO SHAVLIK'S INTELLECTUAL PROPERTY AS SET FORTH IN THIS AGREEMENT, OR ANY INFRINGEMENT OF SHAVLIK INTELLECTUAL PROPERTY BY RESELLER. EACH PARTY ACKNOWLEDGES THAT THE LIMITATIONS ON POTENTIAL LIABILITIES SET FORTH IN THIS SECTION 9.1 WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT. THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL BE RESELLER'S SOLE AND EXCLUSIVE REMEDIES.

**9.2 LIABILITY CAP.** NOTWITHSTANDING THE FOREGOING, SHAVLIK'S TOTAL COLLECTIVE LIABILITY TO RESELLER UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF ANY APPLICABLE FEES ACTUALLY RECEIVED BY SHAVLIK FROM RESELLER PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO SUCH LIABILITY. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS ON POTENTIAL LIABILITIES SET FORTH IN THIS SECTION 9.2 WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT. SHAVLIK NEITHER ASSUMES, NOR AUTHORIZES ANYONE TO ASSUME FOR IT, ANY OTHER LIABILITIES.

**9.3 NO MISSION CRITICAL USE.** RESELLER ACKNOWLEDGES THAT SHAVLIK PRODUCTS ARE NOT DESIGNED FOR, OR INTENDED FOR USE IN, ANY MISSION CRITICAL APPLICATION IN WHICH THE FAILURE OF THE SHAVLIK PRODUCTS MIGHT CAUSE SUBSTANTIAL PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH. SHAVLIK RECOMMENDS AGAINST, AND DISCLAIMS ANY LIABILITY FOR, USE OF THE SHAVLIK PRODUCTS IN ANY SUCH MANNER. SHOULD RESELLER SELL ANY SHAVLIK PRODUCT KNOWING THAT IT WILL BE USED FOR ANY NON-INTENDED USE, RESELLER SHALL BE SOLELY LIABLE AND SHALL HOLD SHAVLIK HARMLESS FROM ALL RELATED COSTS, FEES (INCLUDING LEGAL FEES), EXPENSES AND LIABILITIES.

## 10 INDEMNIFICATION

### 10.1 Indemnification by Reseller.

**10.1.1 Third-Party Actions.** Shavlik shall have no liability to Reseller or any of Reseller's End Users, and Reseller shall indemnify, defend, and hold Shavlik harmless from any expenses, damages, costs or losses (including legal fees) resulting from any third party suit or proceeding (including without limitation any suit or proceeding by an End User) based upon a claim arising from Reseller's performance or non-performance under this Agreement or under any agreement between Reseller and any third party, or for any personal injury or other claim.

**10.1.2 Reseller's Service and Support.** Reseller is solely responsible for its acts, omissions, obligations, representations, and misrepresentations in providing any service or support to an End User. Reseller shall defend, indemnify and hold harmless Shavlik against all claims, lawsuits, liabilities, losses, damages, costs and expenses (including legal fees) as a result of claims in any form by Reseller's End Users, arising out of or in connection with Reseller's acts, omissions, obligations, representations, or misrepresentations in connection with Reseller's provision of any service or support to an End User.

**10.1.3 Indemnification.** In the event Shavlik seeks indemnification from Reseller, Shavlik will promptly notify Reseller of any claim or proceeding brought against it for which it seeks indemnification under this Agreement. Shavlik reserves the right, at its option, to assume full control of the defense of such claim or proceeding with legal counsel of its choice. If Shavlik undertakes any settlement of such claim or proceeding requiring payment from Reseller, such settlement shall be subject to Reseller's prior written approval, which approval shall not be unreasonably withheld, denied or delayed. Reseller shall reimburse Shavlik upon demand for any expenses reasonably incurred by Shavlik in defending such claim, including, without limitation, reasonable legal fees and costs, as well as any judgment or settlement of the claim or proceeding. In no event may Reseller enter into any third party agreements which would in any manner whatsoever affect the rights of or bind Shavlik in any manner, without the prior written consent of Shavlik.

