

Sun Enterprise Learning Platform Hosted Support

People's Republic of China

1. Scope

This Service Listing applies to the Sun Enterprise Learning Platform (ELP) Hosted service which includes the ELP software application, hosting infrastructure and support, and provides Company with: (1) access to the ELP software application via the Internet and an ELP-approved browser; (2) access to other Deliverables or Services available for order via the ELP; and (3) the operations, hosting and support for the ELP, as described in Section 2 below.

2. Tasks and Deliverables

2.1 Definitions.

2.1.1 "Business Hours" means 8:00 a.m. to 8:00 p.m. Eastern Time, excluding U.S. and Canadian public holidays ("Public Holidays").

2.1.2 "Client-Side Technology" means any technology both (a) originating and maintained solely at Company's site(s), such as hardware (including components), data servers, network devices, operating system, mobile devices (including Personal Digital Assistants), tools, Internet browsers, or other software (including third party software), and (b) used in conjunction with the ELP Hosted Services. Such client-side technology should be in conformity with Sun's recommendation.

2.1.3 "Company Help Desk" means the suitably-qualified Company employees and processes designated by Company, and approved by Sun, to provide direct ELP support to Users.

2.1.4 "Content" means any training courses, materials, books, examinations, programs, or other training materials available for use in connection with the ELP application provided by Company, Sun or a third party.

2.1.5 "Customization" means any modification to the ELP application (other than an Upgrade) performed by Sun specifically at the request of Company.

2.1.6 "ELP" means: (a) the Sun Enterprise Learning Platform Hosted software application (in machine-readable, executable binary code format only) and related documentation, design specifications, embedded application programming interfaces; (b) any Upgrades of the Sun Enterprise Learning Platform Hosted software; and (c) any Customizations of the Sun Enterprise Learning Platform Hosted software. ELP does not include the provision of Products or Services that either Sun or Sun's licensors offer separately, nor does it include any Client-Side Technology.

2.1.7 "Error" means a failure of the ELP Hosted Services to operate without significant fault or to substantially conform to material specifications.

2.1.8 "ELP Hosted Service Listing" means this ELP Hosted Service Listing.

2.1.9 "ELP Hosted Services" means the services provided under this Service Listing.

2.1.10 "Major Release" means a release of ELP containing major new features or functionality indicated by the number appearing to the left of the first decimal place in the numbering system used by Sun to designate an ELP release (e.g., ELP release 3.0 is a Major Release, while ELP release 3.1 is a minor release).

2.1.11 "Server-Side Software" means any Sun or third party software (in machine-readable, executable code format only) that is installed on servers or other hardware owned or designated by Sun and used to host the ELP.

2.1.12 "Supplemental License" means the ELP Hosted Supplemental License.

2.1.13 "Upgrade" means the right to any periodic release or new version of the ELP (including any updates, replacements, error corrections, fixes, patches, workarounds, and changes) that may be provided by Sun to Company, but does not include any customizations that may be necessary for installation of the upgrade. The term "Upgrade" does not include: (i) Content; (ii) products or services that Sun or its licensors license separately; or (iii) Client-Side Technology.

2.1.14 "User" means an employee or agent of Company, but only where such person is properly authorized to access the ELP by both Sun and Company.

2.2 ELP Operations, Hosting and Support

2.2.1 ELP Operations and Hosting. Sun will host the ELP at a hosting facility designated by Sun. Sun will provide access to the ELP and Content through the Internet via an ELP-approved browser for the number of Users specified in the ELP Pricing Schedule or Order Confirmation which shall specify Company's right to connect Users through the Internet to access, use, perform, and display the ELP for User training purposes only. Sun will provide Company with a Sun-specified domain name for accessing the ELP. Sun has no additional responsibility for domain names for accessing the ELP. Sun will access the ELP database for operations, billing, auditing, and other related services. Sun's hosting facility will include the following physical security measures: smoke detection and fire suppression systems, secured access, and security breach alarms. Sun's hosting facility also will include the following environmental control measures: raised floors, HVAC temperature control systems with separate cooling zones, periodic HVAC testing, seismic rack bracing (where applicable) and redundant power. Sun will provide periodic ELP application, network and system monitoring. Sun will conduct a full back up of Company data hosted on the ELP on a weekly basis, as well an incremental back up of new Company data on a daily basis.

