

## 1. Scope

These support terms, including the Appendices, (**Support Terms**) apply to the support services purchased, described in these Support Terms (**Support Services**) and provided by Endace Measurement Systems Limited (a New Zealand company) of Unit B, Ground Floor, Building 2, 660-670 Great South Road, Ellerslie, Auckland 1051 (**Endace, we, our or us**) to customers who subscribe to those Support Services (**you or your**).

## 2. Interpretation

### 2.1. Definitions:

In these Support Terms, the following terms have the stated meaning:

**EndaceProbe:** EndaceProbe hardware, EndaceCMS, hardware, and associated software

**Issue or Problem:** any failure of a Product to operate in accordance with our specifications for the Product

**Product:** a standard Endace hardware or software product (excluding Endace DAG hardware, Endace DAG software and Endace TDS products)

**Warranty:** Each hardware product ships with a 12 month warranty period which covers standard hardware **RMA** support only

**RMA:** a Return Material Authorisation, which you must use when returning a Product to us for repair. The RMA is necessary in order for us to identify and keep track of the returned Product

**Chassis RMA:** an RMA for the EndaceProbe excluding the removable storage media, which you must use when returning an EndaceProbe Chassis only to us for repair

**Storage Media RMA:** an RMA for the EndaceProbe's removable storage media, which you must use to request a replacement HDD or SSD for the EndaceProbe

**Storage Media:** includes any removable hard disk drives or removable solid state drives supplied with an EndaceProbe system

**Support Package:** a product that provides support for a number of EndaceProbes. A summary of the services included in the support package is provided in Appendix A

**Support Portal:** the Endace self-service portal for customers, and partners.

**Email support:** a support service provided by Endace using a dedicated email address support as listed in Appendix C

**Support Request:** a request to Endace for assistance in resolving an issue or problem.

**Phone support:** a dedicated phone number to provide access to Endace support personnel

**Response:** an Endace support person has received and reviewed your report of an Issue or Problem and has attempted to contact you in order to begin to address and remediate the Issue or Problem. Response time is measured from the time that we receive and review the Issue report. For telephone reports, the response time begins immediately upon receipt of the call. For email and web reports, the response time begins when we review the email or web report,

which may be up to one business day after the email or web report is sent

## 3. Service descriptions

### 3.1. Conditions of support

You must have an active **Support Package** contract in order to use Endace Support services.

We will support the current and one previous major release of any software Product.

### 3.2. Support portal:

All Support Portal users have access to these free features:

- a. knowledgebase
- b. user forum
- c. documentation
- d. device drivers
- e. summary of support entitlements

### 3.3. Support Services:

We will provide the following Support Services for the Products:

- a. Portal, Phone and Email support
- b. Assistance with configuration and setup of new systems
- c. Bug fixes, patches, software and firmware maintenance and updates through the Endace Support Portal
- d. Access to support documentation and online knowledgebase through the Support Portal
- e. Hardware repair/replacement outside of warranty period

### 3.4. Hardware Issues (**Chassis RMA**):

You must obtain a **Chassis RMA** from us before returning any Products. **RMA**s may be obtained by contacting Endace support.

An **ASR** (Advanced System Replacement) will be sent in advance without any removable storage media. You are required to retain your **Storage Media** in order to keep your data secure. (This does not apply to Probes with embedded Media, EP-114, and EP-124).

When you take receipt of the **ASR** unit, you are required to insert the **Storage Media** you retained into the new chassis, with the disks in the correct order. You take responsibility for marking the media so that re-insertion is performed in the correct configuration.

When returning a faulty **EndaceProbe**, the chassis must be shipped without removable **Storage Media**.

Replacement hardware can only be shipped to the original purchase shipping location and must comply with US export restrictions.

We will bear the cost of return shipping for defective hardware covered by a current **Support Package**.

The cost of return shipping for defective hardware to be repaired or replaced under warranty only (i.e. not covered by a current **Support Package**) is at your expense.

We reserve the right to charge a "no fault found" fee for hardware that is found to be in good working order.

### 3.5. Hardware Issues (**Storage Media RMA**):

You must obtain a **Storage Media RMA** from us before returning any Products. **RMA**s may be obtained by contacting Endace support.

You must then supply a photo of the face plate of the faulty *Storage Media* (including serial number, and model number), and send us the photo along with a certificate of destruction. (You must obtain a *Storage Media RMA* from us before destroying any *Storage Media*).

We will ship your new *Storage Media*. Only *Storage Media* supplied by Endace are covered under the *Storage Media RMA* scheme.

### 3.6. Software Issues:

For software Issues reported by you, we will use commercially reasonable efforts to:

- a. Provide a patch, workaround or other relief
- b. Respond as set out in Appendix A, and
- c. Resolve the Issue in an expeditious manner, in accordance with the priority levels set out in Appendix B.