### 10.2 Indemnification by Shavlik.

**10.2.1 Infringement.** Shavlik will pay Reseller for direct damages awarded against Reseller arising from a final and enforceable decree or settlement based solely upon a claim brought against Reseller that the Shavlik Products when used in the manner set forth in the Documentation, alone and not in combination with any other product, constitute an infringement of any United States copyright, provided that: (i) Shavlik is notified promptly in writing of such claim; (ii) Shavlik controls the defense or settlement of the claim; and (iii) Reseller cooperates reasonably, and gives all necessary authority, information, and assistance (at Shavlik's expense). Shavlik will not be responsible for any costs, expenses, or compromise incurred or made by Reseller without Shavlik's prior written consent. If the use of the Shavlik Products for an End User is permanently enjoined based upon an infringement of any United States copyright, Shavlik will, in its sole discretion and at its own expense, procure for such End User the right to continue using the Shavlik Products, replace the same with a non-infringing software, modify it so that it becomes non-infringing, or if each of the foregoing is commercially unreasonable or unduly burdensome, Shavlik will refund to the Reseller the fees actually paid to Shavlik by Reseller for the infringing Shavlik Products, less any depreciation, and accept its return. For purposes of this Section 10.2.1, depreciation of the Shavlik Products shall be determined using a straight line basis over a period of thirty-six (36) months, commencing on the effective date of the relevant license agreement between Shavlik and such End User. In the event of any such refund, all such fees (and any additional fees paid by the End User to the Reseller with respect to such products) shall be promptly returned to the applicable End User.

**10.2.2 Limitation on Indemnification.** Notwithstanding the provisions of Section 10.2.1 of this Exhibit A, Shavlik will not be liable for any costs or damages, and Reseller and each End User will be responsible to defend or settle any suit or proceeding based upon: (a) a claim arising from Shavlik's compliance with Reseller's or its End User's designs, specifications or instructions; (b) modification of the Shavlik Products by Reseller or an End User or at the direction of Reseller or an End User by a party other than Shavlik after delivery by Shavlik; (c) the use of any Shavlik Products or any part thereof by Reseller or its End User in combination with any other product; or (d) the direct or contributory infringement of any business method patent using a Shavlik Product, in whole or in part. Reseller and its End Users will pay all damages and costs from any such suit or proceeding.

**10.3 Exclusive Remedy.** The foregoing provisions of this Section 10 state the entire obligation and exclusive remedy of each of the parties hereto with respect to any claim, damages, or losses arising from alleged or actual intellectual property infringement.

## 11 INTELLECTUAL PROPERTY

**11.1 Ownership.** Title to and ownership of the Shavlik Products, Documentation and all copies thereof, remains with Shavlik and its licensors. Shavlik retains the right to, without limitation, use, copy, modify, license, sublicense, and distribute the Shavlik Products and Documentation. Reseller acknowledges that, as between Reseller and Shavlik, Shavlik and Shavlik's licensors have exclusive right, title, and interest in and to the Shavlik Products and Documentation, including, without limitation, all intellectual property rights, made by Shavlik, its employees, contractors, consultants, agents, and licensors.

**11.2 Intellectual Property Notices.** Reseller shall not remove any copyright or other intellectual property notice of Shavlik or Shavlik's Licensors in or on the Shavlik Products.

**11.3 No Other License.** Except as expressly set forth herein, nothing in this Agreement is intended to grant any right in or to either party under any patent, copyright, trade secret or other intellectual property right, nor shall this Agreement grant either party any right, title, or license in or to the other party's Confidential Information.

## 12 TERM AND TERMINATION

**12.1 Term.** This Agreement shall commence on the Effective Date and will continue until terminated in accordance with this Section 12 ("Term").

**12.2 Termination by Either Party.** Either party may terminate this Agreement with or without cause for any or no reason by providing written notice of termination to the other party at least thirty (30) days prior to the effective date of termination.

