



## AMDC FIRMWARE END USER LICENCE AGREEMENT

This Licence is between: -

The company or entity using the Firmware and on whose behalf the terms of this Licence are accepted ("the Licensee") and Celoxica, Inc. of 1133 Broadway, Suite 706 New York, NY 10010 ("Celoxica").

It is a condition of your use of the Firmware that you accept the terms of this Licence, in addition to any terms of any third party such as a distributor of the Firmware. If you do not accept all the terms, you must not use the Firmware, and you should return it to Celoxica (or the distributor or sub-licensor from whom you acquired the Firmware).

Definitions of terms are set out in Clause 0.

### 1 Licence Grant

- 1.1 Celoxica grants to the Licensee a non-exclusive licence to: -
  - 1.1.1 allow Permitted Users to use the Firmware on the terms set out in this Licence;
  - 1.1.2 use the Documentation in conjunction with the Firmware;
  - 1.1.3 make a reasonable number of copies of the Firmware for back up purposes during the term of this Licence;
  - 1.1.4 make a reasonable number of copies of the Documentation for training, reference and back up purposes.
- 1.2 The Licensee's use of the Firmware is governed by this Licence and any supplemental agreements with Celoxica or any permitted sub-licensor or permitted distributor.

### 2 Licence Restrictions

- 2.1 Licensee shall adhere to any specific restrictions or terms regarding the Firmware as set out in the Quote or as otherwise agreed. In the event of any inconsistency between the terms of this Licence and the Quote, the Quote shall prevail.
- 2.2 Unless otherwise agreed by Celoxica in writing the Licensee may not: -
  - 2.2.1 allow those who are not Permitted Users to Use the Firmware;
  - 2.2.2 allow any person to use the Firmware outside the Use Area;
  - 2.2.3 modify, adapt, translate, reverse engineer, de-compile, disassemble or attempt to discover the source code of the Firmware or convert or translate the Firmware to a human perceivable form;
  - 2.2.4 allow the Firmware to be combined with, or to become incorporated or integrated in, any other programs, Firmware or hardware except as specifically agreed by Celoxica or unless such combination, incorporation or integration is obviously intended by Celoxica;
  - 2.2.5 use the Firmware otherwise than in accordance with, or as recommended in, the Documentation;
  - 2.2.6 distribute, license, sub-license, lease, lend, transfer or otherwise dispose of any interest in the Firmware to any third party or otherwise allow other parties to use or have access to, the Firmware or Documentation;
  - 2.2.7 use the Firmware in breach of the Celoxica's licence management requirements or systems (including the Licence Server), or bypass or seek to bypass them or access elements within the Firmware that are not supposed to be accessed, or alter the Key or use, alter or create licence files for or within the Firmware in breach of this Licence and any supplemental agreements;
  - 2.2.8 disclose the results of any benchmarking of the Firmware; or
  - 2.2.9 otherwise use the Firmware in any manner not permitted by this Licence.
- 2.3 Notwithstanding the above, where and when required by law, Celoxica will upon request, and subject to reasonable confidentiality requirements, give to the Licensee such information as Celoxica considers reasonably necessary to enable the Licensee to operate its independently created programme with the Firmware. If the Firmware is provided to the Licensee in Europe the Licensee shall not disassemble the Firmware for error correction purposes.

### 3 Delivery Terms

- 3.1 On satisfaction of all Celoxica's delivery requirements and payment for the Licence as agreed, Celoxica shall deliver to the Licensee (by CD, web download or other agreed medium) the Firmware and the applicable Documentation.
- 3.2 The Licensee shall pay all applicable sales, value added and other taxes relating to the licence of the Firmware and the provision of support other than taxes that are calculated by reference to Celoxica's income.

#### **4 Licence and Support Fees**

- 4.1 Celoxica and the Licensee shall agree on the pricing formula for the licence of the Firmware which may be on a limited time basis or perpetual basis.
- 4.2 Support fees shall be paid annually in advance unless included in the pricing.
- 4.3 Unless otherwise specified prices are quoted exclusive of the costs of shipment, insurance, value added tax, withholdings, customs duties and all other taxes and charges (all of which shall be payable by the Licensee). No counterclaim or set-off by the Licensee may be deducted from any payment due on any account whatsoever without the written consent of Celoxica.

