



Superna Eyeglass
Software License and Support **Agreement**

This Software License and Support Agreement (the “**License Agreement**”) is a legal agreement between you (“**you**” or “**Company**”) and Superna, LLC, a Delaware Limited Liability Company with its principal place of business located at 225 Cedar Hill St., Ste. 200, Marlborough, MA 01752 (“**Superna**”). Your right to use the Superna Eyeglass® product is set forth in this License Agreement.

THIS IS A LEGAL AGREEMENT. BY ACCESSING AND USING THE LICENSED PRODUCT, YOU ARE ACCEPTING AND AGREEING TO THIS LICENSE 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.

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 **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.

- 1.4 **Documentation** means the softcopy documentation that may be provided by Superna with the Licensed Program or in connection with the Maintenance and Technical Support Services, such as user manuals, guides, release notes, or online help information.
- 1.5 **Effective Date** means the date that you accept the terms of this License Agreement.
- 1.6 **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.
- 1.7 **Fees** means the aggregate fees for the Licensed Program and Optional Features selected by Company and those fees for Services.
- 1.8 **"High Risk System"** means a device or system that where 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.
- 1.9 **Licensed Product** means, collectively, the Licensed Program, any Licensed Program application program interface ("**API**") and the Documentation.
- 1.10 **Licensed Program** means the executable code version of the Superna Eyeglass software and any Optional Features. Licensed Program includes any Updates or Upgrades that may be delivered by Superna to Company during the Term, as defined in Section 5.1. Licensed Program does not include Prerequisites, as defined in Section 4.2, or Third Party Code.
- 1.11 **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.
- 1.12 **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 8.4.
- 1.13 **Order Email** means an email or other communication from Superna that may include one (1) or more of the following: (a) identification of the specific Licensed Program acquired by the Company; (b) the Authorized Use Limitation, as defined in Section 3.2; (c) the Initial Maintenance and Technical Support Period, as defined in Section 9.1, or

any renewal Maintenance and Technical Support Period, as applicable; (d) the term of any Evaluation Period, as defined in Section 3.1; and (e) a specific Professional Service part reference number.

- 1.14 **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.
- 1.15 **Services** refers collectively to Maintenance and Technical Support Services and Professional Services.
- 1.16 **System Data** refers to data about Computer Systems 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, 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.
- 1.17 **Third Party Code** means those third-party components provided with the Licensed Program.
- 1.18 **Update** means a release of the Licensed Program that contains error corrections and/or minor functional enhancements.
- 1.19 **Upgrade** means a version of the Licensed Program that contains new or substantial functional enhancements.

2. Fees; Payments; Activation:

- 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 License 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 License 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 valid tax exemption certificate authorized by the appropriate taxing authority. 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. 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. Upon receipt of an Order Email from Superna, Company shall be entitled to access or use Maintenance and Technical Support Services. You may be required to activate the Licensed Program or register for Maintenance and Technical Support Services on the Superna website. During such activation or registration, Company must provide current, accurate Company email domains, product appliance identification or appliance ID, and other information requested by Superna as part of the Maintenance and Technical Support Services registration process (collectively, "**Registration Information**"). Company is responsible for maintaining the accuracy and completeness of Registration Information at all times that Maintenance and Technical Support Services are active. Company is responsible for maintaining the confidentiality of its credentials to access or use the Maintenance and Technical Support Services and, accordingly, will be fully responsible for all activities that occur utilizing such credentials. Company agrees to immediately notify Superna of any unauthorized use of Maintenance and Technical Support Services or any other breach of security with respect to the Licensed Program. 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 access to the Maintenance and Technical Support Services secure.

3. License; Feedback:

3.1 Evaluation License: With respect to any Licensed Program 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, 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 thirty (30) 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. 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 license 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 License Agreement:

- a. 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;

- b. 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
- c. 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 License Agreement, Superna grants to Company a perpetual, revocable, non-exclusive, non-transferable license to the Licensed Product identified in the Order Email solely for Company's own internal use. This license does not extend to Company Affiliates unless agreed in writing by Superna and Company. This license is limited to the maximum number of Devices you may monitor as set forth in the applicable Order Email ("**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 the expiration or termination of the Maintenance and Technical Support Period described in the Order Email for Optional Features, or any renewal Maintenance and Technical Support Period, as applicable, or termination of this License Agreement in accordance with Section 5.2.