**12.3 Termination by Shavlik.** Without prejudice to any rights it may have in law, equity, or otherwise, Shavlik may upon written notice to



Reseller terminate this Agreement immediately upon the occurrence of any one or more of the following events:

12.3.1 Reseller fails to perform any of its obligations as set forth in this Agreement;

12.3.2 A government agency or court finds that services provided by Reseller are defective or improper in any way, manner or form;

12.3.3 If actual or potential adverse publicity or other information emanating from a third party or parties about Reseller, the services the Reseller provides, or the use of any logos authorized for Reseller's use causes Shavlik, in its sole judgment, to believe that Shavlik's reputation may be adversely affected;

12.3.4 Reseller performs services using or distributes the Shavlik Products for use in any Mission Critical Application;

12.3.5 Reseller is insolvent, the filing of any voluntary or involuntary petition in bankruptcy by or against Reseller, or Reseller has made any assignment by operation of law or otherwise for the benefit of creditors; or

12.3.6 A change in control of Reseller during the Term of this Agreement. For purposes of this Agreement, "change in control" means (i) the ownership or acquisition (whether by merger, consolidation, sale of stock of subsidiaries, or any other method), by any person or persons, in a single transaction or a series of related or unrelated transactions, of beneficial ownership of more than fifty percent (50%) of Reseller's outstanding capital stock.

12.4 Effect of Termination. Upon termination of this Agreement for any reason, all rights granted under this Agreement shall immediately terminate. Termination of this Agreement shall not limit the terminating party's rights and remedies otherwise available in law or in equity including but not limited to the right to recover damages if there has been any breach of this Agreement. In addition, Reseller shall promptly return all Confidential Information and materials of Shavlik and all Shavlik Products. All outstanding obligations due on or before the effective date of termination will become immediately due and payable.

13 NOTICES. All written notices required or permitted to be given hereunder shall be in writing, shall make reference to this Agreement, and shall be delivered by electronic communication, by hand, or by prepaid courier or by registered or certified mail, postage prepaid, addressed as follows:

If to Reseller:  
P.O. BOX 50179  
MUSGRAVE  
4062

Email: info@slampjct.com.net

If to Shavlik:  
Shavlik  
698 West 10000 South, Suite 500  
South Jordan, Utah 84095  
Attn: Legal Department

Such notices shall be deemed served when received by addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Either party may give written notice of a change of address and, after notice of such change has been received by the other party, any notice or request shall thereafter be given to such party at such changed address.

14 EXPORT CONTROL. Neither party shall export or re-export, either directly or indirectly, any Shavlik Product from the United States without first obtaining any required license or other approval from the U. S. Department of Commerce or any other agency or department of the United States Government and complying with all laws, regulations, orders, or other restrictions of the U.S. Export Administration Regulations. Neither party, nor any of its subsidiaries, will export/re-export from the United States any technical data, process, Shavlik Products, or service, directly or indirectly, to any country for which the United States government or any agency thereof requires an export license, other governmental approval, or letter of assurance, without first obtaining such license, approval or letter. If at any time Shavlik determines that the laws of any country are or become insufficient, in Shavlik's sole opinion, to protect Shavlik's intellectual or proprietary rights, Shavlik reserves the right to restrict or terminate this Agreement

or restrict the Territory so as to exclude such country. Reseller shall take all actions reasonably necessary to enforce this restriction or termination and protect Shavlik's rights.

15 U.S. GOVERNMENT RESTRICTED RIGHTS. Shavlik Products are provided with "RESTRICTED RIGHTS" and are deemed "commercial computer software" and "commercial computer software documentation" within the meaning of applicable civilian and military Federal acquisition regulations and any supplement thereto. Use, modification, duplication, or disclosure by the United States Government is subject to restrictions as set forth in DFARS 252.227-7014(a)(1) (JUN 1995) (DOD commercial computer software definition), DFARS 227.7202-1 (DOD policy on commercial computer software), FAR 52.227-19 (DEC 2007) (commercial computer software clause for civilian agencies), DFARS 252.227-7015 (NOV 1995) (DOD technical data - commercial items clause); FAR 52.227-14, including Alternates I, II, and III (DEC 2007) (civilian agency technical data and noncommercial computer software clause); and/or FAR 12.211 and FAR 12.212 (commercial item acquisitions), and any successor provisions. Use of Shavlik Products by the U.S. Government constitutes acknowledgment of Company's proprietary rights therein. The Contractor or Manufacturer is Shavlik Software, Inc. (or its subsidiaries or affiliates), with an office at 698 West 10000 South, Suite 500, South Jordan, UT 84095, USA.

