

## CRESCENTONE INC.

200 Continental Blvd., 3<sup>rd</sup> Floor, El Segundo, CA 90245, U.S.A.  
Telephone: (310) 563-7000      www.crescentone.com



### CRESCENTONE ON DEMAND TERMS OF SERVICE

PLEASE NOTE: THE PROVISIONS OF THIS DOCUMENT WILL BE LEGALLY BINDING ON CUSTOMER UPON EXECUTION OF ONE OR MORE CRESCENTONE SERVICE ORDERS. CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE EXECUTING THE ORDER.

**1. General.** Customer acknowledges and agrees that the services described on any CrescentOne on Demand Service Order signed by Customer and accepted by CrescentOne Inc. (fka Fujitsu Glovia, Inc.) ("CrescentOne")(the "Service") are subject to all of the provisions contained in these Terms of Service (the "Terms"). These Terms, together with any Addenda, Schedules and/or Amendments expressly agreed to in writing by CrescentOne and the Customer, shall be referred to collectively as the "Agreement". In addition, Customer agrees that unless explicitly stated otherwise, any new features that augment or enhance the Service, and/or any new service(s) subsequently subscribed to by the Customer will be subject to the Terms.

#### **2. Customer's Responsibilities.**

**2.1. Internet Access, PC Configuration.** In order to use the Service, Customer must have or must obtain access to a secure IPsec connection to the World Wide Web. Customer must also provide all equipment necessary to make such (and maintain such) connection to the World Wide Web. Customer must also have or must obtain a PC with at least the following: an 800 Mhz Pentium equivalent processor with 256 MB RAM, 3 GB of disk, a display with Super VGA (1024x768) or higher resolution with 256 colors, and a mouse or equivalent pointer device.

**2.2. Accuracy Of Customer's Registration Information.** Customer agrees to provide accurate, current and complete information about Customer ("Registration Data") in order to gain access to the Service. Customer further agrees to use commercially reasonable efforts to maintain and promptly update the Registration Data to keep it accurate, current and complete. Customer acknowledges and agrees that if Customer provides information that is intentionally inaccurate, not current or incomplete in a material way, or CrescentOne has reasonable grounds to believe that such information is untrue, inaccurate, not current or complete in a material way, CrescentOne has the right to suspend Customer's account.

**2.3. Email And Notices.** Customer agrees to provide CrescentOne with Customer's e-mail address, to promptly provide CrescentOne with any changes to Customer's e-mail address, and to accept emails (or other electronic communications) from CrescentOne at the e-mail address Customer specifies. Except as otherwise provided in this Agreement, Customer further agrees that CrescentOne may provide any and all notices, statements, and other communications to Customer through either e-mail or posting on the Service.

**2.4. Passwords, Access, And Notification.** Customer may designate up to the number of individual users under Customer's account, which corresponds to the number of Named Users for which Customer has subscribed, and Customer may provide and assign unique passwords and user names to each such authorized Named User. Customer acknowledges and agrees that Customer (and each individual user) is prohibited from sharing or allowing users to share passwords and/or user names with unauthorized users. Customer will be responsible for the confidentiality and use of Customer's (including its employees' and subcontractors) passwords and user names. Customer will also be responsible for all data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account ("Electronic Communications"), including, but not limited to, those containing business information, Registration Data, other account holder information, and financial information ("Customer Data"). CrescentOne will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer agrees to immediately notify CrescentOne if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's passwords, user names, and/or account number.

