

## **Sun Enterprise Learning Platform Licensed Support – United States**

### **1. Scope**

This Service applies to the Sun Enterprise Learning Platform Licensed software application only and provides Company with technical advice and support for maintaining the ELP as described in Section 2 below.

### **2. Tasks and Deliverables**

#### **2.1 Definitions**

“Business Hours” means 8:30 a.m. to 7:30 p.m. Eastern Time, excluding public holidays.

“Client-Side Technology” means any technology 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 used in conjunction with the ELP.

“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.

“Content” means any training courses, materials, books, examinations, programs, or other training materials available for use in connection with the ELP.

“Customization” means any modification to the ELP performed by Sun specifically at the request of Company that does not constitute an Upgrade.

“ELP” means: (a) the Sun Enterprise Learning Platform Licensed software application (in machine-readable, executable code format only) and includes related documentation, design specifications, embedded application programming interfaces, and applicable Upgrades; and (b) Customizations.

“Error” means a failure of the ELP to operate without significant fault or to substantially conform to material specifications.

“Upgrade” means 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. A “Major Upgrade” is 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., an Upgrade from ELP release 2.0 to 3.0 is a Major Upgrade). A “Minor Upgrade” is indicated by the number appearing to the right of the first decimal (e.g., an Upgrade from ELP release 2.5 to 2.6 is a Minor Upgrade). A “Micro Upgrade” is indicated by the number appearing to the right of the second decimal from left (e.g., an Upgrade from ELP release 2.5.1 to 2.5.2 is a Micro Upgrade).

“User” means an employee or agent of Company who has been authorized by Sun and Company to access the ELP.

The terms “ELP” and “Upgrade” do not include products or services that Sun or its licensors license separately or any Client-Side Technology.

#### **2.2 ELP Support**

##### **2.2.1 ELP Support, Coverage Hours and Response Times.**

- **7x24 Online and Telephone Support.** Sun will provide the Company Help Desk with technical advice and support for maintaining the ELP by telephone and on-line 24 hours per day, 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.
- **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 may 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 loss of data.
      - A security breach vulnerability is identified.
- Response time:**
- Live 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 no data loss or corruption.
    - ELP reporting features unavailable.
    - Significant ELP performance degradation.
- 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 Operational.** 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.
- 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.

**2.2.2 Upgrades.** Sun will make available to Company Major, Minor or Micro Upgrades of the ELP to Company via CD-ROM (or such other format agreed to by Sun and Company) as such Upgrades become generally commercially available and based on the term for this Service purchased by Company. If Company has purchased at least two years of this Service, Sun will make available to Company Major, Minor and Micro Upgrades. If Company has purchased one year of this Service, Sun will provide Company only with Minor and Micro Upgrades. If Company has not purchased this Service from Sun, Company may receive an Upgrade only if purchased separately at Sun's then-current rates for same. 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, and will not be deemed to extend or establish any warranty in the ELP. Sun will provide bug fixes to Company free of charge, exclusive of any installation or implementation services. Company is responsible for all tasks and expenses related to installing and implementing any Upgrades (including bug fixes), unless Company has purchased installation and implementation services from Sun at Sun's then-current time and materials rates.

**2.2.3 Service Disruptions.** In addition to disruptions resulting from events outside of Sun's control, Company acknowledges that Company's use of the ELP may be disrupted periodically due to planned service interruptions such as installation and testing of Upgrades, hardware upgrades, database rebuilds, and other maintenance and repair services, if such services have been purchased by Company and provided by Sun. Where Sun is providing such services to Company, 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

- Company will ensure that Company Help Desk administrators will interact with Users to identify problems, perform initial troubleshooting, and communicate Error resolution to Users, and will

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, and will only provide support directly to Company Help Desk administrators. Company Help Desk administrators will attempt to resolve Errors before escalating to Sun.

