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# Technical Support Services Terms - Enhanced Support

This Agreement describes the terms under which Shavlik Technologies, LLC ("Shavlik") will provide Software Support Services for the registered copies of the Shavlik software ("Licensed Software") licensed under an End User License Agreement with Shavlik ("EULA"). Software Support Services will be provided to the person or entity designated as Licensee ("Licensee") on the EULA. The definitions contained in the EULA are incorporated by reference unless otherwise stated.

## 1. Data Access Service.

If the Licensed Software requires a maintainable data component, then during the term of this Agreement, Shavlik will provide Licensee with access to the data from within the Licensed Software and will maintain the data as necessary.

## 2. Technical Support Services.

Shavlik will provide Technical Support Services consisting of routine telephone and email support in accordance with Appendix A.

Technical Support Services will not include (i) on-site support; (ii) support for Licensed Software for which Software Support Services have been discontinued; (iii) issues caused by Licensee negligence or fault; (iv) issues resulting from hardware malfunction; (v) issues that do not significantly impair or affect the operation of the Licensed Software; (vi) support for Licensed Software used on a computer or operating system other than that specified by Licensee and accepted by Shavlik per the EULA; and (vii) support for software other than Licensed Software, or for any combination of Licensed Software and other software not covered by this Agreement. When Shavlik believes that a reported problem is likely to fall outside of the scope of support provided under this Agreement, Licensee will be so advised, and Shavlik will provide an estimate of the costs for resolution of the issue. Shavlik will proceed with Technical Support Services only upon Licensee's subsequent agreement with

Shavlik's estimate, and will bill Licensee on a time and materials basis, not to exceed the estimate, when the issue is resolved. Should Licensee and Shavlik subsequently find that the problem was within the scope of support under this Agreement, Licensee will not incur any additional charges. Shavlik also reserves the right to charge for unusual or excessive support person time or telephone expenses in connection with Technical Support Services provided under this Agreement.

### 3. Software Update Program.

Shavlik also will provide periodic updates or upgrades of the Licensed Software ("Updates") for Enhanced Support that may incorporate (i) corrections of any critical defects in the Licensed Software, and (ii) at Shavlik's discretion, enhancements or other changes to the Licensed Software. Updates will be made available solely when and as determined by Shavlik. Licensee is responsible for installing Updates as they are made available. If Updates are not installed within twelve (12) months after release, Shavlik may decline to provide Software Support Services to Licensee as described in this agreement.

### 4. Problem Reporting, Escalation and Resolution.

Upon execution of this agreement, Licensee will be automatically enrolled in Shavlik's Technical Support Services Program. Upon enrollment, Licensee will receive a Technical Support Services Access Code ("Code") that must be used by the Licensee when requesting Technical Support Services by phone or by email. Licensee must identify up to three (3) designated support contacts ("Contact") who will be authorized to contact Shavlik for Technical Support Services, and notify Shavlik of the names, locations and email addresses of the Contact(s) before using the Technical Support Services. When a Contact requests help with the installation or use of the Licensed Software, or reports a problem with the Licensed Software, Shavlik will use commercially reasonable efforts to attempt to answer the question or resolve the reported problem as promptly as possible.

### 5. Additional Services.

Additional services available from Shavlik such as on-site support, training, and consulting are not covered by this Agreement, but may be delivered under separate agreements or plans. These services are normally charged on a time and materials basis, including expenses, and are subject to availability.

## 6. Term, Renewal, and Termination.

- a. Term.** This Agreement will be effective, and Software Support Services provided hereunder will commence, upon the effective date of the first license (once the license key is sent by Shavlik to the Licensee) that Licensee purchases from Shavlik, and will continue for one (1) year unless sooner terminated under subsection (c) below. For any subsequent purchases of Licensed Software, Shavlik will prorate the term for Software Support Services so that all subsequent Software Support Services agreements renew on the anniversary date of the original purchase.
- b. Renewal.** This Agreement may be renewed for additional one (1) year terms by Licensee, upon payment of the applicable fees for renewal term at the then current rate. If payment for a renewal term is not received before expiration of the existing term, Shavlik reserves the right to withhold service until payment received or to terminate this Agreement. Shavlik reserves the right to modify the prices, terms, and conditions of this Agreement or to decline to renew this Agreement by giving Licensee at least thirty (30) days notice of such modified terms in advance of any renewal. If Licensee allows this Agreement to expire and thereafter decides to re-enroll, Licensee must pay a fee equal to the total fees that would have been paid to Shavlik had Licensee not terminated the Software Support Services, the fee for Software Support Services for the term then commencing, and a reinstatement fee equal to 25% of the fees for the period of discontinuance.
- c. Termination.** This Agreement will terminate immediately upon termination of the EULA. Either party will have the right to terminate this Agreement and all services provided hereunder if the other party violates any provision of this Agreement and the breaching party fails to cure such violation within thirty (30) days after receipt of written notice from the non-breaching party.

