

# Fresa Technologies

Neutral IT Solution Provider

## Disclaimer

The following is intended to outline our general product direction. It is intended for information purposes only, and may not be incorporated into any contract. It is not a commitment to deliver any material, code, or functionality, and should not be relied upon in making purchasing decision. The development, release, and timing of any features or functionality described for Fresa Technologies products remains at the sole discretion of Fresa Technologies.

# APPLICATION SERVICE AGREEMENT

Fresa Gold / Fresa XPress/ Fresa Website/ Fresa Mail Products Online

This Application Service Agreement (further referred as "Agreement") is made and effective from day-1(online), by and between **Client** ("Buyer"), located at "Buyer Address" and Fresa Technologies Pvt Ltd, herein referred as the seller, registered at Block 17A-2P, Jains Green Acres, Darga Road, Pallavaram, Chennai-600 043, Tamil Nadu, India.

WHEREAS, Fresa Technologies is the sole and exclusive owner of Fresa Gold / Fresa XPress Online, which is a web-based freight forwarding software system ("Software"); and

WHEREAS, Buyer desires to license and obtain a remote access to the "Fresa Gold / Fresa XPress/Fresa Website/Fresa Mail Online" Software.

NOW, THEREFORE, in consideration of the mutual promises, the parties agree as follows:

## **1. License Grants and Ownership Rights**

- A.** Subject to Buyer's compliance with the terms and conditions of this Agreement, Fresa Technologies grants Buyer a non-exclusive and non-transferable right to remotely access and use the Software ONLY by Buyer's personnel and ONLY for the internal needs within Buyer's organization. Right is granted for the period starting from the date of execution of this Agreement and till the date of its termination.
- B. Buyer may not:**
- (i) Attempt to modify the Software or derive its source code.
  - (ii) Create any programming code, scripts or application that will attempt to access Software interfaces and stored data.
  - (iii) Redistribute, encumber, sell, rent, lease, sublicense, or otherwise transfer the Software or rights thereto.
  - (iv) Publish, or otherwise make available to any third party, any benchmark information or testing results.
  - (v) Share the Software or any parts of the Software with any commercial or non-commercial organization as a part of other products or as a component of Buyer's services.
- C.** Title, ownership rights, and intellectual property rights for the Software shall remain in Fresa Technologies. Buyer acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with Fresa Technologies ownership and rights with respect to the Software. Buyer agrees that nothing contained in this Agreement shall be construed to restrict any of Fresa Technologies rights of use of the same technologies, algorithms, methods, programming languages, interfaces and software architectural solutions for further work.

Further Buyer agrees that this Agreement doesn't apply any restriction for Fresa Technologies work with other companies in the same industry and target markets as Buyer's.

## 2. Services

- A. Fresa Technologies agrees to provide Buyer with electronic access to the Software hosted and maintained by or on behalf of Fresa Technologies.
- B. Fresa Technologies shall make the Software available on Internet and use its best efforts to provide access to the Software on a twenty-four hours a day, seven days a week basis. However as far as both parties acknowledge that the Internet is neither owned nor controlled by any one entity, Fresa Technologies cannot warranty that Buyer will be able to access the Software at any given time. Therefore Fresa Technologies will not be liable for inaccessible or inoperable Software should it happen for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs, which Fresa Technologies or Internet Service Providers may undertake from time to time; or (iii) causes beyond the control of Fresa Technologies including, without limitation, interruption or failure of telecommunication or digital transmission links, delays or failures due to Internet Service Provider, hostile network attacks, network congestion or other failures.
- C. Fresa Technologies will take care of Software maintenance works, including improvements and upgrades to more powerful versions, which become publicly available releases. Upgrades will be performed with Buyer's consent and at the date and time defined by Fresa Technologies with consultations with Buyer.
- D. Fresa Technologies will make periodical backup copies of the time-tracking data collected by Buyer. Fresa Technologies does not provide any warranty and disclaim any liability in respect of data safety, consistency and integrity. Buyer bears the entire risk for any loss of data or its quality.
- E. Upon the mutual agreement of the parties they may add other services to this agreement. Such services shall be outlined and supplemented as a subsequent exhibit, which is governed by the terms and conditions of this Agreement.

### **3. Fees and Payment Terms**

- A.** Buyer shall pay Fresa Technologies recurring usage fees described in Quotation "Fees and Payment Schedule" ("Schedule"). All fees are payable in advance within 15 calendar days from the date of Fresa Technologies invoice. Invoices for recurring payments will be issued 15 calendar days before the end of the last paid period.
- B.** If there is no on-time payment Fresa Technologies service can be interrupted with 48 hours preliminary notification. Service interrupted for more than 30 calendar days is a subject of termination of this Agreement.
- C.** Buyer may choose to follow either six-month, or one-year payment period. At the end of each payment period Buyer may reconsider its previous choice and change the length of the next payment period or the number of user accounts.
- D.** Any prepayment is considered as a commitment regarding the payment period and without any exception (including termination of Agreement) cannot be refunded.
- E.** Fresa Technologies reserve right to change fees specified in the Schedule with 30 days preliminary notification to Buyer. New fees will apply to the next unpaid payment period and will be added as a new subsequent exhibit to this agreement.
- F.** No bank, transaction, tax or any other fees shall be paid in expense of Fresa Technologies.

