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Subscription Terms and Conditions

These Subscription Terms and Conditions (the “**Agreement**”) constitute a legal agreement between you (“**you**” or “**Company**”) and Superna, LLC., a Delaware limited liability company with a place of business located at 225 Cedar Hill St., Ste. 200, Marlborough, MA 01752 (“Superna”). Your right to use the Superna software product identified in an Order Email is set forth in this Agreement.

THIS IS A LEGAL AGREEMENT. BY ACCESSING AND USING THE LICENSED PRODUCT ON A SUBSCRIPTION BASIS, YOU ARE ACCEPTING AND AGREEING TO THIS AGREEMENT ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT IN CONNECTION WITH SUCH ACCESS, OR USE. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE ON BEHALF OF COMPANY. IF YOU DO NOT AGREE WITH ANY OF THE TERMS SET FORTH HEREIN, YOU SHOULD CEASE ACCESSING OR USING THE LICENSED PRODUCT IMMEDIATELY AND TERMINATE YOUR SUBSCRIPTION IN ACCORDANCE WITH SECTION 5 OF THIS AGREEMENT.

SECTION 8 DESCRIBES IMPORTANT LIMITATIONS OF THE LICENSED PRODUCT AND OPTIONAL FEATURES, ESPECIALLY IN CONNECTION WITH IMPLEMENTATION, SYSTEM DESIGN, DATA LOSS AND FAILOVER OF DATA. PLEASE READ THIS SECTION CAREFULLY. BY ACCESSING OR USING THE LICENSED PRODUCT OR CONTINUING TO DO SO, YOU ACKNOWLEDGE AND AGREE TO THESE LIMITATIONS.

1. Definitions:

1.1 **Affiliate** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "**Control**," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2 **Computer System** means the computer hardware equipment on which Company has elected to install and/or execute the Licensed Program.

1.3 **Designated Storage Medium** means a single physical hardware device or virtual system made available through a third party, such as Amazon® Simple Storage Service (Amazon S3™) (each a "**Cloud Provider**"), that supports the storage of files in the Amazon S3 storage object format or the Microsoft Azure blob format.

1.4 **Device** means a physical hardware or virtual system that supports the IP protocol for communications and is recognized by the Licensed Program as a manageable system. Such Devices may be physical, virtual or a manageable component of a larger system. Examples of Devices that may be recognized by the Licensed Program include but are not limited to: computer servers, computer clients, virtual machines, hypervisors, hypervisor management servers, blade servers, converged infrastructure devices, routers, switches, virtual switches, access points, firewalls, load balancers, wireless access points, VPN concentrators, network

appliances, virtual network device instances, storage devices, storage appliances, point of sale systems, printers, phone switches, telecommunications equipment,

UPS, power devices, industrial control systems and other systems supporting IP communications discovered by the Licensed Program.

1.5 **Documentation** means the softcopy documentation that may be provided by Superna with the Subscription, such as user manuals, guides, release notes, or online help information.

1.6 **Effective Date** means the date the Subscription begins, which shall be the date the Order Email is sent to Company.

1.7 **Error** means a failure of the Licensed Program to materially conform to its Documentation, but excluding any nonconformity resulting from Company's: (a) misuse, improper use, or unauthorized modification of any Licensed Product; (b) Company's failure to implement Updates or Upgrades; or (c) the combining of the Licensed Product with hardware or software other than the Prerequisites or other than as contemplated by the Documentation

1.8 **Fees** means the aggregate fees for the Subscription selected by Company, and for any Services.

1.9 **High Risk System** means a device or system for which it is reasonably foreseeable that failure of the device or system could lead directly to death, personal injury, or catastrophic property damage. Without limitation, High Risk Systems may be required in critical infrastructure, industrial plants, manufacturing facilities, direct life support devices, aircraft, train, boat or vehicle navigation or communication systems, air traffic control, weapons systems, nuclear facilities, power plants, medical systems and facilities, and transportation facilities.

1.10 **Licensed Product** means, collectively, the Licensed Program, any Licensed Program application program interface ("**API**") and the Documentation

1.11 **Licensed Program** means the executable code version of the Superna software, and any Optional Features, identified in an Order Email. Licensed Program includes any Updates or Upgrades that may be delivered by Superna to Company during the Subscription Term, as defined in Section 5.1. Licensed Program does not include Prerequisites, as defined in Section 4.2, or Third Party Code.

1.12 **Maintenance and Technical Support Services** means those services described in Section 9 and Exhibit A, attached hereto, and incorporated herein by reference. The term Maintenance and Technical Support Services does not include Professional Services.

1.13 **Optional Features** means additional license key-enabled or other functionality of the Licensed Program that Company may acquire rights to use, as further described in Section 8.2.

1.14 **Order Email** means an email or other communication from Superna that may include one (1) or more of the following: (a) identification of the Licensed Program; (b) the Subscription term; (c) the Authorized Use Limitation, as defined in Section 3.2, if any; (d) the duration of any Evaluation Period, as defined in Section 3.1; and (g) a specific Professional Service part reference number.

1.15 **Professional Services** means those services described in Exhibit B, attached hereto, and incorporated herein by reference. The term Professional Services does not include Maintenance and Technical Support Services.

1.16 **Services** refers collectively to Maintenance and Technical Support Services and Professional Services.

1.17 **Subscription** refers to Customer's entitlement to use the Licensed Program and access the Maintenance and Technical Support Services for such Licensed Program during the Subscription Term.

1.18 **Subscription Term** has the meaning set forth in Section 5.1.

1.19 **System Data** refers to data about Computer Systems, Devices, Designated Storage Media, and related software required by Superna to perform the Services for Company and may include, but not be limited to, documentation, test data, sample output storage device configuration data, Cloud Provider configuration, DNS names, and IP addresses of DNS, NTP, storage devices, and network subnets. System Data also includes data collected by Superna regarding Company's usage of the Licensed Program and related Services.

1.20 **Third Party Code** means any code, libraries or other components included in the Licensed Program as set forth [here](#).

1.21 **Update** means a release of the Licensed Program that contains error corrections and/or minor functional enhancements.

1.22 **Upgrade** means a version of the Licensed Program that contains new or substantial functional enhancements.

2. Fees; Payments:

2.1 **Fees:** The Fees are due and payable by Company in accordance with the terms and conditions provided by Superna's authorized reseller. For any other amounts owed to Superna pursuant to this Agreement, such payments shall be made in United States dollars, and if not paid within thirty (30) days of when due (or such longer period set forth in an invoice) will be subject to interest at the rate of eighteen percent (18%) annually, or the maximum amount allowed by applicable law if lower, calculated from the date when payment was due until payment is made. In addition, Company agrees to pay any reasonable cost of collecting any past-due amounts under this Agreement, including but not limited to attorneys' fees and costs.

2.2 **Taxes:** The Fees for the Services do not include any excise, sales, use, value added or other taxes, tariffs or duties that may be applicable to the Services. When Superna has the legal obligation to collect such taxes, tariffs or duties, the amount of such taxes, tariffs and duties will be invoiced to Company, and Company will pay such amount unless Company provides Superna with a timely and valid tax exemption certificate (or similar document) authorized by the appropriate taxing authority and reasonably acceptable to Superna. All payments by Company for the Services will be made free and clear of, and without reduction for, any withholding taxes. Any such taxes which are otherwise imposed on payments to Superna will be Company's sole responsibility. Company will provide Superna with official receipts issued by the appropriate taxing authority or such other evidence as is reasonably requested by Superna to establish that such taxes have been paid.

2.3 **Registration; Product Notifications:** At its discretion, Superna may include features in the Licensed Program to prevent unlicensed use of the Licensed Program. You agree that Superna may do so. Commencing on the Effective Date, Company shall be entitled to access or use Maintenance and Technical Support Services as described in Section 9.1 In order to validate a Subscription through the Superna website, Company must provide current, accurate Company email domains, product appliance identification or appliance ID, and other information

requested by Superna as part of the Subscription registration process (collectively, **"Registration Information"**). Company is responsible for maintaining the accuracy and completeness of Registration Information at all times that a Subscription is active. Any delay by Company to validate a Subscription shall not change the Effective Date or extend the Subscription Term. In the event that Company fails to validate the Subscription within six (6) months of the date of the Order Email, Customer's entitlement to the Subscription and the Licensed Program shall terminate. By providing Superna with the Registration Information you affirmatively opt-in to receive email communications from Superna with respect to product releases and advisories, new product announcements and training and marketing materials, such as links to webcasts (**"Product Notifications"**). Company may unsubscribe from Product Notifications at any time. However, you acknowledge that by unsubscribing from Product Notifications Company may not receive essential information related to the Licensed Program and Maintenance and Technical Support Services.