## 7. Fees.

Licensee shall pay Shavlik the applicable fee for the level of Software Support Services reflected on Appendix A for the Licensed Software as published on its website at [www.shavlik.com](http://www.shavlik.com) or as described on an official Shavlik Sales Order. Fees for Enhanced Support shall be paid annually in advance of commencement of services, plus applicable Taxes. "Taxes" means all federal, state, local and other taxes, including sales, use and property taxes, related to this Agreement, Licensee's use of the Licensed Software, or any services provided by Shavlik to Licensee related to the Licensed Software, excluding taxes based on Shavlik's net income. Payment shall be made in United States currency. In the event Licensee fails to pay any amount when due, Licensee agrees to pay interest on the unpaid amount at a rate equal to the prime rate plus one and one half percent (1.5%) or the highest rate allowed by law, whichever is less, plus all collection costs including attorneys' fees.

## 8. Warranties/Limitations.

Shavlik will perform the Services in a professional and workmanlike manner. Except as provided expressly herein, THE SOFTWARE SUPPORT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL SHAVLIK BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR SERVICES EVEN IF SHAVLIK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SHAVLIK'S TOTAL LIABILITY TO LICENSEE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT OF ANY MAINTENANCE FEE PAID BY LICENSEE TO SHAVLIK UNDER THIS AGREEMENT.

## 9. Other Terms.

This Agreement and any dispute arising from or relating to it will be governed by and construed and enforced in accordance with Minnesota law, without reference to conflicts of laws principles, and excluding the UN Convention on Contracts for the International Sale of Goods. Any legal action or proceeding will be instituted in a state or federal court in Hennepin County, Minnesota, USA. Shavlik and Licensee agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding. The waiver by Shavlik of a breach of this Agreement or a failure to exercise any right hereunder will not operate or be construed as a waiver of any subsequent breach or as a waiver of any other right. If any provision of this Agreement is held to be unenforceable or overbroad for any reason, it will be modified rather than voided, if possible, in order to achieve the intent of the parties to the extent necessary to make the provision enforceable under applicable law, and enforced as amended. In any event, all other provisions of this Agreement will be deemed valid and enforceable to the full extent. This Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement including any purchase order or ordering document. This Agreement may not be modified or amended except in writing and signed. In no event will Shavlik be liable for any failure to perform that is caused by circumstances beyond its reasonable control, including, without limitation, natural disasters, acts of God, the failure of equipment or facilities not belonging to Shavlik (including, but not limited to, utility service), government order or regulation or any other circumstances beyond the reasonable control of Shavlik. Notwithstanding the forgoing, Shavlik will perform to its fullest capabilities and conform as quickly as possible.

## Appendix A Technical Support Services Schedule Enhanced Support

Technical Support Services will be available by phone 24 hours per day 7 days per week and as further described on Shavlik's website at [www.shavlik.com/support](http://www.shavlik.com/support). E-mail support will be available at [support@shavlik.com](mailto:support@shavlik.com). Phone calls and e-mails will be acknowledged within two (2) hours of receipt..

### Problem Severity Definitions

|           |           |   |
|-----------|-----------|---|
| Critical  | (Level 1) | Product malfunction or failure significantly impacting product functionality            |
| Severe    | (Level 2) | Product malfunction or failure impacts business operation, workaround available         |
| Tolerable | (Level 3) | Product malfunction or failure does not significantly impact core product functionality |

### Problem Escalation and Resolution Guidelines

| Severity  | Escalation | Resolution Target                     | Mandatory Customer Feedback |
|-----------|------------|---------------------------------------|-----------------------------|
| Critical  | Same Day   | Until Resolved                        | Daily                       |
| Severe    | One Week   | On or before next maintenance release | Weekly or better            |
| Tolerable | 15 Days    | Next of future maintenance release    | As determined by Customer   |

The table above lists the maximum allowable time span before the next level of escalation is required. The support engineer has the authority to immediately escalate upon proving that a defect exists.

**NOTE:** Shavlik Technologies does not guarantee defects will be fixed in any specific time duration due to the nature of software operating in a multi vendor environment. It is the goal of Shavlik Technologies to deliver our best effort to satisfactorily resolve each incident using the guidelines in table.