**2.5. Customer's Lawful Conduct.** The Service allows Customer to send Electronic Communications directly to CrescentOne and to third-parties. Customer agrees to comply with all applicable local, state,

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federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications, and anti-spam legislation. Customer will not send any Electronic Communications from the Service that are unlawful, harassing, libelous, defamatory, or threatening. Except as permitted by the Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the Service by any means other than through the interfaces that are provided by CrescentOne. Customer shall not license, rent, sell, lease, transfer, assign, distribute, display, host, outsource, disclose, or otherwise commercially exploit or make the Service available to any third party other than a Named User, including but not limited to, creating internet links to the Service which include log-in information, including but not limited to, user names, passwords, secure cookies, and/or "mirroring" or "framing" any part of the Service. Customer will not upload, post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (including rights of publicity and privacy) without first obtaining the permission of the owner of such rights. Customer will not in any way express or imply that any opinions contained in Customer's Electronic Communications are endorsed by CrescentOne. Neither Customer, nor someone acting on Customer's behalf, will use the Service to target for solicitation any CrescentOne customers for purposes of providing any competitive product. Customer will ensure that any use of the Service by Customer's employees (or users) is in accordance with the terms and conditions of this Agreement.

**2.6. Third-Party Software.** Customer agrees to use software produced by third parties, including, but not limited to, MS Internet Explorer V6 SP1, SP2 or V7. Customer acknowledges that CrescentOne is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such software or for any compromise of data transmitted across computer networks not owned or operated by CrescentOne or telecommunications facilities, including, but not limited to, the Internet.

**2.7. Use of Services By Customer.** Customer acknowledges and agrees that the Service shall solely be used by the Named Users for which Customer has subscribed, and that their use shall be solely in direct support of Customer's normal commercial information processing, the results of such processing solely for the benefit of Customer and the divisions, subsidiaries, and/or affiliates in which it or its parent owns or otherwise controls at least fifty-one percent (51%) of the assets and/or voting shares (the "Normal Operations").

**2.8. Storage Limits.** Database storage is limited to data that is legitimately related to Customer's use of the Service for its Normal Operations. Customer acknowledges that it may not use the Services as a data repository for unrelated data. Any use of database storage outside the scope of these Terms will be charged additional fees at CrescentOne's current storage rates. In addition to the production database for the Customer's Normal Operations, CrescentOne will provide an education database limited to 5gb.

### 3. Service Description.

**3.1. Scope of Services.** The Services covered by the Agreement shall include such services described in any Service Order or other Order, Addendum, Exhibit or Amendment expressly agreed to by Customer and CrescentOne. Customer acknowledges and agrees that any Professional Services (including, but not limited to consulting services, implementation services, migration services, customization services, training services and/or education classes) shall be covered by a separate agreement, subject to separate terms and conditions.

**3.2. CrescentOne on Demand Support.** CrescentOne will make commercially reasonable efforts to promote Customer's successful utilization of the Service, including but not limited to providing Customer with User Guides, online help, and access to the CrescentOne on Demand Service Desk. CrescentOne also offers optional Professional Services consultation and training classes for an additional fee. Customer acknowledges that CrescentOne has extensive experience helping Customers improve utilization and realization of benefits of the Service, and that not following the advice of CrescentOne in these areas may substantially undermine Customer's successful utilization of the Service.

### 4. Confidential and Proprietary Information.

**4.1. Proprietary Rights.** Customer acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that content or information presented to Customer through the Service or by advertisers may be protected by copyrights,

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trademarks, service marks, patents or other proprietary rights and laws, and that its use of such proprietary materials shall be limited to the use described in the Agreement.

**4.2. Trademark Information.** CrescentOne On Demand, CrescentOne, and other service marks, trademarks, logos and product and service names are marks of CrescentOne. Customer agrees not to display or use the CrescentOne Marks in any manner without CrescentOne's express prior written permission.

**4.3. Confidential Information.** For purposes of this Agreement, confidential information shall include the terms of the Agreement, Customer Data, and any information that is clearly identified in writing at the time of disclosure as confidential ("Confidential Information"). Each party agrees: (a) to keep confidential all Confidential Information disclosed to it by the other party or by a third-party; (b) not to use the Confidential Information of the other party except to the extent necessary to perform its obligations hereunder; and (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information). CrescentOne will restrict its employees' access to Customer's Confidential Information to only those employees necessary to successfully provide the Service. CrescentOne may disclose Confidential Information on a need-to-know basis to its contractors who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services for CrescentOne in connection with the performance of this Agreement. Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the recipient, subsequent to disclosure by the disclosing party; or (4) the recipient becomes aware of from a third party not bound by non-disclosure obligations to the disclosing party and with the lawful right to disclose such information to the recipient. This Section 4.3 will not be construed to prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority. The parties agree to give the other party prompt notice of the receipt of any subpoena or other similar request for such disclosure. With respect to any information received by either party from the other as a result of any other relationship between the parties other than as licensor and licensee (or customer and service provider, as the case may be) under this Agreement (i.e., business development, partnership, alliance, etc.), the parties will abide by the terms and conditions of any Nondisclosure Agreement (or similar agreement) executed between the parties.