2.4 Credentials: Company is responsible for maintaining the confidentiality of its credentials to access or use the Subscription, including the Maintenance and Technical Support Services and, accordingly, will be fully responsible for all activities that occur utilizing such credentials, including any unauthorized use. Company agrees to immediately notify Superna of any unauthorized use of Customer credentials or any other breach of security with respect to the Subscription. Superna will not be liable for any loss or damage arising from Company's failure to provide Superna with accurate Registration Information or to keep their Customer credentials secure.

3. License; Feedback:

3.1 Evaluation License: With respect to any Subscription identified in an Order Email as evaluation or demonstration software, Superna hereby grants, and Company hereby accepts, a limited, revocable, non-exclusive, non-transferable license to use the Licensed Product covered by the Subscription, and the Documentation supplied with such Licensed Program, solely for internal non-production testing, evaluation, and demonstration purposes, and not for commercial use (the **"Evaluation License"**), and the license grant set forth in Section 3.2 shall not apply. Each Evaluation License shall be limited to use by Company for five (5) days, unless otherwise set forth in the Order Email (the **"Evaluation Period"**) and shall be subject to the license restrictions set forth in Section 3.3. Any Evaluation License granted pursuant to this Section 3.1 may

include limited features and functionality at Superna's sole discretion and is limited to on one (1) Designated Storage Medium during the Evaluation Period. Company may not designate a new Designated Storage Medium during the Evaluation Period. Notwithstanding anything to the contrary in an Order Email or other communication between the parties, Superna will not and does not grant any right to make production use of the Licensed Program unless Company acquires a paid Subscription to use the Licensed Product. The Company acknowledges and agrees that in connection with any Evaluation License, notwithstanding anything to the contrary set forth in this Agreement:

1. THE LICENSED PROGRAM IS PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT;
2. SUPERNA SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL, OR FOR LOST REVENUES, OR LOST DATA, SYSTEMS OR LOST PROFITS, UNDER ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE; AND
3. SUPERNA SHALL HAVE NO INDEMNIFICATION OBLIGATION TO COMPANY, INCLUDING BUT NOT LIMITED TO CLAIMS ALLEGING THAT THE USE OF THE LICENSED PROGRAM INFRINGES OR MISAPPROPRIATES THE COPYRIGHT OR CANADIAN OR U.S. PATENT RIGHTS OF A THIRD PARTY.

3.2 License: Subject to Company's compliance with the terms set forth in this Agreement, Superna grants to Company a limited, revocable, non-exclusive, non-transferable license to the Licensed Product identified in the Order Email solely for Company's own internal use for the duration of the Subscription Term. This license does not extend to Company Affiliates unless agreed in writing by Superna and Company. This license to use certain Licensed Products may be limited to one (1) or more Designated Storage Media, or the monitoring of a maximum number of Devices, as set forth in the applicable Order Email (each an "**Authorized Use Limitation**"). Notwithstanding the foregoing, Company's license to use the Optional Features shall commence on the date of the Order Email and continue until expiration or termination of the Subscription in accordance with Section 5.

3.3. License Restrictions:

1. Company shall not, and shall not permit any third party to:
 - a. copy the Licensed Products, in whole or in part;
 - b. modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Licensed Products;
 - c. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Licensed Products to any party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
 - d. transfer the Licensed Program to any third party after it is installed on the Computer System;
 - e. monitor more Devices than set forth in the Authorized Use Limitation or implement a new Designated Storage Medium after installation of the Licensed Program without written permission from Superna;
 - f. reverse engineer, disassemble, decompile, decode, or adapt the Licensed Products;
 - g. remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any disclaimers, or trademark or other proprietary rights symbols or notices, on any copy of the Licensed Products;
 - h. use the Licensed Product in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property or other right of any third party, or that violates any applicable law;
 - i. use the Licensed Product in such a way that results in Company's development of software products that are directly or indirectly competitive with the Licensed Program or other Superna products or services; or
 - j. use the Licensed Product for any purpose or application not expressly permitted by this Agreement.

2. Licenses to use the Superna Eyeglass Search & Recover feature and the Superna Eyeglass Golden Copy product are:

1.
 - a. Bound to the designated virtual appliance and not transferable to another physical location after license keys are downloaded without paying a license key unlock fee; and

2.

b. Locked to the hardware serial number of the device being indexed.

3. Cluster-based licenses to use the Superna Eyeglass DR product, version 2 or later, are locked to a cluster GUID and once applied cannot be re-hosted.

3.4 **Feedback:** Company may provide to Superna suggestions, comments, and feedback regarding evaluation, testing and use of the Licensed Product and the Services, including but not limited to usability, bug reports, and enhancement or feature requests or recommendations ("**Feedback**"). Company agrees that Superna and its Affiliates shall be free to use, disclose, reproduce, license, or otherwise distribute, and exploit the Feedback as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

4. Ownership; Prerequisites; Third Party Code:

4.1 The Licensed Product is the proprietary property of Superna or its licensors and is protected by the copyright and trademark law of the U.S., international treaties, and other applicable laws. Superna, its Affiliates and licensors retain any and all right, title, and interest in and to the Licensed Product, including in all copies, improvements, enhancements, modifications, and derivative works of the Licensed Product. Company's rights to use the Licensed Product shall be limited to those expressly granted in Section 3.2. All rights not expressly granted to Company are retained by Superna, its Affiliates or its licensors.

4.2 Superna shall identify a list of prerequisite hardware and software required for installation and use of the Licensed Program ("**Prerequisites**"). Company shall be responsible for acquiring, or authorizing Superna to acquire on Company's behalf, all Prerequisites prior to installation and use of the Licensed Program. Superna shall not be a party to any software or other license agreement associated with the Prerequisites whether or not downloaded or installed by Superna personnel on Company's behalf. Notwithstanding anything to the contrary in this Agreement, Superna makes no warranty of any kind with regard to the Prerequisites.

4.3 Superna shall identify a list of Third Party Code contained within the Licensed Program located [here](#), and all such Third Party Code shall be subject to the license terms set forth therein. Superna shall not be a party to any software or other license agreement associated with Company's use of the Third Party

Code. Notwithstanding anything to the contrary in this Agreement, Superna makes no warranty of any kind with regard to the Third Party Code.

5. Term and Termination:

5.1 The term of this Agreement shall be for a period commencing upon the Effective Date and continuing until the Subscription end date indicated in the Order Email, or until this Agreement is terminated in accordance with Section 5.2 (the **"Subscription Term"**). Superna will provide notice to Company by email or through the user interface of the Licensed Program at least ninety (90) days prior to the expiration of the Subscription Term. Before or upon expiration of the then-current Subscription Term, Company may purchase a renewal of the Subscription, in which case a renewal license key will be sent to Company via an Order Email describing the details of the renewal Subscription, including the new Subscription Term for such renewal Subscription. If the Subscription is not renewed prior to expiration, upon expiration of the Subscription Term, the functionality of the Licensed Program and all features thereof shall immediately cease.

5.2 Superna shall have the right to terminate the Subscription and Company's ability to use the Licensed Product if Company fails to pay any required Fees or otherwise fails to comply with the terms and conditions set forth herein (each a **"Default"**). In the event of a non-payment related Default, Superna shall give written notice to Company of such Default, and, if the Default has not been remedied within thirty (30) days after such notice, the Subscription, the Subscription shall terminate. In the event of a payment-related Default where Company has failed to pay any required Fee, Superna shall give written notice to Company of such Default, and, if the Default has not been remedied in full within five (5) days of such notice, the Subscription, all licenses granted hereunder, and all entitlement to access the Services are hereby automatically revoked without further notice.