2.2.2 ELP Support, Coverage Hours and Response Times.

(a)7x24 Online and Telephone Support. Sun will provide the Company Help Desk with support for maintaining the ELP by telephone and on-line twenty-four (24) hours per day, seven (7) days per week, as described below, excluding Public Holidays. Company can request support for the ELP by telephone, email or via a web-based service application (if available). Services described in this Service Listing will be available to Company in the English language only.

(b)Company-Defined Priority and Response Times. Sun will make commercially reasonable efforts to respond to reported Errors by the Company Help Desk in accordance with the priority levels outlined below. Sun reserves the right to reclassify priority levels selected by Company should Sun determine that the priority classification by Company is inconsistent with the priority thresholds set forth below.

- **Priority One - ELP Unavailable.** ELP is not operational. Some examples of Priority 1 calls include:
 - ELP application failure causing work stoppage;
 - ELP-related bug causing severe data corruption or potential severe loss of data; or

- a security breach vulnerability is identified.

Priority One Response time:

- Transfer of service request during Business Hours.
- Callback within an average of one hour of service request during Non-Business Hours.
- **Priority Two - ELP Impaired.** ELP is not operating with full capability, but is still operational. Some examples of Priority Two calls include:
 - impaired or broken ELP functionality with significant impact to ELP applications;
 - frequent ELP failure, but minor or no data loss or corruption;
 - ELP reporting features unavailable; or
 - significant ELP performance degradation.

Priority Two Response time:

- Callback within an average of two hours of service request during Business Hours.
- Callback within the next business day of service request during Non-Business Hours.
- **Priority Three - ELP Minor Issues .** ELP is up and running with limited or no significant impact to ELP functionality. Some examples of Priority Three calls include:
 - ELP-related bugs that cause limited or no direct impact to ELP functionality; or
 - requests for administrative services in relation to the ELP application.

Priority Three Response time:

- Callback within an average of four hours of service request during Business Hours.
- Callback within the next business day of service request during Non-Business Hours.
- **Disaster Recovery Response Times**
 - **Major** - Significant data loss and significant effort required for recovery.
Response time: Transfer to next available engineer of all support requests. Sun will make commercially reasonable efforts to provide Company Help Desk with an estimate of ELP recovery time within two hours for Major disasters.
 - **Medium** - Non-critical data loss and significant effort required for recovery.
Response time: Transfer to next available engineer of all support requests. Sun will make commercially reasonable efforts to provide Company Help Desk with an estimate of ELP recovery time within two hours for Medium disasters.
 - **Minor** - No data loss and minimal effort required for recovery.
Response time: Transfer to next available engineer of all support requests. Sun will make commercially reasonable efforts to provide Company Help Desk with an estimate of ELP recovery time by the next business day for Minor disasters.

(c) ELP Upgrades. At Company's request, Sun will make available Upgrades as such Upgrades become generally commercially available. Any Upgrade provided to Company will be subject to the terms and conditions of Company's services agreement with Sun, as well as any supplemental license terms accompanying the Upgrade. Such Upgrades do not include any customizations that may be necessary for installation of the Upgrade for compatibility with any (i) Content; (ii) products or services that Sun licenses separately; or (iii) Client-Side Technology.

(d)Hardware and Server-Side Software Upgrades. Sun, in its sole discretion, may periodically upgrade or enhance the hardware or Server-Side Software located in the Sun hosting facility in the course of providing this Service.

(e)Service Disruptions. Company acknowledges that Company's use of the ELP may be disrupted periodically due to planned service interruptions such as installation and testing of ELP, Upgrades, hardware upgrades or maintenance, Server-Side Software upgrades, database rebuilds,

maintenance and repair activities, and other disruptions. Sun will make commercially reasonable efforts to minimize the impact of planned service disruptions and to notify Company in advance of any scheduled downtime in connection with such services.

3. Company Responsibilities

3.1 First Line Support by Company. Company Help Desk administrators will interact with all Users to identify problems, perform initial troubleshooting, and communicate Error resolution to Users. Company Help Desk administrators will attempt to resolve Errors before escalating to Sun. Company will only escalate reported Errors to the attention of Sun when Company has determined that the ELP is the source of the Error. Sun will not provide support directly to Users. Sun will only provide support directly to Company Help Desk administrators.