**4.4. Transmission Of Data.** Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to Customer's use of the Service. Customer expressly consents to CrescentOne's interception and storage of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by CrescentOne. Customer acknowledges and understands that changes to Customer's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Customer agrees that CrescentOne is not responsible for any Electronic Communications and/or Customer Data which are lost, altered, intercepted or stored without authorization during the transmission of any data whatsoever across networks not owned and/or operated by CrescentOne.

## 5. Limited Warranties.

**5.1. Warranty Of Functionality.** CrescentOne warrants to Customer during the Term of Customer's subscription to the Service that the Service will achieve in all material respects the functionality described in the relevant portions of the CrescentOne On Demand User Guides and in other related documentation (available at <https://www.crescentone.com/on-demand-terms/> or successor Web site) and that such functionality will be maintained in all material respects in subsequent upgrades to the Service. CrescentOne does not warrant that the Service will be error-free. Customer's sole and exclusive remedy for CrescentOne's breach of this warranty shall be that CrescentOne shall be required to use commercially reasonable efforts to modify the Service to achieve in all material respects the functionality described in the CrescentOne On Demand User Guides and other related documentation and if CrescentOne is unable to restore such functionality Customer shall be entitled to terminate the Agreement and shall be entitled to receive a pro-rata refund of the Monthly Fees paid for under the Agreement for its use of the Service but which use has not yet been furnished by CrescentOne as of the date of such termination. CrescentOne shall have no obligation with respect to a warranty claim unless notified of such claim within sixty (60) days of the

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first instance of any material functionality problem, and such notice must be sent to [Accounting-AR@crestcentone.com](mailto:Accounting-AR@crestcentone.com).

**5.2. Service Level Warranty.** CrescentOne warrants during the Term of Customer's subscription to the Service that in each month, the Service will meet the service levels outlined in Exhibit A, attached to these Terms and incorporated by this reference.

**5.3. Security, Data Maintenance And Backup Warranty.** CrescentOne warrants during the Term of Customer's subscription to the Service that CrescentOne will use commercially reasonable efforts to ensure that Customer's Data will be safeguarded and maintained accurately. CrescentOne also warrants that it will, at a minimum, utilize and maintain security and backup procedures as listed in Exhibit B, attached to these Terms and incorporated by this reference, to protect Customer Data. In the event of a breach of this provision, CrescentOne will use commercially reasonable efforts to correct the Customer's Data or restore the Customer's Data within three (3) business days. In the event CrescentOne is unable to correct or restore Customer's Data as provided in this Section 5.3, Customer's sole and exclusive remedy shall be that it may at its option terminate its subscription to the Service and receive a pro-rata refund of any fees paid under the Agreement for its use of the Service but which use has not yet been furnished by CrescentOne as of the date of termination.

**5.4. Non-Infringement Warranty.** CrescentOne warrants that it is the sole owner and has full power and authority to grant the license and use of the Service and other rights granted by the Agreement to Customer with respect to the Service and that neither the performance by Customer in its utilization of the Service, nor the license of and authorized use by Customer of the Service as described herein will in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

**5.5. Links.** The Service may provide, or third parties may provide, links to other World Wide Web sites or resources. Because CrescentOne has no control over such sites and resources, Customer acknowledges and agrees that CrescentOne is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources.