5.3 Company agrees, upon termination of this Agreement for any reason, to immediately return or destroy the Licensed Product and copies thereof as directed by Superna and, if requested by Superna, to provide written certification of the destruction or return thereof.

5.4 Sections 2.1, 3.3, 3.4, 4.1, 5.3, 5.4, 7.2, 10, 11, 12, 13.3, 13.4, 13.10, 13.11 and 13.15 of this Agreement, and Sections 4 and 6 of Exhibit B hereto, shall survive the expiration or termination of Company's license and this Agreement.

6. Warranty:

6.1 Superna warrants that during the Subscription Term: (a) the Licensed Program will substantially conform to the specifications in the Documentation, including any known bugs or defects, when used in accordance with the Documentation; and (b) the Services shall be performed in a reasonable and skillful manner, consistent with generally accepted industry standards.

6.2 The Documentation is provided “as is” with no warranties of any kind.

6.3 Company’s exclusive remedy for any breach of the warranties contained in Section 6.1 during the Program Warranty Period or Maintenance and Technical Support Warranty Period, as applicable, is for Superna, at its expense, to use commercially reasonable efforts to: (a) replace or repair the Licensed Program; or (b) re-perform the Services. Company must notify Superna in writing of any such non-compliance with these warranties within fifteen (15) days of identifying such non-compliance (the “**Notice Period**”).

6.4 In the event Superna is unable, after using commercially reasonable efforts, to remedy the non-compliance with a warranty set forth in Section 6.1(a) or 6.1(b) after receipt of notification from Company during the Notice Period, Company’s sole and exclusive remedy shall be to terminate the Subscription, uninstall the Licensed Product, terminate Company’s rights under this Agreement and receive a pro-rata refund of Fees actually received by Superna from Company for the Subscription.

6.5 Any modification or attempted modification of the Licensed Product by Company, any failure by Company to implement any Update or Upgrade to the Licensed Product as supplied by Superna, or any use of the Licensed Product not in compliance with the specifications set forth in the Documentation, shall void the limited warranties set forth in Section 6.1.

6.6 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 6:

3.

a.

- i. SUPERNA, ITS AFFILIATES, LICENSORS AND RESELLERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT

LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AS WELL AS ALL WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW;

4.

a.

- ii. SUPERNA, ITS AFFILIATES, LICENSORS AND RESELLERS, MAKE NO WARRANTY THAT THE LICENSED PRODUCT AND/OR MAINTENANCE AND TECHNICAL SUPPORT SERVICES WILL MEET COMPANY'S REQUIREMENTS, THAT THE LICENSED PRODUCT AND/OR MAINTENANCE AND TECHNICAL SUPPORT SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, THAT ANY PRODUCT DATA OR USAGE DATA STORED BY SUPERNA WILL BE SECURE FROM ALL POSSIBLE THREATS, ACCURATE OR RELIABLE, THAT ERRORS OR DEFECTS IN THE LICENSED PROGRAM WILL BE CORRECTED, OR THAT THE LICENSED PRODUCT OR MAINTENANCE AND TECHNICAL SUPPORT SERVICES WILL BE FREE OF ALL POSSIBLE VIRUSES OR OTHER HARMFUL CODE; NOR DOES SUPERNA MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE LICENSED PRODUCT AND/OR MAINTENANCE AND TECHNICAL SUPPORT SERVICES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW;

5.

a.

- iii. NEITHER SUPERNA, NOR ITS AFFILIATES, LICENSORS OR RESELLERS MAKE ANY WARRANTY THAT THE LICENSED PRODUCT OR THE MAINTENANCE AND TECHNICAL SUPPORT SERVICES WILL: (i) DETECT OR PREVENT ANY OR ALL MALICIOUS CODE OR THAT USE OF THE LICENSED PROGRAM AND RELATED UPDATES OR UPGRADES WILL KEEP COMPANY'S NETWORK OR COMPUTER SYSTEMS FREE FROM VIRUSES OR OTHER MALICIOUS OR UNWANTED CONTENT OR SAFE FROM INTRUSIONS OR OTHER SECURITY BREACHES; or (ii) NOT RESULT IN DAMAGE TO COPIED FILES, ERRORS IN COPIED DATA OR

THAT DATA WILL BE COPIED OR SAVED AT ANY PARTICULAR SPEED; AND

- iv. NEITHER SUPERNA, NOR ITS AFFILIATES, LICENSORS OR RESELLERS MAKE ANY WARRANTY RELATED TO FEES, OVERAGES OR OTHER CHARGES IMPOSED BY CLOUD STORAGE SERVICE PROVIDERS AND INCURRED BY COMPANY IN CONNECTION WITH ITS USE OF THE LICENSED PROGRAM. ANY SUCH FEES, COSTS, OR OVERAGES ARE THE SOLE RESPONSIBILITY OF COMPANY.

7. Mutual Indemnification:

7.1 Superna shall defend Company against any claim, demand, suit, or proceeding made or brought against Company by a third party alleging that the use of the Licensed Program or a Deliverable, as defined in Exhibit B, Section 1.1, as permitted hereunder, infringes or misappropriates the copyright or Canadian or U.S. patent rights of a third party (a "**Claim Against Company**"), and shall indemnify Company for any damages, attorneys' fees and costs finally awarded against Company as a result of, and for amounts paid by Company under a court approved settlement of, a Claim Against Company; provided, however, that Company shall: (a) promptly give Superna written notice of the Claim Against Company; (b) give Superna sole control of the defense and settlement of the Claim Against Company (provided that Superna may not settle any Claim Against Company unless the settlement unconditionally releases Company of all liability); and (c) provide to Superna all reasonable assistance, at Superna's expense. In the event of a Claim Against Company, or if Superna reasonably believes a Licensed Program or Deliverable may infringe, Superna may in its discretion and at no cost to Company: (i) modify the Licensed Program or Deliverable so that it no longer infringes, without breaching its warranties under Section 6.1 above, or Exhibit B, Section 5.1(a), as applicable, (ii) obtain a license for Company's continued use of the Licensed Program or the Deliverable, or (iii) terminate Company's Subscription for such Licensed Program or Deliverable upon ten (10) days' written notice and refund payments actually received by Superna for the Licensed Product or Deliverable licensed to Company which is the subject of the infringement claim. Superna shall have no indemnification obligation for any claim to the extent based upon the following: (a) Company's use of the Licensed Program or Deliverable in combination with other items when such infringement would not have occurred from the use of the Licensed Program or Deliverable solely for the purpose for which they were designed or sold by Superna; (b) modifications to the Licensed Program or

Deliverable not authorized in writing by Superna; or (c) Company's continued use of the Licensed Program or Deliverable following notification to suspend use due to a claim or threat of a claim.

7.2. Company shall defend Superna, and its Affiliates, licensors and resellers (each a "**Superna Indemnatee**"), against any claim, demand, suit or proceeding made or brought against such Superna Indemnatee by a third party: (i) alleging that Company's use of the Licensed Programs, Services or Deliverables in breach of this Agreement or otherwise not in compliance with the Documentation or Service Description, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, or (ii) that otherwise relates to a breach by Company of this Agreement (a "**Claim Against Superna**"), and shall indemnify the Superna Indemnitees for any damages, attorneys' fees and costs finally awarded against each such Superna Indemnatee as a result of, or for any amounts paid by a Superna Indemnatee under a court-approved settlement of a Claim Against Superna; provided that Superna (a) promptly gives Company written notice of the Claim Against Superna; (b) gives Company sole control of the defense and settlement of the Claim Against Superna (provided that Company may not settle any Claim Against Superna unless the settlement unconditionally releases the Superna Indemnatee of all liability); and (c) provides to Company all reasonable assistance, at Company's expense. Company shall have no indemnification obligation for any claim to the extent based upon the gross negligence or willful misconduct of a Superna Indemnatee.

7.3 If at any time during the Subscription Term, Company has actual knowledge of any infringement of litigation instituted with respect to, or challenge to the Licensed Product, including any Optional Feature, or Service or Deliverable, or any component thereof, or any Superna trademark, Company shall immediately notify Superna in writing. Additionally, in such event, Company shall immediately furnish to Superna copies of any correspondence, notices, complaints, legal documents, or other written materials relating such alleged infringement, litigation, or challenge which it may have in its possession.

