Endace – End User License Agreement



IMPORTANT - **READ CAREFULLY.** This document is a legal agreement (**License**) between you (either an individual or an entity) and the entity set out in clause 16 below (**Endace**) for the Software and Product (as defined below).

WARNING! DO NOT INSTALL, COPY, READ, STUDY, OR OTHERWISE MAKE USE OF THE SOFTWARE OR THE PRODUCT (AS DEFINED BELOW) UNTIL YOU HAVE READ AND ACCEPTED ALL THE TERMS OF THIS LICENSE. BY INSTALLING, COPYING, READING, STUDYING OR OTHERWISE MAKING USE OF THE SOFTWARE OR THE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT ACCEPT ALL THE TERMS OF THIS LICENSE DO NOT INSTALL, COPY, READ, STUDY OR OTHERWISE MAKE USE OF THE SOFTWARE OR THE PRODUCT. IF YOU WORK FOR A COMPANY OR ORGANIZATION YOU MUST BE AUTHORIZED TO ACCEPT THE TERMS OF THIS LICENSE ON BEHALF OF THAT COMPANY OR ORGANIZATION.

Where a company is to be bound by this License, references to **you** and **your** in this License are references to the company. Included with the Software or Product may be software that is "open source" (including but not limited to software licensed under the BSD or GNU General Public License). "Open source" software included with the Software or Product is not subject to this License – please refer to the documentation accompanying or included with that "open source" software.

1. Definitions:

- a. Appliance means the Endace-manufactured network appliances (including but not limited to physical and virtual versions of EndaceProbe);
- Application means Endace proprietary software application (including but not limited to EndaceVision, Endace vProbe, EndaceCMS, Investigation-Manager, EndaceFlow, OSm, MGD, EndaceProbeCloud, and EndaceConsole) intended to execute on an Appliance, as a virtual machine, or in a public or private cloud environment;
- c. **DAG** means the Endace-manufactured network cards and associated software including Virtual DAG (vDAG) interfaces;
- d. **DockOS** means the package of Linux along with various open source applications (SNORT, Suricata, Wireshark, etc), bundled with Endace code (DAG, and other libraries);
- e. **Intellectual Property** means copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, confidential information, know-how and any other intellectual proprietary right or form of intellectual property;
- f. Owners means the author of the respective intellectual property: Endace or it's suppliers with respect to the Software or Product;
- g. Product means either an Appliance, Application, Software, or combination thereof; and
- h. **Software** means any firmware, BIOS, source code, compiled code, API, or scripts (including Applications) contained within a Product, or within an electronic install package supplied in connection with a Product or supplied on its own (as applicable), including without limitation all associated media,

printed materials and online or electronic documentation, but excluding "open source" software.

2. License:

Endace and/or the Owners are the owners of the copyright and other intellectual property rights in the Software and Product. On your acceptance of this License and payment of the applicable license fees (if any), Endace grants to you a non-exclusive, non-transferable license under its copyright rights in the Software and Product and the patents to use the Software and Product upon the terms and conditions contained in this License and in accordance with its documentation.

You do not receive title to the Software or Product or any intellectual property or proprietary rights whatsoever.

Access to the Software and Product may be controlled by a License key which shall enable Endace to activate or disable the Software or Product in accordance with the terms contained herein.

On your acceptance of this license agreement you also agree to the terms of the Dell End User License Agreement (EULA) found at: https://www.dell.com/learn/us/en/uscorp1/legal terms-conditions-dellgrmwebpage/art-software-license-agreements.

3. Permitted Uses (Appliances and Applications):

In relation to the Software contained within an Appliance:

- a. the Software is licensed with the Appliance as a single integrated product and may only be used with the Appliance.
 If the Software is not accompanied by the Appliance, you may not use the Software; and
- b. unless otherwise expressly provided, you may use the Software solely as embedded in and for execution on the Appliance for internal business purposes.