**5.6. Disclaimer Of Warranties.** EXCEPT AS STATED IN THIS SECTION 5, CRESCENTONE DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN THIS SECTION 5 ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY CRESCENTONE. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN THIS SECTION 5, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

**5.7. Limitations Of Liability.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THE CONSIDERATION WHICH CRESCENTONE IS CHARGING IN CONNECTION WITH THE AGREEMENT DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY CRESCENTONE OF THE RISK OF CUSTOMER'S INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), ARISING FROM BREACH OF WARRANTY OR BREACH OF CONTRACT, OR NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT. THE MAXIMUM LIABILITY OF EITHER PARTY TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER ARISING OUT OF OR IN THE CONNECTION WITH ANY LICENSE, USE OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, TORT, OR OTHERWISE, SHALL IN NO CASE EXCEED THE EQUIVALENT OF 12 MONTHS IN MONTHLY FEES APPLICABLE AT THE TIME OF THE EVENT. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF THE PARTIES ARISING FROM THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET

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FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION LEVIED IN CONNECTION WITH THE USE OF THE SERVICE AND THAT, WERE CRESCENTONE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS STATED IN THE AGREEMENT, SUCH CONSIDERATION WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER. THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO ANY INDEMNITY OBLIGATIONS SET FORTH IN SECTION 6 BELOW.

### 6. Indemnification.

**6.1. Infringement.** CrescentOne will indemnify, defend and hold Customer harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer which arise out of or result from the infringement of any copyright, patent, trademark, or misappropriation of a trade secret relating to the Service; provided that Customer (a) promptly gives CrescentOne notice of the claim, suit, action, or proceeding; (b) gives CrescentOne sole control of the defense and related settlement negotiations; and (c) provides CrescentOne with all reasonably available information and assistance necessary to perform CrescentOne's obligations under this paragraph. If the Service is held to infringe any intellectual property right, CrescentOne may, in its sole discretion and at its own expense, either procure a license that will protect Customer against such claim without cost to Customer or replace the Service with a non-infringing Service. Provided that CrescentOne complies with this Section 6.1, Customer shall have no remedy against CrescentOne, except it may at its option terminate the Agreement and receive a pro-rata refund of the Monthly Fees paid for under the Agreement for its use of the Service but which use has not yet been furnished by CrescentOne as of the date of such termination.

**6.2. Disclosure Of Customer Data.** CrescentOne will fully indemnify, defend and hold Customer harmless from and against any Losses arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer which arise out of or result from CrescentOne's gross negligence in preventing unauthorized access to confidential Customer data, or CrescentOne's willful disclosure of such confidential Customer data, as determined by a court of competent jurisdiction in connection with a claim by a third party alleging a breach of confidentiality. In addition, CrescentOne will indemnify Customer up to an amount equal to the equivalent of 12 months times the Monthly Fees applicable at the time of the event, from and against any Losses incurred by Customer with respect to any third party claim, suit, action, or proceeding arising out of or relating to CrescentOne's breach of Section 4.3 of this Agreement (which breach does not rise to the level of gross negligence in preventing unauthorized access to confidential Customer Data or CrescentOne's willful disclosure of such confidential Customer Data as described in Section 6.2). CrescentOne's indemnification obligations under this Section 6.2 are expressly premised upon Customer (a) promptly giving CrescentOne notice of any such third party claim, suit, action, or proceeding; (b) giving CrescentOne sole control of the defense and related settlement negotiations; and (c) promptly providing CrescentOne with all reasonably available information and assistance necessary to perform CrescentOne's obligations under this Section 6.2. Provided that CrescentOne complies with this Section 6.2, Customer shall have no remedy against CrescentOne, except it may at its option terminate the Agreement and receive a pro-rata refund of the Monthly Fees paid for under the Agreement for its use of the Service but which use has not yet been furnished by CrescentOne as of the date of such termination.

**6.3. Customer's Indemnity.** Customer shall defend and hold CrescentOne harmless from and against any and all Losses arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against CrescentOne which arise out of or result from a claim by a third-party (i) alleging that the Customer Data or any Trademarks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party, or (ii) arising out of Customer's breach of Section 2.5 and 4.3 above, provided that CrescentOne (a) promptly provides Customer notice of the claim, suit, action, or proceeding; (b) gives Customer sole control of the defense and related settlement negotiations; and (c) provides Customer with all reasonably available information and assistance necessary to perform Customer's obligations under this paragraph.