7.4 This Section 7 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 7.

8. Limitations of Licensed Program and Optional Features:

8.1 Company acknowledges that:

1. the Licensed Program is not intended to replace the professional skills and judgment of Company and its personnel or replace any data backup plans or solutions;
2. neither Company nor its personnel will rely on the Licensed Program, the Documentation, or any Services as a substitute for such professional skills and judgment. Company agrees to regularly backup Company data and Computer Systems in accordance with generally accepted practices.
3. the internet, or any network, may not be reliable and, accordingly, copied files may be damaged when transmitted over such systems.
4. Certain Licensed Programs are made available for one (1) or more specific Designated Storage Media. Superna reserves the right to charge a fee for implementation of a new Designated Storage Medium requested by Company.
5. a Designated Storage Medium may not store copied files correctly and the Licensed Product, and Superna personnel in its performance of any Services, may fail to detect such improper storage. Customer is solely responsible for the functioning of all Designated Storage Media.
6. Superna can make no guarantee with respect to the speed of copying to Designated Storage Media undertaken by the Company using the Licensed Program.
7. with respect to use of the Licensed Program in connection with High Risk Systems, only Company has the necessary risk assessment information to create and implement back-up plans and other safeguards in the event of an Error or misuse of the Licensed Program or Services by Company. Accordingly, all such planning and implementation is the sole responsibility of Company and its personnel. Company acknowledges that it will not use the Licensed Program for back-up of such High Risk Systems or critical data. Company shall also be responsible for the continued operation and maintenance of the Computer System, the Prerequisites, and any Designated Storage Media and any Devices monitored by a Licensed Program.
8. Company will regularly backup Company data and Computer Systems on separate media and in accordance with generally accepted practices. Company acknowledges that any failure to back-up data and Computer Systems may cause Company to lose data in the event of an error

in or other failure of the Licensed Program or any Superna service. Since only Company, not Superna, can know the value of Company Computer Systems and data, only Company can plan and implement backup plans and safeguards appropriate to Company's needs in the event of an Error or other failure of the Licensed Program, or if the Maintenance and Technical Support Services cause Computer System problems or data loss.

9. Company is solely responsible for the design, repair and configuration of Company's Computer Systems, Devices, and the planning and implementation of and compliance with Company's procedures and protocols for disaster recovery and other risks associated with the Computer System and Devices monitored. Company assumes all risks and liability for results obtained by the use of the Licensed Program and/or implementation of plans or procedures that are in any way influenced by the use of the Licensed Product. Company shall protect, indemnify, hold harmless and defend Superna and its Affiliates, licensors, and resellers, of and from any loss, cost, damage, or expense, including attorneys' fees, arising from any claim asserted against Superna, or its Affiliates, licensors, and resellers, which is in any way associated with the matters set forth in this Section 8.1.

8.2 In order to utilize the Optional Features, Company agrees to install all Upgrades and otherwise comply with applicable Documentation for the Licensed Program and such Optional Features, at all times. All Documentation is provided "as is" and "as available." Superna cannot guarantee that it is correct or up to date. Company acknowledges that the Optional Features require computing resources set forth in the Documentation in order to support the Authorized Use Limitation. If Company commits insufficient compute, memory, and disk resources, or fails to install any Prerequisites, this may result in: (a) loss of entitlement to Maintenance and Technical Support Services; and (2) unpredicted response times and software behaviors; and (3) voiding of the warranties set forth in Section 6.1(a). Company must routinely install Updates and follow any updates to the Licensed Program for the Optional Features to operate effectively.

8.3 Superna reserves the right, periodically and at any time, to modify or discontinue, temporarily or permanently, functions and features of the Licensed Program in future releases, with notice posted to <https://manuals.supernaeyeglass.com/> or through a Product Notification. You acknowledge and agree that Superna shall have no liability to you for any interruption, modification, or discontinuation of any feature of the Licensed

Program or change to these terms. You understand and agree that Superna has no obligation to provide Updates or Upgrades to the Licensed Program.

9. Maintenance and Technical Support Services:

9.1 Upgrades and Updates: During the Subscription Term, Superna will provide Company with access to Upgrades and Updates, if any, and appropriate Documentation, for installation by Company. Documentation may include release notes that provide additional information and provisional solutions to reported Errors with the Licensed Program.

9.2 Technical Support Services: Superna shall provide technical support in the English language as described in Exhibit A and the Documentation ("**Technical Support Services**") during the Subscription Term. Superna will use its commercially reasonable efforts to assist Company with requests for Technical Support Services. Superna does not guarantee any particular response or resolution time for such requests, however, Superna will use commercially reasonable efforts to resolve any Errors as set forth in Exhibit A, Section 1.3. Any materials provided to Company by Superna in connection with Technical Support Services shall be deemed Licensed Products (for code) and Documentation (for written materials), and are licensed, not sold, to Company.

9.3 Subcontractors: Superna may, in its sole discretion, use third party contractors to fulfill its obligations to provide Services provided that Superna shall be responsible for performance of the Services by such subcontractor in accordance with the terms of this Agreement.

9.4 Phone Home Feature: Company may elect to opt in to the "Phone Home Feature" to share anonymized metadata with Superna to assist with its performance of Technical Support Services and to develop Licensed Product enhancements. This metadata, if authorized, will be sent automatically to servers owned or controlled by Superna or its Affiliates for storing, analyzing, debugging, and reporting Errors or abnormal behaviors. This metadata is a subset of System Data and, accordingly, will be subject to the terms and conditions of Section 11.1.

10. Confidential Information:

10.1 Information and data supplied by either party to the other party may include confidential or proprietary information. Confidential or proprietary information

(“**Confidential Information**”) means any information or data (including without limitation any formula, pattern, compilation, program, device, method, technique, or process) that is disclosed by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) pursuant to this Agreement and marked or otherwise identified in writing as confidential. Confidential Information of Superna includes, but is not limited to, the Licensed Product, the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated with the Licensed Program, the Documentation, and pricing information. Confidential Information of Company may include, but may not be limited to, Company’s financial and business information. Confidential Information shall not include information that either party can demonstrate: (i) at the time of disclosure, is in the public domain or is otherwise available to the Receiving Party other than on a confidential basis; (ii) after disclosure, becomes a part of the public domain by publication or otherwise through no fault of the Receiving Party; (iii) was disclosed to the Receiving Party by a third party not under an obligation of confidentiality to the Disclosing Party; or (iv) is or has been independently developed by the Receiving Party (as evidenced by the Receiving Party’s written records) without access to any Confidential Information of the Disclosing Party.

10.2 Each party agrees: (i) to hold the Disclosing Party’s Confidential Information in confidence; and (ii) except as expressly authorized by this Agreement, not to, directly or indirectly, use, disclose, copy, transfer or allow access to the Confidential Information. Notwithstanding the foregoing, a Receiving Party may disclose Confidential Information of the Disclosing Party as required by law or court order; in such event, such party shall inform the other party in writing prior to any such required disclosure. And, notwithstanding any other provision of this Agreement, Superna will not be prevented or restricted from using any technique, idea, concept, or know-how relating to Superna’s business activities.

11. Personal Information; Product Data; Usage Data:

11.1 Company agrees to allow Superna, and its Affiliates and resellers, to store and use the personal information Company provides to Superna in connection with its use of the Licensed Product and receipt of Technical Support Services including, but not limited to, Registration Information, System Data, and information contained within any Report or request for Services (collectively “**Product Data**”), anywhere Superna, its Affiliates or its resellers do business, and as set forth in the Privacy Policy at <https://www.supernaeyeglass.com/privacy-policy>. You confirm that you

are solely responsible for any personal information that may be contained in the Product Data and for compliance with applicable data protection laws.

11.2 Superna will have the right to collect, extract, compile, synthesize, and analyze de-identified data and information resulting from or relating to the use or operation of the Licensed Product and the Services by Company ("**Usage Data**").

