

# TRIAL AGREEMENT DETAILS

## FUJITSU Cloud Service S5

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<b>Parties</b>	<b>Customer and Supplier</b>	
<b>Customer</b>	Name:	-----
	ABN:	-----
	Incorporated in:	Australia
	Address:	-----
	Attention:	-----
	Email:	-----
<b>Supplier</b>	Name	<b>Fujitsu Australia Limited</b>
	ABN	19 001 011 427
	Incorporated in	Australia
	Registered Address	118 Talavera Road, Macquarie Park NSW 2113
	Business office	118 Talavera Road, Macquarie Park NSW 2113
	Attention:	Group General Manager – Commercial Law Group
<b>Recitals</b>	<b>A</b>	Supplier provides Cloud technology services from its infrastructure to customers.
	<b>B</b>	Customer wishes to conduct a 60-day end-to-end trial of the Supplier’s Cloud technology (“ <b>Trial</b> ”) during the trial period set out in clause 5 (Trial Period) to evaluate the possibility of entering into a formal agreement with the Supplier for the provision of the Supplier’s Cloud technology on agreed modules.
	<b>C</b>	The parties have agreed to conduct the end-to-end trial on the terms of this agreement.
<b>Date of agreement</b>	-----	

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## General terms

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### **1 Authority to Commence Work**

Customer agrees to conduct an evaluation (“Trial“) of the Supplier’s Cloud technology, including, hardware, software, applications and access terminals ( “ Trial Equipment “) as described in Attachment A. Customer authorises the Supplier to commence the Trial in accordance with this Agreement.

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### **2 Supply of Trial Equipment For Trial Use Only**

The Supplier agrees to provide access to Customer, at its own cost, of the Trial Equipment for use solely for the Trial, for use by Customer during the Trial in accordance with this Agreement.

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### **3 Access Terminals**

The Supplier will be responsible for the provision of the Trial Equipment and all access terminals for the Trial

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### **4 Support services**

During the Trial, Supplier will supply Customer with reasonable support, training and other services. An engagement Project Manager will be appointed by the Supplier and will document all actions/processes and the environment prior to commencement of the Service.

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### **5 Trial Period**

This Agreement is effective from the commencement of the Trial and will continue (unless terminated earlier under clause 11 or otherwise) until the end of the Trial Period of 60 Days or such other date as agreed between the parties in writing.

Commencement Date: \_\_\_\_\_

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## **6 Trial is at Supplier's Risk**

- 6.1 Title to Trial Equipment provided by the Supplier shall remain with the Supplier. Risk of loss or damage to such equipment and/or software shall remain with the Supplier except to the extent that such loss or damage is attributable to Customer's wilful or intentional misconduct.

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## **7 Supplier to Support the Trial Equipment**

The Supplier agrees to maintain and support, the Trial Equipment during the Trial Period as set out in Attachment A. The Supplier agrees to use reasonable efforts to address, as soon as reasonably possible any technical problems relating to the Trial Equipment that arise during the Trial Period.

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## **8 Customer to give reasonable assistance to Supplier**

- 8.1 Without limiting any other obligations of Customer set out in this Agreement, Customer shall provide reasonable assistance to the Supplier to ensure the Trial is a success and will provide personnel, as is reasonably requested by the Supplier so that such personnel can undertake the Trial at the Trial Location(s).
- 8.2 During the Trial, Customer shall permit the Supplier, upon reasonable request, to perform maintenance and support of the Trial Equipment as the Supplier deems appropriate.

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## **9 Standard of Work**

Any services provided by the Supplier shall be undertaken in accordance with all reasonable directions given to the Supplier by Customer, and with the level of professional skill, care, planning, supervision, control and judgement which may be expected of a professional organisation highly familiar with and experienced in providing services of the type and complexity of the services provided.

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## **10 Occupational Health and Safety**

The Supplier will comply with its obligations under the Occupational Health & Safety (Commonwealth Employment) Act 1991 (**OHS Act**) and any other Commonwealth, State or Territory legislation imposing obligations on the Supplier in relation to the Trial and Trial Equipment. .

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## **11 Termination**

- 11.1 Either party may terminate this Agreement if the other party commits a material breach of this Agreement and does not, within 30 days of receipt of notice in writing to do so, rectify the breach.
- 11.2 Either party may also terminate this Agreement at any time without cause by giving no less than 20 Business Days' notice in writing to the other party. Where Customer terminates this Agreement without cause Customer must pay all reasonable set up costs

incurred by the Supplier up to the date the Supplier receives the written notice of termination. The Supplier will use all reasonable endeavours to mitigate such costs.

11.3 Upon expiration or termination of this Agreement

- a) neither party shall be relieved of any obligations due at the time of such expiration or termination, nor shall such expiration or termination prejudice any claim of either party accrued on account of any default or breach by the other; and
- b) each party shall immediately return to the other party, if requested to do so, or destroy, all promotional materials and all Information which has been supplied by the other party

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## 12 Variation

This Agreement may only be varied in writing signed by both parties and such variation will only be binding on both parties when executed by a duly authorised representative of both parties.

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## 13 Representations

- 13.1 Neither this Agreement nor Customer's agreement to participate in the Trial constitutes in any way a representation by Customer to the Supplier that Customer is committed to the Supplier in any manner or in respect of anything related to the Trial, other than as expressly set out in this Agreement. Regardless of the result of the Trial, Customer will not be required to place any orders for any goods or services under this Agreement or other agreement.
- 13.2 Customer acknowledges that nothing in this Agreement shall be construed as a commitment by the Supplier to offer the goods or services to Customer or to anyone else following the termination of the Trial.
- 13.3 Notwithstanding the foregoing, Customer may, at its sole discretion, purchase services relating to the use of the Trial Equipment under a Cloud Environment.