**7. Fees and Payment.** CrescentOne reserves the right to increase the standard Monthly Fees it charges for the Service at any time, subject to providing Customer with at least sixty (60) days advance notice of the increase. However, notwithstanding any such changes to CrescentOne's standard pricing, Customer's Monthly Fees will not be increased any sooner than the expiration of the minimum term specified in the Service Order, or more than once in any calendar year, and no increase will exceed 10% of the Monthly Fees charged to Customer in the period immediately preceding the increase.

## 8. Suspension/Termination.

**8.1. Suspension For Delinquent Account.** CrescentOne reserves the right to suspend Customer's access and/or use of the Service for any accounts for which any payment is due but unpaid but only after CrescentOne has provided Customer three (3) email notices over no less than a thirty (30) day period. Customer agrees that CrescentOne shall not be liable to Customer nor to any third party for any suspension of the Service resulting from Customer's nonpayment of fees as described in this Section 8.1.

**8.2. Suspension For Ongoing Harm.** Customer agrees that CrescentOne may with reasonably contemporaneous telephonic notice to Customer suspend Customer's access to the Service if CrescentOne reasonably concludes that Customer use of the Service is causing immediate and ongoing harm to CrescentOne or others. In the extraordinary event that CrescentOne suspends Customer's access to the Service, CrescentOne will use commercially reasonable efforts to resolve the issues causing the suspension of Service. Customer agrees that CrescentOne shall not be liable to Customer or to any third party for any suspension of the Service under such circumstances as described in this Section 8.2.

**8.3. In The Event of Material Breach.** Either party may terminate this Agreement upon thirty (30) days written notice to the other party in the event of a breach of a material provision of this Agreement by the other party, provided that, during the thirty (30) day period, the breaching party fails to cure such breach. Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service. If this Agreement is terminated as a result of a breach on CrescentOne's part, CrescentOne shall refund the pro rata portion of any fee that may have been paid by Customer for the portion of the Service not furnished to Customer.

**8.4. Handling Of Customer Data In The Event Of Termination.** Customer acknowledges and agrees that following termination of Customer's account and/or use of the Service, CrescentOne may immediately deactivate Customer's account and that following a reasonable period of not less than 90 days shall be able to delete Customer's account and related Customer Data. However, in the event that Customer's Service with CrescentOne terminates, CrescentOne will provide Customer with a copy in electronic format of the Customer Data as it existed in the database of the Service as of the date of termination, provided that Customer has paid in full all good faith undisputed amounts owed to CrescentOne. Customer further agrees that CrescentOne shall not be liable to Customer or to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that CrescentOne is in compliance with the terms of this Section 8.4.

**8.5. Modification To Or Discontinuation Of The Service.** CrescentOne reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof). In the event that CrescentOne modifies the Service in a manner which removes or disables a feature or functionality on which Customer materially relies, CrescentOne, at Customer's request, shall use commercially reasonable efforts to substantially restore such functionality to Customer. In the event that CrescentOne is unable to substantially restore such functionality, Customer shall have the right to terminate the Agreement and receive a pro-rata refund of the Monthly Fees paid under the Agreement for use of the Service which was paid for by Customer but not yet furnished by CrescentOne as of the date of such termination. Customer acknowledges that CrescentOne reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term. Customer agrees that CrescentOne shall not be liable to Customer or to any third party for any modification of the Service as described in this Section 8.

**8.6. Modification To The Terms.** CrescentOne reserves the right at any time and from time to time to modify these Terms.