16 CONFIDENTIALITY

16.1 Non-Disclosure of Confidential Information. Neither party shall (i) use any Confidential Information of the other party for any purpose except for the completion or performance of services or other course of business dealings for or with the other party; or (ii) disclose any Confidential Information of the other party to third parties or to such party's employees, except to those employees of the receiving party who need to have the information in the course of business dealings for or with the other party.

16.2 Protection of Confidential Information. Each party shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party throughout the Term of this Agreement and for a period of five (5) years after termination or expiration of this Agreement. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own confidential information (but no less than commercially reasonable measures) and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

16.3 Compelled Disclosures. If a party or any of its representatives (a "Compelled Representative") that has received Confidential Information becomes legally compelled or is required, by a court, government agency, or other governmental body to make any disclosure of Confidential Information, such party shall (i) promptly notify the other party in writing; (ii) consult with and assist the other party in obtaining an injunction or other appropriate remedy to prevent such disclosure; and (iii) use reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to any Confidential Information that is disclosed.

16.4 Right to Disclose. Subject to the provisions of Section 16.3, the party or Compelled Representative in possession of the Confidential Information may furnish that portion (and only that portion) of the Confidential Information that, in the written opinion of its counsel, such party or Compelled Representative is legally compelled or otherwise required to disclose.

16.5 Ownership of Confidential Information. All documents and other tangible objects containing or representing Confidential Information which have been disclosed by either party to the other party, and all copies thereof which are in the possession of the other party, shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party upon the disclosing party's written request.

16.6 No Warranty. All Confidential Information is provided "AS IS." EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR



OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF ANY SUCH CONFIDENTIAL INFORMATION.

## 17 GENERAL

17.1 **Survival.** Upon termination or expiration of this Agreement for any reason, the following sections of Exhibit A of this Agreement shall remain in effect: Section 2 (Definitions), Section 3.2 (Restrictions on Use), Section 3.8 (General Obligations), Section 6.5 (Failure to Pay in a Timely Manner), Section 6.6 (Taxes), Section 6.7 (Records), Section 6.8 (Audit Rights), Section 8 (No Warranty), Section 9 (Limitations of Liability), Section 11 (Intellectual Property), Section 12.4 (Effect of Termination), Section 13 (Notices), Section 16 (Confidentiality), and Section 17 (General).

17.2 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Utah, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement and to transactions processed under this Agreement. Notwithstanding anything to the contrary herein, to the extent permitted under the applicable law, Shavlik may bring an action in any jurisdiction for the purpose of (a) enforcing a judgment; or (b) protecting Shavlik's intellectual property rights. This Agreement expressly excludes the provisions of the Contracts (Rights of Third Parties) Act 1999 and any amendment thereto.

17.3 **Prevailing Party.** In the event one party shall successfully bring legal action against the other party, or successfully defend itself in or from any legal action or other proceeding by the other party under this Agreement, such other party shall reimburse such first party for court costs, expenses, and reasonable legal fees incurred.

17.4 **Remedies.** The rights and remedies provided in this Agreement are in addition to any other rights and remedies provided at law or in equity. No waiver of any right or remedy on one occasion by either party will be deemed a waiver of such right or remedy on any other occasion. Failure by Shavlik to enforce any terms of this Agreement shall in no way be construed to be a present or future waiver of such terms, nor affect their enforceability.