In relation to the Software supplied for use on non-Endace supplied hardware, for use as a virtual machine, or for use in a public or private cloud environment:

- c. the Software is licensed for use in a specific target environment (ie specific hardware, hypervisor or cloud provider) and may only be used in that environment; and
- d. you may operate only up to a specified number of instances of the Software, for a set period of time, and within the usage restrictions that the license allows; and
- e. unless otherwise expressly provided, you may use the Software solely for internal business purposes.

4. Permitted Uses (DAG, vDAG and DockOS):

The DAG, vDAG and DockOS are provided *as-is* without Support. Endace provides no warranty and accepts no liability.

In relation to the Endace copyright Software supplied with a DAG Card, vDAG, or in a DockOS bundle:

- a. you may use and modify the source code provided for use in your product; and
- b. you may re-distribute binary versions of the code, either in its original, or in a modified form.



5. Restrictions (Appliances and Applications):

This clause 5 applies to Appliances and Applications.

- a. You must not use the Software or Product or make copies of it except as permitted in this License.
- b. Except as expressly set out in clause 3 (as applicable), you must not translate, adapt, vary, modify, or make derivative works from, the Software or Product or any part of it.
- c. You may not disassemble, decompile or reverse engineer any part of the Software or Product supplied to you as compiled code, except that it is permissible to incidentally decompile the Software if it is essential to do so to achieve interoperability of the Software with another computer program (the **Purpose**) provided that you keep any information obtained during de-compilation confidential and do not use that information in any way except for the Purpose.
- d. You may not disassemble, open, modify, decrypt, or reverse Engineer any part of the Appliance, Software, Application, electronic hardware, printed circuit boards, or Product.
- e. You must not remove, obliterate, change or supersede from the Software or Product Endace's copyright notice.
- f. Except as expressly set out in clause 3 (as applicable), you must not sell, assign, lease, rent, loan or sub-license your rights under this License, or provide the Software or Product or otherwise make it available in whole or in part in any form to any person, without prior written consent from Endace.
- g. You must not use the Software or Product for immoral, illegal or for any other purpose which may be determined threatening, abusive or harmful including but not limited to the creation or transmission of any virus, worms, Trojan horse or any other destructive or contaminating program or the illegal interception of communications.
- h. You must not disclose to any person any information which would enable that person to do any of the prohibited acts above.

6. Restrictions (DAG, vDAG and DockOS):

This clause 6 applies to DAG, vDAG and DockOS.

- a. You may not re-distribute Endace source code in either the original, or modified form.
- b. You must not remove, obliterate, change or supersede from the Software or Product Endace's copyright notice.
- c. Except as expressly set out in clause 4 (as applicable), you must not sell, assign, lease, rent, loan or sub-license your rights under this License, or provide the Software or Product or otherwise make it available in whole or in part in any form to any person, without prior written consent from Endace.
- d. You must not use the Software or Product for immoral, illegal or for any other purpose which may be determined threatening, abusive or harmful including but not limited to the creation or transmission of any virus, worms, Trojan horse or any other destructive or contaminating program or the illegal interception of communications.
- e. You must not disclose to any person any information which would enable that person to do any of the prohibited acts above.

7. Additional Requirements:

You must also:

- a. ensure that every person who will use the Software or Product is notified of this License and its terms prior to such use;
- b. supervise and control use of the Software or Product in accordance with the terms of this License;
- take reasonable measures to ensure the security of the Software or Product; and
- d. comply with any license terms or copyright notices included or embedded with the Software or Product.

8. Duration:

- a. This License will immediately and automatically terminate if you breach any of its provisions, in which case you must immediately destroy the Software and all your copies.
- b. In addition to clause 8a, you may terminate this License by uninstalling the Software and all your copies, destroying same and notifying Endace in writing of termination.