11.3 Company grants to Superna and its Affiliates a non-exclusive, irrevocable, royalty-free, worldwide license, with right to sublicense, to use, analyze, copy, make, sell, modify and enhance Product Data and Usage Data: (a) to the extent that such license is required to enable Superna to perform the Services; and (b) in de-identified, aggregated form for statistical purposes; and (c) to enhance and extend the functionality of the Licensed Product or the Services.

12. Limitation of Liability:

EXCEPT FOR COMPANY'S BREACH OF SECTION 3.3 OR EXHIBIT B SECTION 4.2, EITHER PARTY'S BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 10, OR THE INDEMNIFICATION OBLIGATIONS OF A PARTY PURSUANT TO SECTION 7, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR: (A) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, REVENUE OR PROFITS, HOWEVER CAUSED AND ARISING UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE; OR (B) AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEEDING THE NET AMOUNT SUPERNA HAS ACTUALLY RECEIVED FROM COMPANY OR RESELLER UNDER THE APPLICABLE ORDER EMAIL. SUPERNA DISCLAIMS ANY AND ALL LIABILITY FOR DAMAGES ASSOCIATED WITH THE USE OF THE LICENSED PROGRAM, THE SERVICES OR THE DELIVERABLES IN CONNECTION WITH A HIGH RISK SYSTEM.

13. General:

13.1. **Export:** Company acknowledges that the Licensed Product provided hereunder may be subject to export controls. Company agrees that any Licensed

Product licensed hereunder will not be exported (or re-exported from the country where it was first installed), directly or indirectly, separately or as part of a system, without Company, at its own cost, first obtaining all necessary licenses from the United States Department of Commerce and any other appropriate agency of the United States or other government as may be required by law. Company acknowledges that it shall be solely responsible for determining the extent of any such licenses required, and for any costs associated with complying with the requirements of this Section 13.1.

13.2. U.S. Federal Government End Use Provisions: Superna provides the Licensed Product for ultimate U.S. federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Superna to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

13.3. Audit: Superna shall have the right, during the Subscription Term and for a period of one (1) year thereafter, during regular business hours and with ten (10) business days' notice, to audit Company's compliance with the Authorized Use Limitation and usage of the Licensed Product (but only to the extent required to determine that Company's use of the Licensed Product is consistent with the uses permitted under this Agreement), and Company shall permit Superna to have access to such properties, records and personnel of Company as Company may reasonably require for such purpose. Superna may exercise this right once in any twelve (12) month period unless there is a reasonable and substantiated belief that Company has breached a material provision of this Agreement. The audit will be conducted by Superna or its authorized representatives. Company agrees that Superna shall have the right, upon discovering a violation of any Authorized Use Limitation or other material provision hereof, to terminate this Agreement.

13.4 Notice: Except as otherwise set forth herein, any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be delivered (a) in person, (b) by first class registered mail, or air mail, as

appropriate, posted and fully prepaid to the appropriate address set forth in the preamble to this Agreement or the Order Email, as applicable, or (c) via facsimile. Notices will be considered to have been given at the time of actual delivery in person, four (4) business days after deposit in the mail as set forth above, or upon receipt of facsimile confirmation. Either party may change its address for notice by notice to the other party given in accordance with this Section 13.4.

13.5 Assignment: Company may not assign any of its obligations, rights, or remedies hereunder without prior written permission from Superna. Any attempted assignment in violation of this provision shall be null and void.

13.6 Waiver: Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

13.7 Independent Contractors: It is expressly agreed that the parties are acting hereunder as independent contractors. Neither party will be deemed to be an employee, agent, partner, franchisor, franchisee nor legal representative of the other for any purpose, and neither party will have any right, power, or authority to create any obligation or responsibility on behalf of the other.

13.8 Force Majeure: UNDER NO CIRCUMSTANCES SHALL SUPERNA BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM ACTS OF NATURE, FORCES OR CAUSES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, INTERNET FAILURES, COMPUTER EQUIPMENT FAILURES, TELECOMMUNICATION EQUIPMENT FAILURES, OTHER EQUIPMENT FAILURES, ELECTRICAL POWER FAILURES, STRIKES, LABOUR DISPUTES, RIOTS, INSURRECTIONS, CIVIL DISTURBANCES, SHORTAGES OF LABOUR OR MATERIALS, FIRES, FLOOD, STORMS, EXPLOSIONS, ACTS OF GOD, WAR, GOVERNMENTAL ACTIONS, ORDERS OF DOMESTIC OR FOREIGN COURTS OR TRIBUNALS, NON-PERFORMANCE OF THIRD PARTIES, OR LOSS OF OR FLUCTUATIONS IN HEAT, LIGHT OR AIR-CONDITIONING.

13.9 Severability. If any provision, or portion thereof, of this Agreement is found to be invalid, unlawful, or unenforceable to any extent, such provision of this Agreement will be enforced to the maximum extent permissible by applicable law so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. The parties will negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent and economic effect of such provision.

13.10 Equitable Relief: The obligations of Company under Sections 3.3, 8 and 10 hereof are of a special and unique character which gives them a peculiar value to Superna and its Affiliates, licensors, and resellers for which neither Superna nor these third parties can be reasonably or adequately compensated in damages in the event Company breaches such obligations. Therefore, Superna and its Affiliates, licensors, and resellers, in addition to other remedies which may be available, shall each be entitled to injunctive and other equitable relief in the event of the breach or threatened breach of such obligations.

13.11 Governing Law: This Agreement shall be governed by the substantive laws of the Commonwealth of Massachusetts, U.S.A., without regard to any conflict of law provisions. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, or by the Uniform Commercial Code, the application of which are expressly excluded. The parties agree that sole jurisdiction and venue for any dispute relating to this Agreement shall be in the state courts of Massachusetts or the United States District Court for the District of Massachusetts.

13.12 Companies in Brazil: For Companies with a primary place of business located in Brazil, the Supplemental Terms set forth [here](#), shall apply.

13.13 Construction. If there is a conflict between any term of this Agreement and any term of an Order Email, the term in the Agreement will prevail with respect to such conflict. This Agreement and any instrument referred to herein or executed and delivered in connection herewith, will not be construed against any party as the principal draftsman hereof or thereof. The section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement. Unless otherwise expressly stated to the contrary herein, all remedies are cumulative, and the exercise of any express remedy by either party herein does not by itself waive such party's right to exercise its other rights and remedies available at law or in equity.

13.14 No Third Party Beneficiaries. The parties hereto expressly agree that there are no third party beneficiaries of this Agreement.

13.15 Entire Agreement. This Agreement (and Exhibits hereto) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to such subject matter. No terms, provisions or conditions of any purchase order, acknowledgement, or other business form that Company may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Superna to object to such terms, provisions, or conditions. Except as otherwise set forth herein, this Agreement may not be amended, except by a writing signed by both parties.

13.16 Translation: This Agreement has been prepared, and shall be interpreted, in the English language. Any translation of this Agreement into any other language is solely for the convenience of Company. In the event of an inconsistency between clauses of this English version and any translation into another language, the English language clause shall prevail.

13.17 Terms Subject to Change: You acknowledge and agree that Superna may change the terms and conditions of this Agreement from time to time upon reasonable notice to the email address you provided in the Registration Information or through a Product Notification. If you do not agree to any changes in this Agreement, your only remedy is to cease using the Licensed Program. Your continued use of any part of the Licensed Program or Services after Superna has provided you with reasonable notice of such change for your review will be considered your acceptance of such change.

Exhibit A

Maintenance and Technical Support Services Terms

Table A:

Coverage	Standard Offering
Tier 3	Yes

Error Correction	Yes
Updates	Yes
Assisted Upgrades, system expansions, migrations, redeployments, or any related tasks (collectively “ Assisted Upgrades ”)	Yes (M-F 2 AM -3 PM EST excluding holidays) pending resource availability. The Licensed Program is fully upgradeable without Technical Support Services and accordingly the Error Report Acknowledgment target set forth in Section 1.2 below and the Service Level Objectives in Section 1.3 below shall not apply to requests for Assisted Upgrades.
Access to Upgrades during the Subscription Term	Yes
Technical Support Services Methods	Web-based: https://support.superna.net ; email: eyeglasssupport@superna.net phone: 1 (855) 336-1580
Availability	24 x 7 (Including holidays)
Online Knowledge Base	Yes
Tech Bulletin (tech tips, FAQs, patches)	Yes
VMware	No
Hyper-V	No
RHEL or CENTOS	No
SUSE Linux	No

1. Error Correction:

1.1 **Definition: “Error”** means a failure of the Licensed Program to materially conform to its Documentation but excludes any nonconformity resulting from Company's: (a) misuse, improper use, or unauthorized modification of any Licensed Product; (b) Company's failure to implement Updates or Upgrades; or (c) the

combining of the Licensed Product with hardware or software other than the Prerequisites or other than as contemplated by the Documentation. Errors are classified in Table B.