17.5 **Injunctive Relief.** Each party agrees that its confidentiality obligations and intellectual property rights hereunder are necessary and reasonable in order to protect the other party and the other party's business, and expressly agrees that monetary damages would be inadequate to compensate the other party for any breach by either party of such rights and obligations. Accordingly, each party agrees and acknowledges that any such violation or threatened violation of the intellectual property (including trademark) rights or confidentiality obligations of this Agreement will cause irreparable injury to the other party and that, in addition to any other remedies that may be available in law, in equity or otherwise, the other party shall be entitled to obtain injunctive relief against such threatened violations or breaches or the continuation of any such violation or breach, without the necessity of proving actual damages. In the event such equitable relief is granted against a party, such party will not object to courts in other jurisdictions granting provisional remedies enforcing such judgments.

17.6 **Conflicts.** In the event of a conflict between this Agreement and any other document related to the subject matter of this Agreement, the terms of this Agreement shall prevail.

17.7 **Severability.** The terms and conditions stated herein are declared to be severable. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected. The parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal, or unenforceable) that is valid, legal, and enforceable

and carries out the parties' intentions to the greatest lawful extent under this Agreement.

17.8 **Force Majeure.** Except with regard to payments of fees, neither party shall be responsible for any failure to perform hereunder due to unforeseen circumstances or to causes beyond the non-performing party's reasonable control. Examples of such causes are acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, accidents, and shortages of transportation, fuel, energy, or material.

17.9 **Relationship of the Parties:** For purposes of this Agreement, Reseller and Shavlik are independent contractors. This Agreement does not establish a franchise, joint venture or partnership, or create any relationship of employer and employee, master and servant, or principal and agent between the parties. Neither party will have, nor represent that it has, any power, right, or authority to bind the other party, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party without such other party's express written consent. Reseller acknowledges that any commitment made by Reseller to its End Users with respect to price, quantities, delivery, specifications, warranties, modifications, interfacing capability, or suitability will be Reseller's sole responsibility, and Reseller will indemnify Shavlik from liability for any such commitment by Reseller. Each party shall control the means, manner and method of its performance. Neither party shall either exercise or have the right to exercise any control, supervision, or oversight of the other party's performance.

17.10 **Third Party Rights.** A person who or entity that is not a party hereto has no right to enforce any term of this Agreement.

17.11 **Headings:** The headings to the sections and subsections of this Agreement are for convenience only, do not form a part of this Agreement, and shall not in any way affect the interpretation thereof. Where the context so requires, the singular will include the plural and the plural will include the singular.

17.12 **Modifications.** Except as otherwise explicitly stated herein, this Agreement may not be modified except in writing signed by authorized representatives of each party.

17.13 **Interpretation.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Each party has been, or has had the opportunity to be, represented by experienced and knowledgeable legal counsel. In the event of a conflict, except to the extent this Agreement provides otherwise (e.g. in relation to variations to be posted on the Reseller Website), the following order of precedence will apply: (1) Front section of this Agreement; (2) Program Requirements and Benefits; (3) Exhibits; and (4) Reseller Website.

17.14 **Assignment, Sale, or Transfer:** Subject to applicable law, Reseller may not assign any rights or obligations hereunder without the prior written approval of Shavlik. Any attempt by Reseller to assign any rights, duties or obligations hereunder without Shavlik's written consent will be void. Shavlik may assign all or any part of its rights or obligations hereunder in Shavlik's sole discretion.

17.15 **Days.** All days are calendar days unless otherwise stated.

17.16 **Reservation of Rights.** All rights not expressly granted herein are reserved to the owner, and no other licenses are granted herein by implication, estoppel or otherwise. Specifically, (i) nothing in the licenses granted herein or otherwise contained in this Agreement shall either expressly or by implication, estoppel or otherwise, give either party any right to license the other party's intellectual property rights to others, and (ii) no license or immunity is granted by Shavlik either directly or by implication, estoppel or otherwise, to any third parties acquiring Licensed Software from either party for the combination of Licensed Software with other items or for the use of such combination.