3.3. **License Restrictions:** Company shall not, and shall not permit any third party to:

- a. monitor more Devices than set forth in the Authorized Use Limitation;
- b. copy the Licensed Products, in whole or in part;
- c. modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the Licensed Products;
- d. 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;
- e. transfer the Licensed Program to any third party after it is installed on the Computer System;
- f. reverse engineer, disassemble, decompile, decode or adapt the Licensed Products;
- g. remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, disclaimers, or proprietary rights notices or other symbols, notices, or marks relating to 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 License Agreement.

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 3.1. 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 License 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 at <http://documentation.superna.net/3rdparty notices> 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 License 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 License Agreement shall be for a period commencing upon the Effective Date and continuing until such time as Company discontinues use of the Licensed Product on the Computer System or this License Agreement is terminated in accordance with Section 5.2 (the “**Term**”).

5.2 Superna shall have the right to terminate Company’s license 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 that a Default is not payment-related, Superna shall give written notice to Company of such Default. If the Default has not been remedied within thirty (30) days after such notice, the license granted hereunder and any access to Maintenance and Technical Support Services shall terminate. In the event that Company has failed to pay any required License Fee, whether an initial license Fee or a Fee for Optional Features, or any Services, Superna shall give written notice to Company of such Default. If the Default has not been remedied in full within five (5) days of such notice, all licenses granted hereunder, and all entitlement to access Optional Features and Services are hereby automatically revoked without further notice.

5.3 Company agrees, upon termination by reason of this License 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, 4.1, 5.3, 5.4, 7.2, 8.3, 10, 11.2, 12, 13.3, 13.4, 13.10 and 13.11 of this License Agreement shall survive the expiration or termination of Company’s license and this License Agreement.

6. Warranty:

6.1 Superna warrants that:

- a. for a period of ninety (90) days following the Effective Date (the “**Program Warranty Period**”) that 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. during the Initial Maintenance and Technical Support Period, as defined in Section 9.1, and any renewal Maintenance and Technical Support Period, as applicable (the “**Maintenance and Technical Support Warranty Period**”), Maintenance and Technical Support Services shall be performed in a reasonable and workmanlike 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 Maintenance and Technical Support Services. Company must notify Superna in writing of any such non-compliance with these warranties within the applicable Warranty 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 applicable Warranty Period, Company's sole and exclusive remedy shall be: for Section 6.1(a), to return the Licensed Product, terminate Company's rights under this License Agreement and receive a pro-refund of payments actually received by Superna from Company for the Licensed Product (or the Optional Feature, if applicable) which is the subject of the warranty claim; and, for Section 6.1(b), to receive a pro-rata refund of fees actually paid by Company for the deficient Maintenance and Technical Support Services.

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:

- 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 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; 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 THE LICENSED PRODUCT OR THE MAINTENANCE AND TECHNICAL SUPPORT SERVICES WILL DETECT OR PREVENT ANY OR ALL MALICIOUS CODE OR THAT USE OF THE SOFTWARE 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.

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 the Licensed Program 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 Deliverables, or (iii) terminate Company's license for such Licensed Programs or Deliverables upon ten (10) days' written notice and refund payments actually received by Superna from Company for the Licensed Product or Deliverable 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 Indemnitee**"), against any claim, demand, suit or proceeding made or brought against such Superna Indemnitee by a third party: (i) alleging that Company's use of the Licensed Programs, Services or Deliverables in breach of this License 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

License Agreement (a "**Claim Against Superna**"), and shall indemnify the Superna Indemnitees for any damages, attorneys' fees and costs finally awarded against each such Superna Indemnitee as a result of, or for any amounts paid by a Superna Indemnitee 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 Indemnitee 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 Indemnitee.