3.2 Training of Company Help Desk Administrators. Company will make available the required resources for training by Sun to ensure that Company Help Desk administrators assigned to support the ELP are properly trained in their area of responsibility. Company will ensure throughout the term of service that Company Help Desk administrators who contact Sun are sufficiently trained on the use and operation of the ELP and any other supporting systems or services that are the responsibility of the Company. Company will comply with Sun training requirements to ensure the timely and satisfactory completion of the ELP administrator and help desk training classes by the required number of Company administrators specified in the applicable ELP Pricing Schedule or Order Confirmation, and will purchase additional classes as necessary to maintain the required minimum number of trained Company Help Desk administrators.

3.3 Internet Browser Compatibility. Company will use ELP-approved Internet browsers in connection with the ELP Hosted Services as specified in the documentation or as otherwise designated by Sun from time to time. Company is responsible for all tasks and expenses required to maintain compatibility of the ELP Hosted Services with such Internet browsers.

3.4 Cooperation. Company will cooperate with Sun as necessary to allow Sun to complete all aspects of this Service. Company will promptly implement any remedial actions suggested by Sun. Company acknowledges that failure to implement remedial actions may result in additional time for service recovery.

3.5 Compatibility with ELP and Upgrades. Company is responsible for all tasks and expenses required to maintain compatibility of (i) Client-Side Technology, (ii) Content and (iii) Customizations, with ELP, including specifically as a result of any Upgrade of the ELP (including, without limitation, all tasks and expenses associated with data modification, data re-entry, or redevelopment of, or modifications to, customized interfaces, components or modules as a result of such Upgrade). If Sun provides services to Company for such tasks in relation to any Upgrade, including without limitation any Customization to maintain compatibility with any Upgrade, Company will pay Sun for such services at Sun's then-current time and materials rates.

3.6 Internet Access and Hardware. Company is responsible for all telecommunications, remote connectivity and Internet access, and all related fees, for client side- connection to the ELP Hosted Services.

3.7 Data, User Names and Passwords. Company is responsible for the collection, transfer, and integrity of all data provided by Company or User to Sun. Company will monitor and safeguard any ELP user names and passwords to ensure the authorized use and security of the ELP and any data or other

materials accessible via the ELP. Sun reserves the right to block any improper, unauthorized or redundant user names or passwords used to access the ELP Hosted Services.

3.8 Client-Side Technology and Content. Company is responsible for: (a) procuring licenses and rights to use, purchasing and supporting any Client-Side Technology or Content; and (b) maintaining data backup of any Company or User data and any other materials provided by Company to Sun.

3.9 Interoperability of ELP and Content. Company is responsible for all tasks and expenses associated with formatting, configuring, developing, upgrading, programming, remedying errors and omissions, and otherwise rendering and maintaining any Content provided to Sun by or on behalf of Company to ensure that all such Content are interoperable with, and deliverable via, the ELP. If Sun provides services to Company relating to the interoperability of such Content with the ELP, Company will pay Sun for such services at Sun's then-current time and materials rates unless otherwise agreed to in writing by Sun.

3.10 Fees. Company will pay Sun fees for the ELP Hosted Services as specified in the applicable ELP Pricing Schedule or Order Confirmation. All fees paid in connection with this Hosted Software Service Listing are non-refundable and are based on the applicable Sun prices at the time of order. Company will pay Sun additional fees for any services provided by Sun that are not expressly identified in this ELP Hosted Service Listing (including, without limitation, any services related to bulk loading, updating or migration of Company data to the ELP) at Sun's then-current rates for such services. Fees for this ELP Support Service Listing are non-refundable and are based on the applicable Sun prices at the time of order.

3.11 Supplemental License. Company agrees to accept the terms of the most recent version of Sun's ELP Hosted Supplemental License.

4. Restrictions on Service Delivery

4.1 Purchase and Completion of Prior Services. Company must have purchased the ELP (i) Business Functional and Technical Analysis Service, and (ii) Administrator and Help Desk Training Service (or their equivalents), and all such Services must have been completed before Sun will begin to provide ELP Hosted Services to Company under this ELP Hosted Service Listing unless otherwise required by local law.