Table B:

Critical (Severity 1)	Major (Severity 2)	Minor (Severity 3)
<p>Critical Errors. Critical Errors render the Licensed Program non-operational and have no known work-around. Critical Errors include the following:</p> <p>(a) complete failure to sync ALL configuration data for supported cluster configurations and versions of cluster software;</p> <p>(b) inability to launch failover job;</p> <p>(c) inability to log on to the UI;</p> <p>(d) inability to boot the appliance successfully after more than two (2) attempts;</p> <p>(e) inability of Superna Eyeglass Easy Auditor to read or write audit data or execute any audit searches, only if not related to external network, prerequisites and reachability, and operational documented procedures to monitor audit ingestion and restart ingestion have already been completed;</p>	<p>Major Errors. Major Errors affect Licensed Program operation and require immediate attention. However, these Errors do not have critical impact on operations and can be addressed during maintenance windows. Major Errors include the following:</p> <p>(a) Errors that disrupt or prevent routine Licensed Program activities such as system backup, system administration or sync function;</p> <p>(b) complete failure to sync some of the Synciq policy configuration data for supported cluster configurations and versions of cluster software;</p> <p>(c) Errors that significantly affect a core material function of the Licensed Program and no reasonable workaround is available;</p>	<p>Minor Errors. Minor Errors do not significantly impair the core functions of the Licensed Program and do not significantly affect ability to execute failover, monitor performance, search for audit events with unknown date or time of the incident. Minor Errors include the following:</p> <p>(a) Errors in a function of the Licensed Program with a known work-around;</p> <p>(b) Errors in non-key functions of the Licensed Program;</p> <p>(c) Errors in the user Interface with a known work-around;</p> <p>(d) Errors that affect usability but not functionality;</p> <p>(e) Errors in the Documentation;</p> <p>(f) Errors related to the pre-production use of the Licensed Program (initial installation and configuration</p>

(f) inability of Superna Eyeglass Ransomware Defender to create snapshots or lockout ALL users from SMB shares if not related to external cluster API or partial snapshot or share lockout or restore user access to ALL SMB shares; and	(d) Health check test functions such as security guard and robot audit, are not functioning;	and/or installation service not completed);
(g) Superna Eyeglass Search & Recover unable to execute any searches.	(e) Superna Eyeglass Ransomware Defender unable to restore access to some SMB shares;	(g) Problems resulting from procedures missing from the Documentation;
Critical Errors do not include any Error resulting from the following:	(f) Inability of Superna Eyeglass Ransomware Defender to successfully complete security guard or restore access to some SMB shares via automated method; and	(h) Upgrade issues;
	(g) Inability of Superna Eyeglass Search & Recover to complete incremental index jobs that are not related to cluster change list job issues.	(i) Errors that affect service for administrators such as emailing alarms, reports if not related to customer mail server;
		(j) Problems with forwarding email or syslog alarm configuration;
(a) Company running latest Major or Minor Release and attempting a failover where the issue is resolved in an available version;		(k) Problems with syslog forwarding of audit data; and
(b) Failover over jobs with errors that require manual recovery steps;		(l) Inability of Superna Eyeglass Easy Auditor to ingest historical audit data to audit database.
(c) Company failure to follow failover recovery steps as directed by Technical Support Services personnel or from Documentation;	Major Errors do not include any Error resulting from the following:	
	(a) External dependencies caused by IP network permissions, CPU, memory, or disk; or AD availability, incorrect DNS configuration and cluster API issues;	Minor Errors do not include any Error resulting from the following:
		(a) External dependencies caused by IP network permissions, CPU, memory, or disk; or AD availability,

(d) Any failure of Company to contact third party software or device product support resources when reasonably requested by Technical Support Services personnel;	(b) Licensed Program performance below recommended configurations in Documentation;	incorrect DNS configuration and cluster API issues;
(e) External dependencies caused by IP network, permissions, CPU, memory and disk, virtual hypervisor environment, AD availability, incorrect DNS configuration and cluster API issues;	(c) third party software or hardware that is identified as the root cause of an Error that affects the Licensed Program;	(b) Licensed Program performance below recommended configurations in Documentation;
(f) Computer System performance below recommended configurations in Documentation;	(d) Superna Eyeglass Easy Auditor missing data in the audit data base as a result of Company's failure to monitor health check features, or act on alarms that indicate audit data processing issue (reading or writing to database); or	(c) 3rd party software or hardware that is identified as the root cause of an Error that affects the Licensed Program; or
(g) Company failure to follow regular daily or weekly monitoring of Computer System operations (alarms, reports);	(e) Company failing to follow operational procedures in Documentation to monitor audit data processing alarms and graphs.	(d) Company failing to follow operational procedures to monitor audit data processing.
(h) Company failure to take corrective actions, or requesting Technical Support Services, for any procedure or condition for which Documentation is available;		
(i) Company failure to configure all Prerequisites as stated in Documentation;		
(j) Company failure to follow recommended configurations		

provided during knowledge transfer sessions;

(k) Company failure to follow any published release note or technical advisory with respect to the Critical Error;

(l) Installation by Customer of any software agent or other modification to the operating system that conflicts or interferes with Licensed Program functionality, such as monitoring or security agents;

(m) failure of Company to detect ransomware during a simulated test;

(n) Customer inability to login as Superna Eyeglass Search & Recover AD user, with local admin user functional;

(o) Failure of Superna Eyeglass Search & Recover following incomplete indexing of data;
or

(p) Inability of Superna Eyeglass Easy Auditor to ingest historical audit data because audit data is missing from the database.

1.2 Error Classification: Upon identification of an Error, Company shall notify Superna using a Technical Support Services Method set forth in Table A above ("**Technical Support Services Method**"). Superna shall only respond to notifications that are properly submitted through a Technical Support Services Method. Company must provide Superna with sufficient information to locate and reproduce the Error. Superna will use commercially reasonable efforts to acknowledge receipt of the Error report each an "**Error Report Acknowledgement**") within two (2) hours for all case types and target response for unplanned failover of 30 minutes. Superna will make the final determination of the classification of such Error. Notwithstanding anything to the contrary herein, the following requests for Technical Support Services will not be subject to the Error Report Acknowledgment target in this Section 1.2 or the Service Level Objectives set forth in Section 1.3: (a) Error reports classified by Company as "Task" or "Question," and (b) Assisted Upgrades.

1.3 Service Level Objectives: Superna and Company acknowledge the potentially idiosyncratic nature of any Error in the Licensed Product, and that not all Errors will be corrected. Superna will use commercially reasonable efforts to attempt to resolve any Errors within the times specified in Table C ("**Resolution Time Target**"). However, the parties acknowledge and agree that any failure to meet Resolution Time Targets will not constitute a failure of Superna to perform a material provision of this Agreement.

Table C:

Error Severity	Support Site Priority	Resolution Time Targets
Critical	High	70% = root cause identified within 2 business days 30% = root cause identified within 5 business days

		Resolution and deployment of a solution within 5 business days of identification of root cause
Major	Normal	80% = root cause identified within 4 business days 20% = root cause identified within 10 business days Resolution and deployment of a solution within 10 business days of identification of root cause
Minor	Low	Root cause identified within 10-20 business days Resolution and deployment of solution in the next Update

1.4 Resolution Time Target Requirements:

6. Resolution Time Targets are triggered by Superna's receipt of notice of an Error via a Technical Support Services Method.
7. Resolution Time Targets require that Company provide a sample of at least ten (10) cases of an Error to be statistically measurable.
8. Resolution Time Targets are provided "as is" with no implied or express warranty or recourse if not met by Superna.
9. Resolution Time Targets are presented as a guideline only and may be impacted by third party product support response times.
10. In the event Company's response to any question or request for input by Superna is unanswered for seven (7) consecutive days, the question or request will be automatically closed.