7.3 If at any time during the 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 Services, or any component thereof, or any Deliverable, 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, advertising, 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 the Licensed Program is a tool that is not intended to replace the professional skills and judgment of Company and its personnel. Company further acknowledges that Company, in Company's sole discretion, shall be responsible for Computer System design, and implementation and use of the Licensed Program and Documentation by Company. Neither Company nor its personnel will rely on the Licensed Program, the Documentation or any Superna services as a substitute for such professional skills and judgment. With respect to use of the Licensed Program, Documentation and related services with respect to High Risk Services, Company further acknowledges that only Company has the necessary Computer System and risk assessment information to plan and implement back-up plans and other safeguards in the event of an Error or misuse of the Licensed Program by Company. Accordingly all such planning and implementation is the sole responsibility of Company and its personnel. Company shall also be responsible for the continued operation and maintenance of the Computer System, the Prerequisites, and the Devices monitored by the Licensed Program.

8.2 Company agrees to 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.

8.3 Company agrees that it 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, that is in any way associated with the matters set forth in Sections 8.1 through 8.3.

8.4 In order to utilize the Optional Features, Company agrees to install all upgrades to the Licensed Program 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.

8.5 The Licensed Product or Optional Features may allow Company to opt in to the "Phone Home Feature" to share anonymized metadata to Superna to assist with 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.

8.6 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 <http://documentation.superna.net/> or change, update or modify the terms and conditions set forth in this License Agreement upon notice to you. 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 The Order Email sets forth the initial Maintenance and Technical Support Services entitlement period for the Licensed Product (“**Initial Maintenance and Technical Support Period**”). In the event that Company allows a lapse in Maintenance and Technical Support Services for any period of time, Superna may, in its sole discretion, elect to provide Company limited Technical Support Services on an “as is” basis with no service level commitment and no access to Maintenance Services, as described in Section 9.2. In the event of any termination or lapse as contemplated by this Section 9.1, Superna may require Company to acquire any Update or Upgrade by paying the then-current Licensed Program Fee for including Maintenance and Technical Support Services. Upon receipt of such payment, Superna will issue a new license key for the Licensed Program Maintenance and Technical Support Services to Company which will include the Authorized Use Limitation and the Maintenance and Technical Support Services entitlement period.

9.2 **Maintenance Services:** If Company maintains Maintenance and Technical Support Services during the 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.

9.3 **Technical Support Services:** Technical Support Services shall consist of technical support to be rendered in the English language by Superna as described in Exhibit A and the Documentation (“**Technical Support Services**”). Superna reserves the right to alter or amend the provisions of these sections, or terminate the provision of Technical Support Services for the Licensed Program, upon the end of the then-current Maintenance and Technical Support Services period. 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.

9.4 **Subcontractors.** Superna may, in its sole discretion, use third party contractors to fulfill its obligations to provide Maintenance and Technical Support Services provided that Superna shall be responsible for performance of the Maintenance and Technical Support Services by such subcontractor in accordance with the terms of this License Agreement.

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 License 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 License 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 License 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, including 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 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: (a) to the extent that such license is required to enable Superna to perform the Services or support the Optional Features; and (b) in de-identified, aggregated form for statistical purposes and to enhance and extend the functionality of the Licensed Product or the Services.

11.3 Superna will have the right to collect, extract, compile, synthesize, and analyze deidentified data and information resulting from or relating to the use or operation of the Licensed Product and the Services by Company ("**Usage Data**"). Any Usage Data will be owned by Superna and may be used by Superna for any lawful business purpose

without a duty of accounting to Company subject to the confidentiality obligations set forth herein. 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: (a) to the extent that such license is required to enable Superna to perform the Services or support the Optional Features; and (b) in de-identified, aggregated form for statistical purposes and 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 LICENSE 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 LICENSE 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 License 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 us 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 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 License 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 License Agreement. The audit will be conducted by Superna or its authorized representatives. Client agrees that Company shall have the right, upon discovering a violation of any of the Authorized Use Limitation or other material provision hereof, to terminate this License Agreement.

13.4 Notice: Any notice required or permitted under the terms of this License 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 License 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 License Agreement or of a party's rights or remedies under this Services Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Services Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Services Agreement and will not in any way affect the validity of the whole or any part of this Services 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 Services Agreement will preclude the enforcement by such party of any other right or remedy under this Services 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 License Agreement is found to be invalid, unlawful or unenforceable to any extent, such provision of this License 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 License 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 License 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 License 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 License Agreement shall be in the state courts of Massachusetts or the United States District Court for the District of Massachusetts.