**8.7. Effects of Termination.** The following obligations shall survive termination of the Agreement for any reason:

**8.7.1.** all obligations relating to non-use and nondisclosure of the Confidential Information;

**8.7.2.** all applicable obligations relating to indemnification and protection of proprietary rights;

**8.7.3.** all obligations to make payments of amounts that are or become due under the Agreement prior to the effective date of termination (except as otherwise provided in the Agreement); and

**8.7.4.** all provisions regarding the limitations and exclusions of liability, warranty, and remedy.

**9. GENERAL TERMS**

**9.1. Governing Law and Jurisdiction.** The Agreement, and all matters arising out of or relating to the Agreement, will be governed by the procedural and substantive laws and regulations of the State of California, United States of America, without reference to the choice of law principles thereof provided. Unless expressly otherwise agreed by the parties, the parties agree to submit to the exclusive jurisdiction of state or federal courts located in Los Angeles County, California, United States of America.

**9.2. Attorneys' Fees And Costs.** If either party to the Agreement brings any action, suit, counterclaim, appeal, arbitration, or mediation against the other party regarding the terms of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs as determined by the Court, arbitrator, or mediator.

**9.3. Assignment.** Customer may not assign or otherwise transfer the Agreement or any license, right, or obligation under this Agreement without CrescentOne's express prior written consent. Any attempted unauthorized assignment by Customer shall be wholly null and void and of no force or effect whatsoever.

**9.4. Force Majeure.** Excluding only Customer's material obligations of Confidentiality and payment, neither party will otherwise be responsible to the other party for any nonperformance or delay in the performance of its obligations under the Agreement due to Acts of God, acts of governments, fire, natural disaster, terrorism, labor stoppage, war or military hostilities, riots, accidents in transportation, criminal acts of third parties, or other causes beyond the commercially reasonable control of the nonperforming party, provided, however, that in the event of any such nonperformance, the nonperforming party shall be required to promptly notify the other party of such nonperformance and of the date when such performance has resumed.

**9.5. Notices.** Any notice which is or may be required to be given under the Agreement must be in writing. Routine notices concerning the Service, Support, User Guides or changes in the Terms may be given by e-mail as provided in Section 2.3 of these Terms. However, all notices concerning breach or termination of the Agreement will be sent by registered or certified mail, postage prepaid, return receipt requested, or by commercial courier service, fees prepaid. All notices will be deemed to have been given when received, addressed to Customer at the address specified in the Registration Data as of the date of the notice, and to CrescentOne at the following address: CrescentOne, Inc. Attn: General Counsel, 200 Continental Blvd., 3<sup>rd</sup> Floor, El Segundo, CA 90245.

**9.6. Severability.** In the event that any provision contained in the Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, such illegality, invalidity or unenforceability will not affect (i) the other provisions of the Agreement; (ii) the application of such provision to any circumstance other than that for which the Agreement was held to be illegal, invalid, or unenforceable; and (iii) the legality, validity, or enforceability of the Agreement as a whole.

**9.7. Waiver.** The waiver by Customer or CrescentOne of any default or breach of the Agreement will not constitute a waiver of any other or subsequent default or breach. Except for actions relating to Customer's nonpayment and/or material breach of the Agreement, no action, regardless of form, arising out of the Agreement may be brought by Customer or CrescentOne more than one (1) year after the cause of action has accrued.

**9.8. Purchase Orders.** Except for identifying the licenses and/or services that Customer is ordering under the Agreement only for Customer's own internal purposes, the charges, terms and conditions contained or referenced in Customer's purchase order or other ordering document will be of no force or effect whatsoever and shall in no way alter or modify any portion of the Agreement.

**9.9. Amendment.** Except as otherwise provided in these Terms, no portion of the Agreement may be modified or amended except in a writing signed by Customer's and CrescentOne's authorized representatives, and no other act, document, usage, or custom will be deemed to amend or modify the Agreement in any way.

**9.10. Integration.** This Agreement shall constitute the entire understanding of the parties as to the subject matter hereof and shall entirely supersede all prior and contemporaneous agreements, understandings, and representations, written and oral. There are no undertakings, restrictions, promises, warranties or covenants except as expressly stated herein.