- Company is responsible for ensuring that Company Help Desk administrators assigned to support the ELP are properly trained in their area of responsibility (e.g., Company will ensure 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 ensure the timely and satisfactory completion of the ELP Administrator and Help Desk Training Service 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.
- Company agrees to procure and use Sun-supported Internet browsers in connection with the ELP 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 with such Internet browsers.
- Company will cooperate with Sun as necessary to allow Sun to complete all aspects of this Service, and 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.
- Company is responsible for all tasks and expenses required to maintain compatibility of the ELP with any Customizations, Client-Side Technology, Content, data or other Company or third party materials or technology as a result of any Upgrade (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). If Sun provides services to Company for such tasks in relation to any Upgrade, Company will pay Sun for such services at Sun's then-current time and materials rates.
- Company is responsible for all hardware, network security, Internet-accessible server, installation and configuration of the ELP, hosting arrangements, and other Client-Side Technology in relation to operation of the ELP, unless Company has purchased such services from Sun.
- Company is responsible for all aspects of the collection, transfer, processing, integrity, use and security of all Company data and personal data of Users and for obtaining all necessary consents from Users for such use of such data. Company will monitor and safeguard any ELP user names and passwords to ensure the authorized use and security of the ELP, Deliverables and any data or other materials accessible via the ELP.
- Company is responsible for: (a) procuring rights to use, purchasing and supporting any Client-Side Technology or Content; and (b) maintaining data backup of any User data or any other materials accessible via the ELP.
- Company is responsible for all tasks and expenses associated with formatting, configuring, developing, programming, remedying errors and omissions, and otherwise rendering and maintaining any Content or other materials to ensure that all such Content and materials are interoperable with, and deliverable via, the ELP. If Sun provides services to Company relating to the interoperability of such Content and materials with the ELP, Company will pay Sun for such services at Sun's then-current time and materials rates.
- Company will pay Sun fees for this Service as specified in the applicable ELP Pricing Schedule or Order Confirmation.
- Company will pay Sun additional fees for any services provided by Sun that are not expressly identified in this Service Listing (including, without limitation, any services related to bulk loading or migration of Company data) at Sun's then-current rates for such services.

#### **4. Restrictions on Service Delivery**

Sun reserves the right to restrict delivery of this Service and/or modify the price, scope, or schedule for delivery based on Company's fulfillment of its responsibilities under this Service Listing and the following conditions:

- Company has purchased the ELP Business Functional and Technical Analysis, ELP Implementation, and Administrator and Help Desk Training Services, and such services have been completed prior to commencement of this Service.

- Unless otherwise agreed to by Sun in writing, this Service will not apply to any Client-Side Technology or Content. Support for Client-Side Technology or Content may be provided by Sun, in its discretion, to Company. Company agrees that it will pay Sun additional fees for such services and that execution of a separate agreement may be required. Sun will only provide this Service if Sun has performed the installation and implementation of the ELP (including any Upgrades).
- Support for the ELP does not include services required due to Company's failure to maintain the ELP and Client-Side Technology at Sun-specified minimum release levels or configurations necessary to keep the ELP within the terms of Sun's applicable end of life support policy, or to properly install Upgrades as directed by Sun. Support for the ELP will be limited to the current Major release and one previous Major release of the ELP only. This Service does not include services required due to: (a) improper use, abuse, or neglect; (b) any alterations, modifications, or attempts to repair the ELP or other Deliverables that Sun has not authorized or performed; or (c) causes external to the ELP or other Deliverables.
- Sun will, in its discretion, determine whether the source of any Error (whether reported by Company or discovered by Sun) is within the ELP or external to the ELP. If Sun determines the source of the Error is within the ELP, Sun will make commercially reasonable efforts to resolve the Error. If Sun determines the source and responsibility for resolution of any Error is external to the ELP, Sun will not be responsible to pinpoint or resolve such Error.
- Sun will not provide any on-site support at Company's facilities unless agreed to in writing by Sun. In the event that Sun and Company determine that an on-site visit to a Company facility is required, Company will be responsible for reasonable travel and accommodation expenses incurred by Sun.
- Sun may use subcontractors in those roles it deems appropriate.
- This Service will begin on a mutually acceptable date.
- The Deliverables described in this Service Listing will be deemed accepted by Company upon delivery.
- The Deliverables described in this Service Listing may contain Sun confidential and proprietary information and are subject to the limitations on use and disclosure as set forth in Company's services agreement with Sun and any supplemental license terms accompanying the Deliverables.
- Fees for this Service are non-refundable and are based on the applicable Sun prices at the time of order.
- Unless otherwise specified in the applicable ELP Pricing Schedule or Order Confirmation, the minimum initial term for this Service is three years commencing on the date Sun issues an Order Confirmation for this Service and will automatically renew for successive one year terms unless Company or Sun provides written notice of cancellation of this Service not less than 30 days prior to the expiration of the applicable term (unless earlier terminated by Company or Sun in accordance with Company's services agreement with Sun).
- The only tasks and Deliverables Sun will undertake or deliver in providing this Service are those specifically set forth in this Service Listing.
- Sun will not be obligated to perform this Service if Company fails to comply with its responsibilities under this Service Listing. Company will pay Sun for any services provided by Sun as a result of Company's failure to comply with its responsibilities at Sun's then-current time and materials rates.

In the event that Company purchases the above-described Service from Sun, this 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 accompanying the Deliverables. Sun is not obligated to perform the services described in this 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 this Service. This 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 Service described in this Service Listing is only available within the above-referenced country.

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