13.12 Construction. If there is a conflict between any term of this License Agreement and any term of an Order Email, the term in the License Agreement will prevail with respect to such conflict. This License Agreement and any instrument referred to herein or executed and delivered in connection herewith, will not be construed against any party as the principal drafter hereof or thereof. The section and paragraph headings used in this License Agreement are inserted for convenience only and will not affect the meaning or interpretation of this License 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.

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

13.14 **Hyperlinks:** Superna uses hyperlinks in sections of this License Agreement for the sole purpose of providing you with additional information about the subject matter of such sections. The information referenced in any hyperlink is provided for informational purposes only and is not made a part of this License Agreement or incorporated in this License Agreement by reference unless specifically set forth herein.

13.15 **Entire Agreement.** This License Agreement (and Exhibits hereto) contains the entire agreement of the parties with respect to the subject matter of this License 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 Services Agreement will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this License Agreement, regardless of any failure of Superna to object to such terms, provisions or conditions. Except as otherwise set forth herein, this License Agreement may not be amended, except by a writing signed by both parties.

13.16 **Terms Subject to Change:** You acknowledge and agree that Superna may change the terms and conditions of this License Agreement from time to time upon reasonable notice to the address, including email address, you provided upon signup. If you do not agree to any changes in this License 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

Coverage	Standard Offering
Tier 3	Yes
Error Correction	Yes
Updates	Yes
Upgrades	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 A.

Table A:

Critical	Major	Minor
<p><u>Critical Errors.</u> Critical Errors render the Licensed Program non-operational and have no known work-around. Critical Errors include, but are not limited to, the following:</p> <ul style="list-style-type: none"> (a) complete failure to sync ALL configuration data for supported cluster configurations and versions of cluster software; (b) inability to launch failover job; (c) inability to log on to the UI; and (d) inability to boot the appliance successfully after more than two (2) attempts. <p>Critical Errors do not include any Error resulting from the following:</p> <ul style="list-style-type: none"> (i) Not running latest Major or Minor Release and attempting a failover; (ii) Failover over jobs with errors that require manual recovery steps; (iii) Failure to follow failover recovery steps as directed by Technical Support Services personnel or from Documentation; (iv) Any failure to contact third party product support resources when reasonably requested by Technical Support Services personnel; 	<p><u>Major Errors.</u> Major Errors affect Computer System 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> <ul style="list-style-type: none"> (a) Errors that disrupt or prevent routine Computer System activities such as system backup, system administration or sync function; (b) complete failure to sync some of the SyncIQ policy configuration data for supported cluster configurations and versions of cluster software; (c) 3rd party software or hardware that is identified as the root cause of an Error that affects the Licensed Program; (d) Errors that significantly affect service for a large number of administrators such as 	<p><u>Minor Errors.</u> Minor Errors do not significantly impair the core functions of the Licensed Program and do not significantly affect ability to execute failover. Minor Errors include the following:</p> <ul style="list-style-type: none"> (a) Errors in a function of the Licensed Program with a known work-around; (b) Errors in non-key functions of the Licensed Program; (c) Errors in the user Interface with a known work-around; (d) Errors that affect usability but not functionality; (e) Errors in the Documentation; (f) Errors related to the pre-production use of the Licensed Program (initial installation and configuration and/or installation service not completed); and (g) Problems resulting from procedures missing from the Documentation.

<ul style="list-style-type: none"> (v) External dependencies caused by IP network, permissions, CPU, memory and disk (vi) Computer System performance below recommended configurations in Documentation; (vii) Failure to follow regular daily or weekly monitoring of Computer System operations (alarms, reports); (viii) Failure to take corrective actions, or requesting Technical Support Services, for any procedure or condition for which Documentation is available; or (ix) Failure to configure all Prerequisites as stated in Documentation 	<p>emailing alarms, reports; and</p> <p>(e) Problems that significantly affect a function of the Licensed Program and no suitable workaround is available.</p> <p>Major Errors do not include any Error resulting from the following:</p> <ul style="list-style-type: none"> (i) External dependencies caused by IP network permissions, CPU, memory or disk; or (ii) Computer System performance below recommended configurations in Documentation. 	
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1.2 Error Classification: Upon identification of an Error, Company shall notify Superna using a Technical Support Services Method set forth 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 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.

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 1 (“**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 License Agreement.