4.2 No Sun Support for Content or Client-Side Technology. Unless otherwise agreed to by Sun in writing, this ELP Hosted Service Listing will not apply to, nor will Sun provide support for, any Client-Side Technology or Content. Support for Client-Side Technology or Content may be provided by Sun, at Sun's discretion, to Company. Company agrees that it will pay Sun additional fees for such services and that execution of a separate written agreement may be required.

4.3 End of Life Support. Support for the ELP application will be limited to only the current Major Release and one previous Major Release of the ELP ("End of Life Support Policy"). This ELP Hosted Service Listing does not include services required due to: (i) improper use, abuse, or neglect; (ii) alterations, modifications, or attempts to repair the ELP or other Deliverables that Sun has not authorized or performed; or (iii) causes external to the ELP or other Deliverables.

4.4 Support Restrictions. Unless otherwise agreed to by Sun in writing, support for the ELP does not include services required due to: (i) Company's failure to maintain the Customization and Client-Side Technology at Sun-specified release levels, including release scope specifications therein, or Sun-

specified configurations, (ii) problems relating to accessing or using the Content on the ELP, and (iii) any services beyond the terms of Sun's applicable End of Life Support Policy for ELP.

4.5 Source of Error. Sun, in its discretion, will determine whether the source of any Error (whether reported by Company or discovered by Sun) is within the Sun hosting facility or external to the Sun hosting facility. If Sun determines the source of the Error is within the Sun hosting facility, Sun will make commercially reasonable efforts to resolve the Error. If Sun determines the source and responsibility for resolution of the Error reside outside of the Sun hosting facility, Sun will not be responsible to pinpoint or resolve Errors, but Sun will use commercially reasonable efforts to notify the party or parties responsible for the source of the Error. Company agrees and acknowledges that Sun will not be responsible to resolve Errors that are external to the Sun hosting facility.

4.6 On-Site Support. Sun will not provide any on-site support at Company's facilities unless otherwise specifically agreed to in writing by Sun. In the event that Sun and Company so agree that an on-site visit to a Company facility is required, Company will be responsible for reasonable travel and accommodation expenses incurred by Sun.

4.7 Commencement Date for Services and Acceptance. The Services provided under this ELP Hosted Service Listing will begin on a mutually acceptable date. The ELP Hosted Services and any Deliverables described in this ELP Hosted Service Listing will be deemed accepted by Company upon delivery.

4.8 Additional Restrictions. The ELP and Deliverables described in this ELP Hosted Service Listing may contain Sun and/or third party confidential and proprietary information and are subject to the limitations on use and disclosure as set forth in the General Terms, Purchasing Exhibit, applicable Statements of Work, applicable Service Listings and any supplemental license terms applicable to the ELP and Deliverables.

4.10 Scope. The only Services, tasks and Deliverables Sun will undertake or deliver in providing this ELP Hosted Service Listing are those specifically set forth in this ELP Hosted Service Listing. Sun may use subcontractors to provide the ELP Hosted Services as Sun, at its sole discretion, deems appropriate.

4.11 Failure to Meet Company Responsibilities. Sun will not be obligated to perform if Company fails to fulfill its responsibilities. Company will pay Sun for any services provided by Sun as a result of Company's failure to fulfill its responsibilities at Sun's then current time and materials rates. In addition, under such circumstances Sun reserves the right to (i) restrict or terminate delivery of the Services and/or (ii) modify the price, scope, or delivery schedule for such Services.

In the event that Company purchases the above-described ELP Hosted Services from Sun, this ELP Hosted Service Listing will be incorporated by reference in and subject to the terms of Company's services agreement with Sun and any other supplemental license terms applicable to the ELP. Sun is not obligated to perform the services described in this ELP Hosted Service Listing unless Company has an existing services agreement with Sun and has received an order confirmation from Sun accepting Company's purchase order or electronic order for the ELP Hosted Services. This ELP Hosted Service Listing does not constitute an offer by or invitation to contract with Sun. Service features are subject to availability and may vary by geography. Unless otherwise stated, the ELP Hosted Services described in this ELP Hosted Service Listing are only available within the applicable countries referenced on <http://www.sun.com/service/servicelist/> and only under the applicable service listings thereon.

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