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## 14 Intellectual Property

- 14.1 The Supplier and Customer agree that all Intellectual Property rights associated with or relating to, test results, statistical information, or other information generated from or created during the undertaking of the Trial under the terms of this Agreement ("Trial IP") shall vest in and be owned by the Supplier. All Intellectual Property associated with or relating to the products, software, techniques, know how, processes or methodologies owned by or licensed to Customer and the Supplier prior to the commencement of the Trial and provided by a party for use in the Trial shall remain, as between Customer and the Supplier, the absolute property of Customer and the Supplier respectively ("Background IP").
- 14.2 The Customer shall not modify, reverse engineer, disassemble, or decompile the goods or services; or cause or permit copying, display, loan, disclosure, publication, transfer of possession or other dissemination of the goods and services, except as expressly permitted by the terms of this Agreement.
- 14.3 The Customer warrants that it will not commercially exploit or otherwise deal with any Supplier IP or data that is embedded in the Trial IP or Background IP of Supplier to the

detriment of Supplier including provision of such Trial IP or Background IP to any third party without the prior written consent of Supplier.

- 14.4 The Supplier hereby grants Customer a limited non-exclusive, non-transferable licence to use the Supplier Background IP relating to the Trial Equipment for the sole purpose of Customer evaluating the Trial Equipment. Such license shall lapse on termination of this Agreement.
- 14.5 Customer agrees that upon expiration or termination of this Agreement, Customer will promptly return all copies of goods and services and associated documentation to the Supplier in the same condition as received, reasonable wear and tear excepted, and shall erase all computer programs from the personal computer on which they were loaded.

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## **15 Warranties**

- 15.1 Supplier warrants that the Trial Equipment to be provided and services to be performed by Supplier under this Agreement will not infringe the Intellectual Property rights of any person.
- 15.2 Except for the warranty stated in Clause 15.1, the goods and services are offered on an “as is” basis. The Supplier makes no warranties or representations relating to the reliability, effectiveness, accuracy, completeness, performance or operation of the goods and services. The Supplier does not guarantee that the services will not cause interruptions in or interference with the Customer’s telecommunications or other services which interconnect with the goods and services.

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## **16 Limitation of Liability**

- 16.1 Neither party (including but not limited to each party’s affiliates, directors or employees) shall be liable to the other for any claim, losses, damages or expenses of any kind howsoever arising including but not limited to any special, incidental, consequential, indirect or direct including but not limited to lost profits or revenues, costs of standstill, loss or mutilation of data. This restriction of liability does not apply in the case of bodily injury or death caused by the negligence of either party or its employees, agents or affiliates.
- 16.2 The parties agree that this Agreement applies to the Trial only and that neither party will have any liability to the other arising from the conduct of the Trial which shall be undertaken in good faith, except in the case of bodily injury or death caused by the negligence of either party or its employees, agents or affiliates.

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## **17 Confidentiality**

### **17.1 Disclosure of Confidential Information**

No Confidential Information may be disclosed by the recipient of that Confidential Information (“**recipient**”) to any person except:

- (a) Representatives of the recipient or its Related Entities requiring the information for the purposes of this Agreement; or
- (b) with the consent of the party who supplied the information; or

- (c) if the recipient is required or authorised to do so by law or a stock exchange; or
- (d) if the recipient is required to do so in connection with legal proceedings relating to this Agreement.

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## **17.2 Announcements, releases and Trial Location visits**

A party may not make press or other announcements or releases relating to this Agreement and the transactions the subject of this Agreement without the approval of the other party to the form and manner of the announcement or release.

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## **18 Costs**

- 18.1 The cost for the first sixty (60) day period shall be at no cost. In the event the trial continues beyond this period Fujitsu's standard pricing for the platform shall apply.
- 18.2 Should any additional services be required over and above the scope of the trial, a quote will be provided to the Customer for sign off
- 18.3 Unless otherwise stated, the Customer shall bear its own expenses associated with the Trial

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## **19 Notices**

### **19.1 Form**

Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing, signed by the sender and marked for the attention of the person identified as the recipient.

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## **20 Assignment**

Neither party may assign or otherwise deal with its rights under this Agreement without the prior written consent of the other party which consent must not be unreasonably withheld or delayed.

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## **21 Entire agreement**

This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

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## **22 No representations or warranties**

Each party acknowledges that in entering into this Agreement it has not relied on any representations or warranties about its subject matter except as expressly provided by the written terms of this Agreement.



# Attachment A

The Customer will trial the Suppliers FUJITSU Cloud Service S5 offering.

The Customer will configure the service via the self-service portal with a demo provided by Fujitsu.

All requirements for the Trial will be agreed between the Supplier and the Customer before the Trial commences.

Customer will use the equipment provided during the trial to test the capability of the FUJITSU Cloud Service S5.

## SCOPE OF TRIAL

- 60-day free trial of Fujitsu's Cloud Platform
- Ten (10) Economy Virtual Machine types each with:
  - Windows/CentOS Operating System
  - 1 x 1GHZ CPU
  - 1.7 GB Memory
  - Operating System Disk
    - Windows Server 2008: 40GB
    - Windows Server 2012: 180GB
    - CentOS: 10GB
  - 30 GB Additional Disk (maximum capacity)
- Middleware: Microsoft SQL Server
- One (1) Load Balancer System
- One (1) Internet connection with 1 public IP address
- Access to Fujitsu's 24 x 7 infrastructure support
- SLA's do not apply
- More resources can be provisioned easily as required (extra cost)
- **No commitment at the end of the trial will result in the contract being suspended and ALL data and servers being removed by Fujitsu after 30 days**