**EXHIBIT A  
SERVICE LEVEL AGREEMENT**

CrescentOne performs maintenance and upgrades during scheduled times as follows:

Sun-Thu	Friday	Saturday
11:00 PM to 1:00 AM	11:00 PM to 4:00 AM	11:00 PM to 4:00 AM
Pacific Time	Pacific Time	Pacific Time

CrescentOne will periodically perform major upgrades, which may extend beyond the scheduled times shown above.

From time to time, in its sole discretion, CrescentOne may have to perform unscheduled maintenance.

CrescentOne will use commercially reasonable efforts to notify Customer of any maintenance or upgrades outside the regularly scheduled maintenance hours.

Except for the maintenance and upgrades listed above, CrescentOne guarantees 99.5% uptime for the Service. If in a calendar month these commitments are not met, Customer's sole and exclusive remedy is that CrescentOne will provide Customer with a credit for one month's Monthly Fees. Any credit is expressly conditioned upon Customer providing CrescentOne written notice of such failure sent to [Accounting-AR@crestone.com](mailto:Accounting-AR@crestone.com) by the tenth day of the month following such service level failure.



## EXHIBIT B SECURITY

### Security Overview

CrescentOne's security strategy is to protect Customer data at multiple levels, which includes data security, data integrity, and data privacy. To ensure the privacy, security, and availability of Customer data and transactions, CrescentOne employs the following technologies in delivering its service.

- Secure Data Center
- Encrypted User Authentication
- Internet Firewalls
- Network Translation and Proxy Services
- IPsec or Secure Socket Layer Data Encryption (SSL)
- Highly Available Routers and Switches
- Highly Available, and Secure Web and Application Servers
- Highly Available Power
- Highly Available Data Access
- Scheduled Backups, Offsite Storage
- Highly Available Application
- Secure Operating Systems
- Data Security

### Data Center Security

CrescentOne's production systems are located in one of the leading fully managed hosting facilities. Production application and database servers along with network equipment are housed at this facility which provides 24x7 security. To access the facility, personnel must pass several security levels guarded by state of the technology including encoded IDs and biometric readers

### Network Security

CrescentOne's network is protected by redundant firewalls and monitored for unauthorized access. Firewall logs are reviewed on a regular basis. The network has been architected to be highly reliable and redundant. If a router, load balancer, or firewall should fail, this architecture ensures a working path to all CrescentOne Service connections.

### Data Security and Availability

CrescentOne uses a secure connection to communicate between your site and the Data Center. Data encryption is controlled through the secured connection protecting your data as it passes across the network. CrescentOne provides you with secure single sign on and authentication to the CrescentOne Service. The Oracle databases cannot be directly accessed by end-user software. Administrative users are restricted to a controlled list; individual activities are restricted, logged, and monitored. Data is stored on highly redundant storage systems. The Oracle DB servers are configured using RAID 5 with dual parity. All data is written to both primary and nearline storage providing a 30 day rolling incremental online disk backup.

# CRESCENTONE INC.

## **Secure Application Access**

CrescentOne's users access the Service using secure single sign on and authentication. A customer cannot view or access another customer's data. Every successful and unsuccessful access is tracked, monitored, and made available to the customer.

## **System Security**

CrescentOne enforces tightly controlled passwords on its servers and network equipment. CrescentOne limits access to production systems to authorized personnel only. Passwords are changed on a regular basis.

## **System Reliability**

CrescentOne looks at its application as well as the infrastructure as a tightly integrated system. All aspects of the system are designed to be reliable to ensure continued availability in the event that a component fails. CrescentOne employs a virtual resource architecture that provides fast recovery from equipment failure. CrescentOne operates the Service using an expert team and state of the art tools to manage, monitor, backup, and perform necessary maintenance. System administrators respond to monitoring alerts 24x7 and repair critical failures.

## **Data and Backups**

Customer data is stored on network attached storage (NAS) using RAID 5 with dual parity. In the event of a disk failure, the customer will not experience an interruption of service. All data is written to both primary and nearline storage providing a 30 day rolling incremental online disk backup. In addition, all customer data is automatically backed up to a tape library system. Tapes are taken offsite to a secure location that is designed to safeguard tapes under almost any environmental condition.