9. No Warranties:

ENDACE AND THE OWNERS PROVIDE THE SOFTWARE OR PRODUCT "AS IS" AND MAKE NO WARRANTIES IN RESPECT OF THE SOFTWARE OR PRODUCT, EITHER EXPRESS OR IMPLIED. TO THE EXTENT PERMISSIBLE BY LAW, ALL CONDITIONS AND WARRANTIES (STATUTORY, EXPRESS OR IMPLIED) ARE EXCLUDED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Without limiting the generality of the preceding sentence, Endace makes no warranties that (i) future versions of the Software or Product, if any, will contain features similar to or the same as the Software or Product; or (ii) operation of the Software or Product will be uninterrupted or error-free.

10. Exclusion of Liability:

- a. IN NO EVENT SHALL ENDACE AND THE OWNERS BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SOFTWARE OR PRODUCT.
- b. ENDACE'S AND THE OWNERS' MAXIMUM JOINT LIABILITY SHALL BE LIMITED TO THE LICENSE FEE (IF ANY) PAID BY YOU FOR THE SOFTWARE PLUS, WHERE YOU HAVE ACQUIRED THE SOFTWARE AS PART OF THE PURCHASE OF A PRODUCT, THE PURCHASE PRICE OF THAT PRODUCT.

11. Legal and Regulatory approvals:

You agree that it is your responsibility to obtain any legal or regulatory approvals required for installation and/or use of the Software or Product.



12. Intellectual Property:

You acknowledge that all copyright, trademarks, patents and other intellectual property in or relating to the Software, Product and any derivative works thereof, including but not limited to all code, images, photographs, animations, video, audio, music, text and data incorporated in the Software or Product are owned by Endace and/or the Owners.

13. Indemnity:

You shall defend, indemnify and hold harmless Endace and the Owners against any losses, damages, suits and other liabilities arising in whole or in part out of your acts or omissions in connection with this agreement and your use of the Software, Product and any derivative works, including without limitation: (1) injuries to persons, including death or disease; (2) damage to property, and (3) your failure to comply with applicable law.

14. Benefit of License:

This License is for the benefit of and is enforceable by Endace and/or the Owners.

15. Export:

You must adhere to any applicable export control laws and regulations and shall not export or re-export any Product or technical data received or the direct product of such technical data except in compliance with the applicable export control laws and regulations.

16. Governing Law and Jurisdiction:

Unless otherwise agreed in writing the Licensor is as follows:

- if you are domiciled in New Zealand, Endace Measurement Systems Limited (New Zealand company 1202098) (EMS).
 The License will be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- if you are domiciled in Asia or Oceania, excluding New Zealand, Endace Australia Pty Limited (ACN 135 892 358) (Endace Australia). The License will be governed by the laws of New South Wales, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.
- if you are domiciled in Europe, Africa or the Middle East, Endace Europe Limited (UK company 04834114, registered office Squires House, 205a High Street, West Wickham, Kent, United Kingdom, BR4 0PH) (Endace Europe). The License will be governed by the laws of England, and the parties submit to the non-exclusive jurisdiction of the courts of England; and
- if you are domiciled in Latin America or North America, Endace USA Limited, a Delaware company (Endace USA). The License will be governed by the laws of the State of Delaware and the parties submit to the non-exclusive jurisdiction of the federal and State courts located in the State of Delaware.

17. General:

- a. This license represents the whole of the contract and understanding between the parties; and replaces all prior agreements and understandings between the parties, whether written, oral or both, with respect to its subject matter.
- No addition or modification (including without limitation no additional warranty or representation) will be binding on either party unless made in writing and signed by both parties.
- c. Failure or neglect of Endace to enforce any provision of this License at any time shall not be construed or deemed to be a waiver of its rights and shall not in any way affect the validity of this License or any of its provisions nor prejudice Endace's right to take subsequent action.
- d. In the event that any provision of this License is deemed by any competent authority having jurisdiction to be invalid, unlawful or unenforceable to any extent, that provision shall to that extent only be severed from the remaining provisions which shall continue to be valid.