#### **5 Support and Maintenance**

- 5.1 Support and maintenance, in accordance with Celoxica's standard support agreement in force from time to time, shall be provided for every current licence of the Firmware for which any necessary support fees have been paid. The standard support agreement in force from time to time is available at <http://www.celoxica.com/aboutus/legal.html>.
- 5.2 If any service pack or similar is sent or made available to Licensee prior to its full testing, Licensee shall use all reasonable endeavours to update its Firmware accordingly but understands that the service pack is provided "as is" and without any warranties or conditions as to its functionality, fitness for purpose, quality, merchantability or otherwise.

#### **6 Copyright and Intellectual Property**

- 6.1 Copyright and all other intellectual property rights whatsoever in the Firmware and the Documentation is owned by Celoxica or by third parties from which rights to license have been obtained from or through the licensor. The content, structure, organisation and code comprised in the Firmware and the information in the Documentation are the valuable trade secrets, and Confidential Information, of Celoxica.
- 6.2 Save as set out in Clauses 1 and 0, this Licence does not grant the Licensee any intellectual property rights in the Firmware.
- 6.3 The Licensee will ensure that all copies of the Firmware at all times bear the proprietary and other notices contained in or on the original copy of the Firmware supplied to the Licensee and shall not remove any proprietary notices, labels, or markings on the Firmware including any source code header files or otherwise.
- 6.4 Without prejudice to Clause 2.2, if the Licensee discovers any potential fix or modification of the Firmware ("Modification") it shall notify Celoxica of that fact as soon as reasonably practicable after such discovery. The Licensee hereby grants to Celoxica a royalty free, perpetual, irrevocable, sub-licensable, worldwide licence to develop, modify and commercialise in any manner any Modifications discovered by the Licensee.

#### **7 Confidentiality**

- 7.1 Each party agrees both during the term of this Licence and for a period of 5 years after the date hereof that it will not use or disclose to any third party any Confidential Information of the other except as permitted by this Licence or as authorised by the other party in writing. Each party undertakes to use the same care to maintain the Confidential Information of the other party as it uses to maintain the confidentiality of its own non-public information of equal importance but in any event at least all reasonable care including the use of reasonable security precautions.
- 7.2 The confidentiality obligations in this Licence shall not apply to any Confidential Information which is required to be disclosed by applicable law or order of a Court of competent jurisdiction or recognised stock exchange or government department or agency or other competent authority provided that prior to such disclosure the recipient party consults with the other party as to the proposed form, nature and purpose of the disclosure.

#### **8 Limited Warranty**

- 8.1 Celoxica warrants that for a period of 90 days from the delivery of the Firmware, the Firmware will operate substantially in accordance with the AMDC Firmware Product Description (FPD) and that the media on which the Firmware is delivered will be free from defects on delivery. If, within 90 days of receipt of the Firmware by the Licensee the medium on which it is supplied is faulty and returned to Celoxica, Celoxica shall replace it without charge. This warranty shall not apply to service packs or Updates that have not been fully tested.
- 8.2 The Licensee accepts that the Firmware cannot be tested in every possible combination or operating environment. In particular and for the avoidance of doubt Celoxica does not warrant (i) that the Firmware will operate in all selected combinations including with any particular third party Firmware or hardware, (ii) that operation of the Firmware will be uninterrupted or error free, (iii) that operation of the Firmware will meet the Licensee's requirements (and in particular, as the Firmware is a development tool, the Licensee acknowledges that the results of the use of the Firmware depend on the specific design of the product being created by the Licensee and the code written using the Firmware) and (iv) that the Firmware, or the results of using the Firmware, will operate in high risk or mission critical environments.
- 8.3 Without prejudice to the generality of Clause 8.4, any express or implied warranties herein shall not apply if (i) the Firmware is not used in accordance with the instructions of Celoxica, (ii) the Firmware is altered, modified or converted by the Licensee or a third party or combined or integrated with or into third party Firmware,

unless such alteration, modification, conversion or use in combination or integration is with Celoxica's express consent (iii) a program error in the Firmware results from a malfunction of a third party's or the Licensee's equipment or Firmware not supplied by Celoxica or (iv) the Firmware is not of a version or release that is being generally supported by Celoxica.

