

1. SCOPE

These support terms, including the Appendices, (**Support Terms**) apply to the support services described in these **Support Terms (Support Services)** and provided by Endace USA Limited (a Delaware corporation) of 2 Research Place, Suite 300, Rockville, MD 20850 (**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:

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.

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.

RMA: a Return Material Authorization, 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.

Support Package: the type of support package that you have subscribed to, either premium, standard or DAG support. A summary of the features of each type of Support Package is provided in Appendix A.

3. SERVICE DESCRIPTIONS

3.1 Services: We will provide the following Support Services for the Products:

- a. phone and email support
- b. assistance with configuration and setup of new systems
- c. bug fixes, patches, software and firmware maintenance and updates
- d. access to support documentation and online knowledgebase
- e. access to online self-guided training, and
- f. hardware repair/replacement.

The specific service inclusions, the coverage period and the response times differ according to the type of Support Package that you have subscribed to.

3.2 Hardware Issues: We will address hardware Issues by accepting return of the defective Product and either:

- a. shipping an advance-replacement unit to you, or
 - b. repairing and returning the defective unit to you,
- depending on the Support Package that you have subscribed to. You must obtain an RMA from us before returning any Products. RMAs may be obtained by contacting Endace support. We reserve the right to charge a "no fault found" fee for hardware that is found to be in good working order. 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.

3.3 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.

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

4. YOUR ACTIONS AND RESPONSIBILITIES

4.1 **Raising support Issues:** You may raise support Issues by contacting Endace support via phone, email or the web. 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: Product serial number, description of the fault and 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. your, 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 authorized 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 Service 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 shipment of the Product 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. Upon request, we will quote a longer or shorter renewal term. You may upgrade your Support Package at any time, upon payment of the requisite fee. You may downgrade your Support Package only at the renewal date. 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 at least 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 and workmanlike manner.
- 8.2 **NO IMPLIED WARRANTIES: TO THE MAXIMUM EXTENT PERMITTED BY LAW:**
- 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;
 - 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
 - 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:**
- 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.
 - 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:
- LOSS OF PROFIT, REVENUE, SAVINGS, BUSINESS, DATA AND/OR GOODWILL, OR
 - 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
Attn: Group Legal Counsel
 - 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 authorized 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 the state of Delaware. Each party submits to the non-exclusive jurisdiction of the courts of the state of Delaware in relation to any dispute connected with these Support Terms or the Support Services.

Appendix A - Support Packages

The following only applies if you are currently subscribed to a DAG, standard or premium support package.

Package	DAG **	Standard	Premium
Support availability	24 x 7 x 365	24 x 5	24 x 7 x 365
Initial response time (Support response times, see Appendix B)	15 Minutes	15 Minutes	5 Minutes
Email Support	Yes	Yes	Yes
Phone Support	Yes	Yes	Yes
Remote diagnostics	Yes	Yes	Yes
Software and firmware maintenance and feature release updates	Yes	Yes	Yes
Software bug fixes / patch releases	Yes	Yes	Yes
Online User Guide access	Yes	Yes	Yes
Online FAQ access	Yes	Yes	Yes
Online Knowledge Base access	Yes	Yes	Yes
Ticketing system / Web Portal access	Yes	Yes	Yes
Online self-guided training	Yes	Yes	Yes
Single day Lab access	/A	N/A	Yes
Shipping and logistics	Return and replace cost on Endace	Return and replace cost on Endace	Return and replace cost on Endace
Advanced system replacement (EndaceProbe, EndaceCMS)	N/A	N/A	1 business day shipping
Advanced hardware replacement (DAG, and TDS)	1 business day shipping	Ships within 7 days from receipt	1 business day shipping
HDD & PSU advanced replacement	N/A	N/A	1 business day shipping
HDD & PSU advanced replacement (Chicago, New York, London)	N/A	N/A	Same day courier

TDS = Time Distribution Server

HDD = Hard Disk Drive

PSU = Power Supply Unit

Advanced replacement means the replacement item delivered prior to receiving the defective item.

** Selected DAG cards only

Appendix B - Priority Definitions and Associated Response Times

Priority Definition		Response Times		
Priority	Definition	DAG 24 x 7 x 365	Standard 24 x 5	Premium 24 x 7 x 365
1 – Critical	Equipment is unusable resulting in critical impact on the customer's business.	4 Hours	8 Hours	1 Hour
2 – High	Equipment is usable with some functionality being limited resulting in minor impact on the customer's business.	8 Hours	8 Hours	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.	24 Hours	24 Hours	8 Hours
4 – Low	Equipment is operational resulting in no impact to the customer's business.	24 Hours	24 Hours	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. support@endace.com
Level 2	Contact the Endace Case Manager - support.management@endace.com
Level 3	Contact the Endace Director of Support - support.director@endace.com