

## 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 Ltd, with its principal place of business at Suite 555, The Almaden, 99 Almaden Boulevard, San Jose, California, 95113, USA and registered offices at 2 Research Place, Suite 300, Rockville, MD 20850, USA (**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:

**Product:** Endace DAG Card, Endace DAG Software, Accessories or Endace Timing Distribution Switch (TDS).

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

**Site License:** A per-location license for project teams developing code for DAG products. Different physical sites, and different project teams each require a license. A Site License grants you access to DAG source code, phone, portal and email support

**Project Team:** A design team working on a single specific customer product – may include product variants.

**On demand support:** An on-demand DAG support product purchased through the **Support Portal** which provides three **Support Tickets** that expire after 3 months

**Support Ticket:** A **Support Portal** based support request for one issue only, up to one previous major release of any DAG software product

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

**RMA License:** RMA support for a specific DAG card or accessory (Serial number must be registered)

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

**Support Portal:** the Endace self-service support portal for customers

**Support Request:** a request for Endace assistance in resolving an issue or problem related to the operation of a DAG card or accessory

**Email support:** a support service provided by Endace to Customers with a valid **Site License** using a dedicated email address support as listed in Appendix C

**Phone support:** a dedicated phone number provided by Endace to Customers with a valid **Site License** or **RMA License** 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

A summary of the features of each type of Support Package is provided in Appendix A.

### 3.1. Conditions of support:

You must have an active **Support Portal** account to make use of any support services.

Endace makes no warrantee or commitment to resolve issues that you may report.

### 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. On demand support:

Purchased via the **Support Portal**. Each purchase allows three **Support Tickets** to be raised. These expire after 3 months.

Each Support ticket provides the following support services:

- a. request support for an issue via the **Support Portal**
- b. respond as set out in Appendix A

### 3.4. Site License:

If you have an active **Site License** we will use reasonable commercial efforts to provide the following Support Services:

- a. phone and email support
- b. bug fixes, patches, software and firmware maintenance and updates as set out in Appendix A
- c. access to support documentation and online knowledgebase through the Endace Support Portal
- d. access to DAG source code

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

### 3.5. Hardware Issues (**RMA License**):

You must have an active **RMA License** for each DAG card you want covered for **RMA** support.

We will address hardware Issues by accepting return of the defective Product and shipping an advance-replacement unit to you.

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

#### 4. Your actions and responsibilities

##### 4.1. Raising support Issues (*Support Ticket*):

When raising a support issue you must provide the following information:

- a. Product serial number
- b. Description of the fault and symptoms

##### 4.2. Raising support Issues (*Site License*):

You may raise support Issues by contacting Endace support via phone, email or through 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.

##### 4.3. Raising support Issues (*RMA support*):

You must provide the following information:

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

You must have purchased *RMA License* for the specific DAG card at least one month before the fault is reported.

##### 4.4. Escalation (*Site License, and RMA License only*):

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 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
- d. Products into which you do not allow us to incorporate modifications

##### 5.2. Out of scope services:

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 (*Site License & RMA License only*)

##### 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.

The term for Support Tickets will commence on the date of receipt of payment and will remain in force for 3 months from confirmation of payment.

##### 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

##### 7.1. *Site License & RMA pricing and payment*:

Fees for a *Site License* or *RMA License* 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.

**Pricing for Support Tickets is published on the Support Portal and payment is made at the published rates at the time of purchase.**

#### 8. Warranties

##### 8.1. Warranty:

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

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 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 Services

The following only applies if you are currently subscribed to support package.

SERVICE DESCRIPTION	SITE LICENSE	SUPPORT TICKETS	RMA LICENSE
Support availability	24 x 7 x 365	24 x 5	24 x 7 x 365
Initial response time (Technical response times, see Appendix B)	15 Minutes	1 Working Day	15 Minutes
Email Support	Yes	No	Yes
Phone Support	Yes	No	Yes
Remote diagnostics	Yes	No	Yes
Submit support request via Support Portal	Yes	Yes	Yes
Access to source code	Yes	No	No
Software and firmware maintenance and feature release updates	Yes	Yes	Yes
Request software bug fixes or patch releases	Yes	No	No
Online User Guide access	Yes	Yes	Yes
Online FAQ access	Yes	Yes	Yes
Ticketing system / Web Portal access	Yes	Yes	Yes
Advanced hardware replacement (DAG, Accessories and TDS)	No	No	Ships no later than the next working day

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

PRIORITY	DEFINITION	RESPONSE TIMES	
		SITE LICENSE	ON DEMAND
Availability	Periods in which initial technical support is available	24 x 7 x 365	24 x 5
1 – Critical	Equipment is unusable resulting in critical impact on the customer’s business.	4 Hours	No guarantee
2 – High	Equipment is usable with some functionality being limited resulting in minor impact on the customer’s business.	8 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	
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.

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>