2. Delivery of Maintenance and Technical Support Services:

2.1 Company Obligations:

(a) Company is responsible for Level 1 and Level 2 Technical Support of its authorized users. "**Level 1 Support**" means responding to the initial report identifying an Error; and (ii) "**Level 2 Support**" means analyzing and/or reproducing the reported Error or determining that the reported Error is not reproducible. Level 2 Support also includes resolving any Error when Superna has provided Company with notice of the Error through a Product Notification and a description of the action required to address it.

(b) Company must also:

1. Supervise, control, and manage the Licensed Product, implement backup procedures, and maintain a current backup copy of all programs and data to protect information in the event of Errors or malfunctions of the Licensed Product or Computer Systems (including the software and hardware products used to provide disaster recovery or other IT services) and protect data from damage during the performance of Technical Support Services;
2. Accept use of Webex VOIP audio and screen sharing software or provide Superna with reasonable telephonic or remote screen sharing solutions for Company's personnel and equipment upon which the Licensed Product is loaded or operating;
3. Document and promptly report Errors of the Licensed Product to Superna;
4. Properly train its personnel in the use of the Licensed Product and the Computer System;
5. Promptly install Updates provided by Superna;
6. Refrain from running virus protection, backup software or other software during Technical Support Services unless authorized in writing by Superna;
7. Designate one primary and one backup individual to serve as Company liaison with Superna Technical Support Services personnel (each a "**Technical Contact**") and promptly notify Superna whenever its Technical Contact responsibilities are transferred to another individual;
8. If Company intends to designate a Technical Contact that is an employee of a third party, including Dell EMC, submit a written request to Superna including the company name, and the individual's name and email address, for review and approval by Superna;
9. Open each request for Technical Support Services with both a primary and a backup Technical Contact email addresses to allow Superna to validate Technical Support Services entitlement; Use only those email addresses

where the domain name matches the domain name in the Registration Information; No personal email addresses (e.g., gmail.com, yahoo.com) or other domains not associated with Company may be used to open a request for Technical Support Services.

10. Upload System Data as requested by Superna Technical Support Services personnel;
11. For Errors related to the Licensed Program, make reasonable attempts to reproduce the Error, and provide documentation of such reproduction upon request of Superna Technical Support Services personnel;
12. Provide all requested information, screen shots or log files upon request of Superna Technical Support Services personnel;
13. Execute remediation steps upon request of Superna Technical Support Services personnel and provide prompt responses to inquiries using a Technical Support Services Method
14. Submit any request for Technical Support Services to assess failover readiness no less than seven (7) days prior to the planned failover event. Failure to request an assessment in accordance with this subsection may result in suspension of Maintenance and Technical Support Services in Superna's sole discretion;
15. Acknowledge that if Company receives a failover assessment of "Not Ready" from Superna Technical Support Services Personnel, it may result in suspension of Maintenance and Technical Support Services at Superna's sole discretion; and
16. Acknowledge that, following written notice to Company and a ten (10) day cure period, Superna may suspend Maintenance and Technical Support Services to the extent Company's failure to comply with this Section 2.1 substantially increases the cost or difficulty of Superna providing Technical Support Services to Company.

2.2 Superna Obligations:

1. Superna will provide Level 3 Technical Support Services. "**Level 3 Support**" means: (i) isolating the reported Error to a component level of the Licensed Product, provided such reported Error is reproducible by Company and does not relate solely to enhancements or other modifications of the Licensed Product made by or on behalf of Company, and (ii) providing a reported Error correction or a circumvention (followed as promptly as practicable by a

reported Error correction). Superna will provide telephone-based Technical Support Services as and when necessary to fulfill Level 3 Support obligations, at Superna's sole discretion. Superna's obligations with respect to Level 3 Support are contingent upon Company compliance with the provisions of Section 2.1 hereof and pursuant to the Agreement.

2. Superna may elect to offer Technical Support Services to Company by means of video and audio conference meetings utilizing a third party provider such as WebEx (each a "WebEx Session"). Company consents to the collection, recording, use, processing, storage, and transfer of the visual, written, or audible communications, files or documents displayed, posted, uploaded, exchanged, or transmitted by Company in connection with any WebEx Session ("Support Content"). Company grants to Superna and its Affiliates a non-exclusive, irrevocable, royalty-free, worldwide license, with right to sublicense, to use, analyze, copy, make, sell, modify, and enhance Support Content to the extent required to enable Superna to perform the Technical Support Services or enforce the terms of the Agreement.
3. Superna shall have no obligation to provide Technical Support Services in connection with any of the following:
 1. PowerScale cluster and OneFS releases;
 2. Microsoft Active Directory;
 3. Microsoft DFS and all versions;
 4. Networking including firewalls between the virtual appliance and the clusters;
 5. Dell Synciq performance or functionality;
 6. Supported browsers used to access the appliance; or Linux client machines that access the cluster;
 7. ESX host and virtual environment that hosts the virtual appliance;
 8. Applying OS patches and security changes to the appliance;
 9. DNS servers used to resolve names for failover or appliance functionality;
 10. Time sync of the appliance to the PowerScale clusters time source;
 11. Any component, software or hardware not listed above that is affecting failover of an PowerScale system;
 12. Any Designated Storage Medium, including any Cloud Provider feature or functionality, including but not limited to Amazon AWS, Microsoft Azure, and Dell EMC ECS; or

13. VM memory, CPU, and disk latency fail to meet those specified in the Documentation.

3. Version Support Policy

3.1 Superna will provide Technical Support Services for the Licensed Product in accordance with its then-current Superna Software Availability and Support Policy, a copy of which is available at <https://manuals.supernaeyeglass.com/project-software-releases/HTML/software-releases.html>. Company shall at all times use a supported version of the Licensed Product in accordance with such policy.

3.2 Company will be responsible for ensuring that the particular release specified for any required Computer System and Designated Storage Medium software (such as operating system, firmware, or utilities) is being used. Superna may suspend Maintenance and Technical Support Services until the necessary Computer System software is installed. Company's obligation to pay fees for the then-current Subscription Term will not be affected by such suspension.

Exhibit B

Professional Services Terms

These Professional Services Terms (the “**Terms**”) shall apply to Professional Services you acquire from Superna in connection with your Subscription. Capitalized terms not defined herein shall have the meanings set forth in the Superna Subscription Terms and Conditions (the “**Agreement**”).

Definitions:

1.
 - a. **Deliverable** means a literary work or other work of authorship (such as documentation, training material, report, drawing, presentation, video, recording or similar work) that Superna may deliver to Company as described in a Service Description or any Statement of Work.
 - b. **Effective Date** means the date Company accepts a Service Description or SOW.

- c. **Fees** means the aggregate fees for the Professional Services ordered by Company in a Service Order.
 - d. **Services** means those professional services to be performed by Superna as described in the applicable Service Description or Statement of Work. Services do not include Maintenance and Technical Support Services.
 - e. **Service Description** means Superna's standard, then current description of a Professional Service that are set forth [here](#). In order to utilize any such Professional Service, Company must complete a questionnaire which includes an acknowledgment of the terms of such Services Description (each a "Technical Questionnaire"). Company may make no changes to a Service Description unless documented in a Statement of Work executed by the parties.
 - f. **Service Order** means Company's request for a Professional Service that: (a) includes a specific Professional Service part reference number corresponding with, and incorporating by reference, a Service Description; and (b) has been accepted by Superna in an Order Email.
 - g. **Statement of Work or SOW** means a document describing a customized service with scope determined and Fees quoted by Superna before purchase by Company.
- **Scope of Services:**
 - 2.
 - a. Subject to these Terms, Superna will use commercially reasonable efforts to perform the Professional Services in accordance with the Service Description or SOW.

4. Performance of the Professional Services:

4.1. **Staffing:** The Professional Services will be performed at Superna's premises in conjunction with Company's personnel located on Company's premises. Superna will control the manner by which the Professional Services are performed. Superna retains the right to subcontract any or all of the Professional Services at any time, provided that Superna shall be responsible for performance of the Professional Services by such subcontractor in accordance with these Terms.