## 4. Your actions and responsibilities

### 4.1. Raising support Issues:

You may raise support issues by contacting Endace support via phone, email or via the Support Portal. We will provide you with all contact information. You should raise any priority 1 (critical) issues via telephone to ensure immediate response. When raising a support issue you must provide the following information:

- a. Product serial number
- b. Description of the fault
- c. Symptoms and priority (see Appendix B for priority definitions).

### 4.2. Escalation:

In the event that you believe you have not received the expected level of support, you may escalate the Issue to Endace support management, in accordance with the procedure set out in Appendix C. Escalation to Endace support management requires an open support case and should only be used when the normal support process has not addressed the Issue.

## 5. Limitations and exclusions

### 5.1. Exclusions:

You assume responsibility and we have no responsibility for the replacement or repair of Product failures caused directly or indirectly by:

- a. you, your employees' or third parties' negligent or wrongful act, including neglect, accident, misuse, unsuitable physical or operating environment, transportation by you, failure of electrical power or any other failure not attributable to the Product
- b. modification of the Product not authorised in writing, by us
- c. products that (i) are not manufactured by us, (ii) do not comply with applicable standards and/or regulatory requirements, and/or (iii) are not compatible with the Products in your environment, or
- d. Products into which you do not allow us to incorporate modifications.

### 5.2. Out of scope services:

In addition, the Support Services do not include any of the following services:

- a. Product installation or relocation
- b. development or customization of Products

- c. provision of consumable items, or
- d. products not supplied by us.

### 5.3. Product removal:

You must remove any products not eligible for support to allow us to perform the Support Services. If the Support Services are made more difficult because of such products, we may charge a fee to you for the extra work at our standard time and materials service rates.

## 6. Term

### 6.1. Regular term:

The initial term for Support Services will commence on the date of receipt of payment and will remain in force for the support period you have subscribed to as stated in your purchase order (**Initial Term**). Sixty days before the end of the Initial Term or any subsequent renewal term, we may send an invoice to you for a subsequent renewal term of the same period as the then-current support term. You may renew your subscription to Support Services for the relevant renewal term by notifying us and paying the invoice. These Support Terms will remain in effect during the Initial Term and any and all renewal terms.

### 6.2. Lapse in coverage:

If you did not subscribe to Support Services with your initial Product purchase and subsequently wish to initiate Support Services, or if you have allowed Support Services to lapse and wish to recommence, an initiation/recommencement fee will apply. In addition, you must pay the fee for Support Services for the period when you were not subscribed. We may require a Product inspection before accepting a Product for Support Services. Support Services cannot be reinstated for Products that have been unsupported for 12 months or longer; time and materials support services are available for such Products.

### 6.3. End of support:

We will provide a minimum of 6 months' notice that a Product is becoming unsupported. In some circumstances, Support Services may only be available for part of a year, in which case we will refund any fee paid by you in advance that relates to the post-support period.

## 7. Pricing and payment

Fees for Support Services for the Initial Term are as stated on our written quote for Products. Fees for renewal terms will be as stated in our renewal invoice. Payment must be made prior to the renewal term commencing. We may charge you additional charges for services beyond the scope or term of the Support Services for a Product.

## 8. Warranties

### 8.1. Warranty:

We warrant that we will perform the Support Services in a professional manner.

### 8.2. No implied warranties:

TO THE MAXIMUM EXTENT PERMITTED BY LAW:

- a. OUR WARRANTIES ARE LIMITED TO THOSE SET OUT IN THESE SUPPORT TERMS, AND ALL OTHER CONDITIONS, GUARANTEES OR WARRANTIES WHETHER EXPRESSED OR IMPLIED BY STATUTE OR OTHERWISE ARE

EXPRESSLY EXCLUDED;

- b. WE MAKE NO REPRESENTATION CONCERNING THE QUALITY OF THE SUPPORT SERVICES OR ANYTHING PROVIDED TO YOU BY US IN CONNECTION WITH THE SUPPORT SERVICES, AND
- c. WE DO NOT PROMISE THAT THE SUPPORT SERVICES OR ANYTHING PROVIDED TO YOU BY US IN CONNECTION WITH THE SUPPORT SERVICES WILL MEET YOUR REQUIREMENTS OR BE SUITABLE FOR A PARTICULAR PURPOSE, OR BE SECURE, FREE OF VIRUSES OR OTHER HARMFUL CODE, UNINTERRUPTED OR ERROR FREE.