### **4. Independence of operations**

Nothing contained in this Agreement shall be construed to imply a joint venture, partnership or principal-agent relationship between the parties. And neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

### **5. Development Monitoring**

Buyer shall have the right to reasonably observe and monitor the performance of Fresa Technologies obligations hereunder and Fresa Technologies shall use reasonable efforts to facilitate such observation and monitoring.

## **6. Confidentiality**

Each party acknowledges that it may have access or receive "Confidential Information" from the other party in connection with its performance under this Agreement, either in writing or verbally. Each party hereby agrees to maintain the confidentiality of all such information and not disclose such information to third parties except to employees authorized to receive such information or make any use of such information, except in carrying out its obligations under this Agreement. Information considered confidential by either party includes without limitation (a) matter of a technical nature such as trade secret processes or devices, know-how, data formulas, inventions, (whether or not patentable or copyrighted), training materials, specifications and characteristics of products planned or being developed, and research subjects, methods and results, (b) matters of a business nature such as information about costs, profits, pricing policies, markets, sales suppliers, customers, employees, product plans, and marketing plans or strategies, (c) other information of a similar nature not generally disclosed by the either party to the public.

The obligations under this section shall not apply to information which (i) is or becomes generally known to the public through no fault of the receiving party; (ii) was known to the receiving party prior to the date it was disclosed by the other party; or (iii) is disclosed to the receiving party by a third party having no obligation of confidentiality to the other party with respect to such information.

The terms of this section shall survive during the entire life period of this contract and for a period of one (1) year from the termination of contract by both parties.

## **7. Disclaimer of warranty for the Software**

The Software is provided with all faults on an "as is" basis. Fresa Technologies disclaims all warranties, whether express or implied, including the warranties that the Software is free of defects and able to operate on an uninterrupted basis, that the functionality of the Software will meet Buyer's requirements, or that errors in the software will be corrected. Further, Fresa Technologies does not warrant or make any representations regarding the use or the results of the use of the Software in terms of their correctness, accuracy, reliability, or otherwise. No oral or written information or advice given by Fresa Technologies representative shall create a warranty or in any way increase the scope of any warranty that cannot be disclaimed under applicable law. Fresa Technologies has no liability with respect to Buyer's use of the software. Buyer bears the entire risk as to their quality and performance and assumes the entire cost of any service and repair.

## 8. Limitation of Liability

With the exception of sections 1-C (Ownership) and 6 (Confidentiality) to the maximum extent permitted by applicable law, in no event will either party, or its respective parents, affiliates, directors, employees, distributors, suppliers, agents or resellers be liable for any indirect, special, incidental, consequential, or exemplary damages arising out of or in any way relating to this Agreement, including, but not limited to lost profits, lost data, loss of goodwill, work cancellation, computer failure or malfunction, or any and all other commercial damages or losses, even if such party has been advised of the possibility thereof, and regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based.

With the exception of sections 1, 2 (Services) and 6 (Confidentiality) in no event shall either party's aggregate liability for losses or damages relating to or arising out of this Agreement exceeding the amount of the service fees actually paid by Buyer to Fresa Technologies.

## 9. Term and Termination

- A.** This Agreement shall commence upon the effective date and shall continue thereafter for one year, unless sooner terminated pursuant to this Section 9. This Agreement shall renew automatically for successive one year terms.
- B.** Both the Parties have the rights to terminate this Agreement at the end of the prepaid period and with 30 calendar day's preliminary notification to the other party.
- C.** This Agreement shall terminate automatically if in accordance with Section 3-B (delayed payment) service is interrupted for more than 30 calendar days.
- D.** Section 1-C (ownership) and Section 6 (confidentiality) shall survive the expiration or termination of this Agreement.
- E.** At the time of termination of the contract, Seller shall provide the data backup, software execution files and running environment of the software to Buyer at the mutual understanding of the hardware and software cost for such implementations.

## **10. Force Majeure**

- A.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
  
- B.** Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

## **11. No Waiver**

The failure of a party to require strict performance of any provision of this Agreement by the other, or the forbearance to exercise any right or remedy, shall not be construed as a waiver by such party of any such right or remedy or preclude any other exercise thereof or the exercise of any other right or remedy.

## **12. Assignment**

The rights, duties and privileges of parties shall not be transferred or assigned by them, in whole or in part, without the prior mutual written consent.

## **13. Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements,

representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

#### **14. Severability**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

#### **15. Governing Law**

This agreement is governed by and shall be construed in accordance with the laws of the Rules of India without giving effect to any principles of conflicts of law. The venue of arbitration shall be at Chennai, Tamil Nadu, India.

#### **16. Headings**

The headings used in this Agreement are for convenience only and are not to be used in construction or interpretation.

On behalf of  
Client Name  
terms of this exhibit were accepted by

On behalf of  
Fresa Technologies Pvt Ltd.,  
terms of this Agreement were accepted by

Name of the Authorized Person  
Position  
Email id

J.P.R. Ramesh  
Director  
jpr@fresatechnologies.com