4.2 **Company Responsibilities:** Company understands and agrees that Superna's performance of the Professional Services is dependent upon Company's timely and

effective performance of its responsibilities hereunder. Company agrees to undertake the Company responsibilities outlined in any Service Description or SOW and as follows (the **"Company Responsibilities"**):

2. Company shall promptly complete a Technical Questionnaire and provide System Data to Superna. Company shall also provide Superna with access to other resources and personnel reasonably required by Superna to perform the Professional Services. Company shall be solely responsible for, and assumes the risk associated with the accuracy, completeness, competence, or consistency of the Technical Questionnaire or the System Data;
3. Company is responsible for the proper implementation or use of the Professional Services and any Deliverables in Company's Computer System or operations. Tasks that are primarily the responsibility of Company's personnel will remain Company's responsibility, even if Superna assists Company in performing such tasks. Company agrees that Superna may rely on all Company decisions and Company approvals conveyed to Superna by Company personnel with respect to the Professional Services;
4. Company acknowledges that any recommendations made by Superna in the performance of the Professional Services are subject to the information Superna receives by the Company and shall not replace the professional skills and judgment of Company and its employees, agents, and consultants. Company further acknowledges that Company, in Company's sole discretion shall be responsible for Computer System design, Cloud Provider access, configuration, implementation and use made by Company of any recommendations provided by Superna in the course of providing the Professional Service. Company shall also be responsible for the continued operation and maintenance of the Company's Computer Systems;
5. Company shall promptly respond to any Superna Professional Service scheduling request. Company must provide a written notice of delay if Services scheduling will be delayed by more than four (4) weeks from initial scheduling contact by Superna;
6. Company is solely responsible for obtaining all applicable equipment, and software and Cloud Provider services, and the compatibility thereof with the Deliverables; and
7. Company is responsible for promptly scheduling any Professional Service. Superna shall have no obligation to perform or provide any refund for any Professional Service not scheduled by within six (6) months of the Order Email date.

4.3 Proprietary Rights:

1.
 - a. **Deliverables:** Superna or its licensors will own the copyright in all Deliverables. Subject to Section 4.2 below, Superna grants to Company a non-exclusive, non-transferable license to use the Deliverables solely for Company's internal business use and in conjunction with Company's authorized use of the Licensed Program during such time as Company is authorized to use the Licensed Program. Superna grants to Company only the licenses and rights specified with respect to the Professional Services. No other licenses or rights in or to the Deliverables (including licenses or rights under patents) are granted. The rights provided to you by Company in the Deliverables are subject to payment by Company of amounts due under these Terms.
 - b. **Use Restrictions:** Company shall not, and shall not permit any third party to:
 2. copy the Deliverables, in whole or in part, except to the extent required to exercise the license grant set forth in Section 4.1;
 3. use the Deliverables to facilitate Company's development of products or services that are directly or indirectly competitive with the Licensed Program or other Superna products or services;
 4. prepare derivative works or improvements of the Deliverables;
 5. transfer the Deliverables to any third party; or
 6. remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any disclaimers, or trademark or other proprietary rights symbols or notices, on any copy of the Deliverables.

4.4 Notification: Company shall promptly notify Superna of any unauthorized use, disclosure, reproduction, or distribution of the Deliverables, which comes to Company's attention, or which Company reasonably suspects.

Warranty:

Superna warrants that:

1. for a period of thirty (30) days following delivery of a Deliverable to Company (the **"Deliverable Warranty Period"**) that Deliverable Material will substantially conform to the specifications in the Service Description or any applicable SOW; and

a. during the term of any applicable Service Order, (the **"Professional Services Warranty Period"**), Services shall be performed in a reasonable and skillful manner, consistent with generally accepted industry standards.

2. Company's exclusive remedy for any breach of the warranties contained in Section 5.1 during the Deliverable Warranty Period or Professional Services Warranty Period, as applicable, is for Superna, at its expense, to use commercially reasonable efforts to: (a) replace or repair Deliverable; or (b) re-perform the Professional Services. Company must notify Superna in writing of any such defect within the applicable Warranty Period.

a. In the event Superna is unable, after using commercially reasonable efforts to remedy the defects identified by Company pursuant to Sections 5.1(a) or 5.1(b), Company's sole and exclusive remedy shall be: (a) for Section 5.1(a), to return the Deliverable, terminate Company's rights under these Terms and receive a pro-rata refund of payments actually received by Superna from Company for the Deliverable which is the subject of the warranty claim; and (b) for Section 5.1(b), to receive a pro-rata refund of fees actually paid by Company for the deficient Professional Services.

b. Any modification or attempted modification of a Deliverable by Company, or any failure by Company to use a Deliverable not in compliance with these Terms or the Licensed Product not in compliance with the Agreement, shall void the limited warranties set forth in Section 5.1. Without limiting the foregoing, Company agrees that any of the following may void the limited warranties set forth in Section 5.1: (a) incorrect or inaccurate System Data; (b) failure to perform the Company Responsibilities set forth in Section 3.2; (c) any failure of Company to properly maintain Company Computer Systems or related software.

3. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 5:

1.

a. SUPERNA, ITS AFFILIATES, LICENSORS AND RESELLERS, EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AS WELL AS ALL WARRANTIES ARISING BY

USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW;

- b. SUPERNA, ITS AFFILIATES, LICENSORS AND RESELLERS, MAKE NO WARRANTY THAT THE DELIVERABLES AND/OR PROFESSIONAL SERVICES WILL MEET COMPANY'S REQUIREMENTS, THAT THE DELIVERABLES AND/OR PROFESSIONAL SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURED FROM ALL POSSIBLE VULNERABILITIES , OR ERROR FREE, THAT ANY SYSTEM DATA OR REGISTRATION INFORMATION STORED BY SUPERNA WILL BE SECURE FROM ALL POSSIBLE VULNERABILITIES, ACCURATE OR RELIABLE; NOR DOES SUPERNA MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE LICENSED PRODUCT AND/OR PROFESSIONAL SERVICES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW; AND
- c. GIVEN THE NATURE AND VOLUME OF MALICIOUS AND UNWANTED ELECTRONIC CONTENT, NEITHER SUPERNA, NOR ITS AFFILIATES, LICENSORS OR RESELLERS MAKE ANY WARRANTY THAT UTILIZING THE PROFESSIONAL SERVICES, INCLUDING CONFIGURATION OF THE LICENSED PROGRAM, WILL RESULT IN DETECTION OF ANY OR ALL POSSIBLE MALICIOUS CODE, THREATS OR THAT USE OF THE LICENSED PROGRAM AND RELATED UPDATES OR UPGRADES WILL KEEP COMPANY'S NETWORK OR COMPUTER SYSTEMS FREE FROM VIRUSES OR OTHER MALICIOUS OR UNWANTED CONTENT OR SAFE FROM INTRUSIONS OR OTHER SECURITY BREACHES.

Miscellaneous:

Non-Solicitation: Company acknowledges and agrees that the employees of Superna who perform the Professional Services are a valuable asset to Superna and are difficult to replace. Accordingly, during the term of these Terms and for a period of one (1) year thereafter, Company shall not solicit, whether directly or indirectly, the employment of any Superna employees without the prior written consent of Superna. If Company violates this Section 6.1, the parties agree that Company shall pay to Superna the sum of one hundred thousand dollars (US\$100,000) as liquidated damages. The parties further agree that precise monetary damages for Company's violation of this Section 6.1 would be difficult to ascertain and that the foregoing sum represents a fair and conservative

approximation of cost of recruitment, hiring and training that would be incurred by Superna.

Independent Development: Nothing in these Terms (including, without limitation, the receipt of information from Company in connection with the Professional Services) shall: (a) limit Superna's development, marketing or distribution of software or other technology involving any functionality or ideas, whether similar to those disclosed by Company or otherwise; (b) limit Superna from undertaking similar efforts or discussions with third parties who may compete with Company; or (c) create obligations binding in any way on Superna limiting or restricting the assignments, activities, or training of employees or contractors of Superna.