- 8.4 EXCEPT AS PROVIDED ABOVE, THE FIRMWARE IS PROVIDED "AS IS" AND CELOXICA EXPRESSLY DISCLAIMS AND EXCLUDES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER TERMS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 8.5 If Celoxica provides any pre- or post-sales services or advice (which is not covered by any other form of services or support agreement) including optimisation, parameterisation, integration services or advice, or carries out any programming including the writing of any code for the Licensee or provides advice on the same, and which is carried without charge, then NO WARRANTIES ARE GIVEN AS TO THE QUALITY, MERCHANTABILITY, FITNESS FOR PURPOSE OR OTHERWISE OF SUCH SERVICES OR ADVICE UNLESS OTHERWISE AGREED IN WRITING WITH CELOXICA. IN NO EVENT SHALL CELOXICA BE LIABLE FOR ANY DAMAGES (INCLUDING LOSS OF PROFITS OR DATA) ARISING OUT OF ANY SUCH SERVICES OR ADVICE.
- 8.6 Notwithstanding anything to the contrary in this Licence, certain elements of third party Firmware are licensed "as is". See Clause 0.

## **9 Limitation of Liability**

- 9.1 IN NO EVENT SHALL CELOXICA BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS OR DATA) ARISING OUT OF THE USE OR INABILITY TO USE THE FIRMWARE, (INCLUDING IN PARTICULAR THE FUNCTIONALITY (OR LACK THEREOF) OF ANY CODE CREATED USING THE FIRMWARE), WHETHER BASED ON A CLAIM UNDER CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF CELOXICA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE AVOIDANCE OF DOUBT, CELOXICA SHALL HAVE NO LIABILITY FOR THE LOSS, INTERCEPTION, ENCRYPTION OR DECRYPTION OF DATA, FILES OR OTHER INFORMATION (INCLUDING SECURE OR SENSITIVE INFORMATION) ARISING FROM USE OF THE FIRMWARE. Because some jurisdictions do not permit the exclusion or limitation of liability for consequential or incidental damages the above limitation relating to liability for consequential damages may not apply to certain Licensees.
- 9.2 THE FIRMWARE IS NOT DESIGNED, MADE OR INTENDED FOR USE IN, AND LICENSEE SHALL BE SOLELY LIABLE FOR ITS USE IN, ANY DEVICE(S) INTENDED FOR AN APPLICATION OR USE WHICH IS MISSION CRITICAL OR WHERE THERE IS A SIGNIFICANT RISK OF DEATH OR PERSONAL INJURY OR DAMAGE TO OR LOSS OF PROPERTY OR SIGNIFICANT DATA. NOTWITHSTANDING ANY OTHER PROVISION OF THIS LICENCE, IF LICENSEE USES THE FIRMWARE OR ANY ELEMENT WITHIN THE FIRMWARE FOR SUCH APPLICATIONS OR USES, OR ALLOWS A THIRD PARTY TO USE THE FIRMWARE OR ANY ELEMENT WITHIN THE FIRMWARE FOR ANY SUCH APPLICATIONS OR USE, THEN LICENSEE WILL INDEMNIFY AND HOLD HARMLESS CELOXICA, ITS SUPPLIERS, DIRECTORS, EMPLOYEES, SUBSIDIARIES, AFFILIATES, DISTRIBUTORS, AGENTS AND ITS LICENSORS FROM ANY CLAIMS, LOSS, COST, DAMAGE, EXPENSE, OR LIABILITY, INCLUDING LEGAL FEES, ARISING OUT OF OR IN CONNECTION WITH SUCH USE.
- 9.3 Celoxica's entire liability in contract, tort, negligence or otherwise for damages or other liability in respect of any one incident or a series of connected incidents shall not, in any event, except as provided in Clause 0, exceed the amount of the fees paid to Celoxica under this Licence.
- 9.4 THE FOREGOING STATES LICENSEE'S SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY AND OBLIGATION OF CELOXICA WITH RESPECT TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY RIGHTS BY THE FIRMWARE.