### **8.3. Limitation of remedies:**

- a. In the event that the Support Services are not performed in a professional and workmanlike manner, our liability is limited, at our option, to supplying the relevant Support Services again, or paying the cost of having the relevant Support Services supplied again
- b. Where legislation or rule of law implies a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Support Terms. However, our liability for any breach of that condition or warranty is limited, at our option, to the remedies set out in clause 8.3a

## **9. Liability**

### **9.1. Maximum liability:**

OUR AGGREGATE LIABILITY TO YOU UNDER THESE SUPPORT TERMS OR IN CONNECTION WITH THE SUPPORT SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, WILL NOT EXCEED 12 MONTHS' FEES FOR THE SUPPORT SERVICES YOU ARE SUBSCRIBED TO AT THE TIME ANY SUCH LIABILITY FIRST ARISES.

### **9.2. Unrecoverable loss:**

WE ARE NOT LIABLE TO YOU UNDER THESE SUPPORT TERMS OR IN CONNECTION WITH THE SUPPORT SERVICES FOR ANY:

- a. LOSS OF PROFIT, REVENUE, SAVINGS, BUSINESS, DATA AND/OR GOODWILL, OR
- b. CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGE OR LOSS OF ANY KIND.

### **9.3. Preservation of remedies:**

Clauses 9.1 and 9.2 do not apply to limit or exclude any liability that cannot be limited or excluded under applicable law.

## **10. Export control**

You must adhere to all applicable export control laws and regulations and must not export or re-export any Products or technical data received except in compliance with the applicable export control laws and regulations of the U.S. and any other applicable countries.

You are responsible for obtaining such licenses to export, re-export or import Products or technical data as may be required.

## **11. General**

### **11.1. Force majeure:**

We are not liable to you for any failure to perform our obligations under these Support Terms to the extent caused by an event that is beyond our reasonable control.

### **11.2. Entire Agreement:**

These Support Terms set out everything agreed by the parties relating to their subject matter, and supersede and cancel anything discussed, exchanged or agreed prior to the date you first subscribe to Support Services. You confirm that you have not relied on any representation, warranty or agreement relating to the subject matter of these Support Terms or the Support Services that is not expressly set out in these Support Terms, and no such representation, warranty or agreement has any effect from the date you first subscribe to Support Services.

### **11.3. Notices:**

Our address for notices is:

Unit B, Ground Floor, Building 2, Central Park Corporate Centre,  
660-670 Great South Road, Ellerslie, Auckland 1051  
PO Box 12894, Penrose, Auckland 1642  
New Zealand  
Fax +64 9 582 0361

Email: [legal@endace.com](mailto:legal@endace.com)

Attn: Chief Executive Officer

We may change this address by written notice to you.

### **11.4. Severability:**

If any provision of these Support Terms is, or becomes illegal, unenforceable or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If such modification is not possible, the provision must be treated for all purposes as severed from these Support Terms without affecting the legality, enforceability or validity of the remaining provisions of these Support Terms.

### **11.5. Variation:**

Any variation to these Support Terms must be in writing and signed by an authorised Endace signatory.

### **11.6. Assignment:**

You may not assign, novate, subcontract or transfer any right or obligation under these Support Terms, without our prior written consent.

### **11.7. Law:**

These Support Terms are governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute connected with these Support Terms or the Support Services.

## Appendix A – Support Package

SERVICE DESCRIPTION	SERVICE PROVIDED
Support availability	24 x 7 x 365
Initial response time (Technical response times, see Appendix B)	5 Minutes
Email Support	Yes
Phone Support	Yes
Remote diagnostics	Yes
Software and firmware maintenance and feature release updates	Yes
Software bug fixes / patch releases	Yes
Online User Guide access	Yes
Online FAQ access	Yes
Online Knowledge Base access	Yes
Single day Lab access	Yes
Shipping and logistics	Return and replace cost on Endace
Advanced system replacement (EndaceProbe, EndaceCMS)	1 business day shipping
Storage Media & PSU advanced replacement	1 business day shipping
Storage Media & PSU advanced replacement (Chicago, New York, London, Sydney)	Same day courier

## Appendix B - Priority Definitions and Associated Technical Response Times

PRIORITY	DEFINITION	RESPONSE TIMES
Availability	Periods in which initial technical support is available	24 x 7 x 365
1 – Critical	Equipment is unusable resulting in critical impact on the customer's business.	1 Hour
2 – High	Equipment is usable with some functionality being limited resulting in minor impact on the customer's business.	4 Hours
3 – Medium	Equipment is usable but some features may not be available resulting in minimal to no impact on the customer's business.	8 Hours
4 – Low	Equipment is operational resulting in no impact to the customer's business.	24 Hours

## Appendix C - Escalation

If you need to escalate your support case please follow the escalation path shown below starting with level 1. If you do not get a satisfactory response, please escalate to the next level.

Level 1	Contact Endace Support. <a href="mailto:support@endace.com">support@endace.com</a>
Level 2	Contact the Endace Case Manager - <a href="mailto:support.management@endace.com">support.management@endace.com</a>
Level 3	Contact the Endace Director of Support - <a href="mailto:support.director@endace.com">support.director@endace.com</a>