Table B:

Error Severity	Support Site Priority	Resolution Time Targets
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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:

(a) Resolution Time Targets are triggered by Superna’s receipt of notice of an Error via a Technical Support Services Method.

(b) Resolution Time Targets require that Company provide a sample of at least ten (10) cases of an Error to be statistically measurable.

(c) Resolution Time Targets are provided “as is” with no implied or express warranty or recourse if not met by Superna.

(d) Resolution Time Targets are presented as a guideline only and may be impacted by third party product support response times.

(e) In the event Company’s response to any question or request for input by Superna is unanswered for four (4) 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 to Company’s designated personnel an electronic notice of the Error and a description of the action required to address it.

(b) Company must also:

- (i) 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;
- (ii) 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;
- (iii) Document and promptly report Errors of the Licensed Product to Superna;
- (iv) Properly train its personnel in the use of the Licensed Product and the Computer System;
- (v) Promptly install Updates provided by Superna;
- (vi) Refrain from running virus protection, backup software or other software during Technical Support Services unless authorized in writing by Superna;
- (vii) 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;
- (viii) 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;
- (ix) Open each request for Technical Support Services *with both primary and 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.
- (x) Upload System Data as requested by Superna Technical Support Services personnel;

- (xi) 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;
- (xii) Provide all requested information, screen shots or log files upon request of Superna Technical Support Services personnel;
- (xiii) Execute remediation steps upon request of Superna Technical Support Services personnel and provide prompt responses to inquiries using a Technical Support Services Method;
- (xiv) 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 provide adequate notice for assessment may result in suspension of Maintenance and Technical Support Services in Superna's sole discretion;
- (xv) 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
- (xvi) 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:

(a) 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 License Agreement.

(b) Superna shall have no obligation to provide Technical Support Services in connection with any of the following:

- (i) Isilon cluster and OneFS releases;
- (ii) Microsoft Active Directory;
- (iii) Microsoft DFS and all versions;

- (iv) Networking including firewalls between the appliance and the clusters;
- (v) EMC SyncIQ performance or functionality;
- (vi) Supported browsers used to access the appliance; or Linux client machines that access the cluster;
- (vii) ESX host and virtual environment that hosts the virtual appliance;
- (viii) Applying OS patches and security changes to the appliance;
- (ix) DNS servers used to resolve names for failover or appliance functionality;
- (x) Time sync of the appliance to the Isilon clusters time source; or
- (xi) Any component, software or hardware not listed above that is affecting failover of an Isilon system.

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 <http://documentation.superna.net/eyeglass-isilon-edition/software-release-download>. 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 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 Maintenance and Technical Support Services Period will not be affected by such suspension.

4. Superna™ Eyeglass Installation Quick Start Maintenance Task Description

Overview:

This support task is designed for customers who have a need for deployment and knowledge transfer on monitoring, troubleshooting and basic operations of Eyeglass.

- **Delivery:** Remote WebEx
- **Operating Hours:** Monday to Friday 8:30 to 5:30 EDT
- **Terms and Conditions of task covered in Exhibit B**
- **Exclusions:**
 - **This maintenance task is included in product purchase and IS NOT a replacement for advanced services that include DR design and failover training and knowledge transfer**
 - **Available once per customer purchase of 8 or more node licenses or 2 or greater cluster licenses**
 - **No external configuration of AD, DNS, Isilon**
 - **Installation Technicians are not authorized to provide design recommendations, initiate failover operations OR make material cluster configuration changes that can compromise cluster data availability.**
 - **NOTE:** Installation Technician will defer all known install questions to post sales team.

Prerequisites:

- **Mandatory:** Eyeglass Isilon Basic Installation Questionnaire Form completed located [here](#)
- **Mandatory** Schedule service installation [here](#).

- **Restrictions:** Entitlement is one per purchase of 8 or more nodes or 2 or greater cluster licenses
 - Superna reserves the right to cancel this entitlement quick start task 60 days from purchase date or for any other reason at Superna's sole discretion.

Eyeglass Installation Quick Start Maintenance Task:

This service includes the following:

1. **Eyeglass for Isilon Installation** - Remote Install with customer via WebEx meeting to accomplish the following
 - a. Gather site installation requirements from checklist above
 - b. Provide guidance on Install of appliance on VMware host only
 - i. Excludes RHEL and Windows Hyperv
 - c. If Eyeglass was previously installed for Eyeglass trial, reset system to factory default removing trial configuration.
 - d. License Eyeglass with transaction number and appliance ID
 - e. Provide guidance on create service account for authentication to customer clusters
 - f. Sync Cluster configuration inventory (add clusters)
 - g. Verify correct job creation and successful sync
 - i. Run one policy sync job to verify sync status
 - h. Run appliance backup
 - i. Configure email for alarms and change report
 - i. Test and verify email
 - j. Configure phone home support
 - i. Test phone home is successful
 - k. Installation Completed install document provided.
2. **Knowledge Transfer Session** - WebEx
 - a. Review installation, and operating procedure to monitor the system replication status, overall DR status, inventory status.
 - b. Review monitoring tools email, twitter, logging export to log analysis tools
 - c. Review online help system for errors within Eyeglass webui
 - d. Provide installation summary document and system status test results
 - e. Review appliance backup
 - f. Review appliance restore procedure
 - g. Review Eyeglass CLI and capabilities

- h. Walk through support account enrollment, knowledge base access, feature request process
- i. Review Failover planning documentation and review support process for failover.
- j. Identify Next steps documentation for customer to review configuration steps for DR design.
- k. Review appliance HA documentation links and explain choices for HA of the appliance
- l. Review Free hands on virtual training and online self paced courses links.

Exhibit B

Professional Services Terms

These Professional Services Terms (the “**Terms**”) shall apply to Professional Services you acquire from Superna in connection with your use of Superna Eyeglass® product. Capitalized terms not defined herein shall have the meanings set forth in the Superna Eyeglass Software License and Support Services Agreement (the “**License Agreement**”).

1. Definitions.

- 1.1. **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.
- 1.2. **Effective Date** means the date a Service Description or SOW is signed by Company.
- 1.3. **Fees** means the aggregate fees for the Professional Services ordered by Company in a Service Order.
- 1.4. **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.
- 1.5. **Service Description** means Superna’s standard, then current description of a Professional Service that will be accepted by Company or by a Superna reseller on Company’s behalf. Company may make no changes to a Service Description. All current Service Descriptions are listed [here](#).
- 1.6. **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.

- 1.7. **Statement of Work or SOW** means a document describing a customized service with scope determined and Fees quoted by Superna before purchase by Company.
2. **Scope of Services.** Subject to these Terms, Superna will use commercially reasonable efforts to perform the Professional Services in accordance with the Service Description or SOW.
3. **Performance of the Professional Services.**
 - 3.1. **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.
 - 3.2 **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**"):
 - a. Company shall promptly provide System Data and 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 System Data;
 - b. 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;
 - c. 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, 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;
 - d. 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;

- e. Company is solely responsible for obtaining all equipment and software, and the compatibility thereof with the Deliverables; and
- f. 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. **Proprietary Rights**

- 4.1. **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 this Services Agreement.
- 4.2. **Use Restrictions.** Company shall not, and shall not permit any third party to:
 - k. copy the Deliverables, in whole or in part, except to the extent required to exercise the license grant set forth in Section 4.1;
 - l. 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;
 - m. prepare derivative works or improvements of the Deliverables;
 - n. transfer the Deliverables to any third party;
 - o. remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, disclaimers, or proprietary rights notices or other symbols, notices, or marks relating to any copy of the Deliverables;
- 4.3 **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.

5. **Warranty.**

- 5.1. Superna warrants that:
 - b. 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
 - c. during the term of any applicable Service Order, (the "**Professional Services Warranty Period**"), Services shall be performed in a reasonable and workmanlike manner, consistent with generally accepted industry standards.

- 5.2. 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.
- 5.3. 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.
- 5.4. Any modification or attempted modification of a Deliverable by Company, any failure by Company to use the Licensed Product not in compliance with the License 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.
- 5.5. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 5:
- 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 VULNERALBILITIES , OR ERROR FREE, THAT ANY SYSTEM DATA OR REGISTRATION INFORMATION STORED BY SUPERNA WILL BE SECURE FROM ALL POSSIBLE VULNERALBILTIES, 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 SOFTWARE 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.

6. Miscellaneous

- 6.1. **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.
- 6.2. **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.