## **10 Term and Termination**

- 10.1 This Licence shall commence on the date that the Firmware and is delivered to the Licensee and shall continue until terminated as set out below.
- 10.2 Notwithstanding the above this Licence shall terminate automatically: -
- 10.2.1 by mutual agreement of the parties;
  - 10.2.2 by either party giving notice to the other following a material breach by the other of any obligation under this Licence which is not (if capable of remedy) remedied within 30 days of such notice to the satisfaction of the first party (and a material breach shall include the failure to pay any fees or payments due hereunder);
  - 10.2.3 by notice to either party if the other party becomes insolvent or is otherwise unable to pay its debts as they fall due within the meaning of S.123 Insolvency Act 1986 or is deemed to be insolvent within the meaning of the laws of the applicable jurisdiction of the Licensee; or
  - 10.2.4 if any Licence fee is not paid on the due date in any year this Licence shall automatically terminate 30 days after such payment becomes due.
- 10.3 Except as otherwise provided herein, upon the termination of this Licence for any reason, the Licensee shall cease using the Firmware and destroy or (at the request of Celoxica) return to Celoxica all copies of the Firmware (including copies of any and all storage media) and the Documentation and shall provide Celoxica, if

so requested, with written confirmation thereof. This obligation applies to all copies in any format or media whatsoever and whether partial or complete or merged into other Firmware or materials or media.

- 10.4 Following termination this Licence shall remain in force and effect thereafter in respect of any matters, covenants or conditions which shall not have been done, observed or performed prior thereto by either party and the other party shall be at liberty to enforce the same in accordance with the provisions of this Licence. In particular all provisions relating to obligations of confidentiality and non-disclosure of Confidential Information, obligations of indemnity, obligations to make payments of sums due (or to become due), ownership of intellectual property, limitation of liability and all other obligations which by their nature are to continue after termination, shall survive termination of this Licence.

## **11 Third party rights**

- 11.1 Save as provided below, no third party shall be deemed a third-party beneficiary under this Licence, and nothing in this Licence shall confer upon a third party any right that may arise pursuant to the Contracts (Rights of Third Parties) Act 1999. The Firmware contains third party Firmware which Celoxica has the right to license. Please see the Help, About dialog for further details. In particular, most third party Firmware is licensed "as is". Please contact Celoxica for details of those licences and terms if necessary. Licensee understands that portions of the Firmware, and other Firmware included with the Firmware and related documentation have been licensed to Celoxica from third parties and that such third parties are intended third party beneficiaries of the provisions of this Licence and associated licences and terms. Save as otherwise provided, those third parties shall enjoy the same protection of confidentiality, protection of intellectual property rights, disclaimers of warranty, limitations on liability, and other similar provisions as does Celoxica with respect to such Firmware or components of Firmware, and no amendment of this Agreement by the parties will affect those rights. If the licensor of any third party Firmware to Celoxica terminates the license of such third party Firmware, and if the grounds of termination do not include breach by Licensee, the right to use such third party Firmware granted hereunder shall terminate thirty (30) days following the date of such termination, but if Licensee requires a continuing right to use the relevant third party Firmware, Celoxica shall make reasonable endeavours to procure that the third party Firmware licensor grants Licensee a continuing right to use such third party Firmware on substantially the same terms as this Agreement to the extent that such terms apply to such third party Firmware. If, however, the grounds of termination include a claim of breach by Licensee, then Celoxica shall have no such duty.

## **12 General Provisions**

- 12.1 Celoxica's Quote is incorporated into this end user licence agreement when the delivery or download of the Firmware takes place.
- 12.2 If any part of this Licence is found void and unenforceable, it will not alter the validity of the remainder of the Licence, which shall remain valid and enforceable according to its terms. The parties shall meet and discuss in good faith the void and unenforceable provisions and shall substitute therefore a lawful and enforceable provision which so far as possible results in the same economic effects.
- 12.3 This Licence (and any agreements referred to herein) represent(s) the entire understanding between the parties and shall supersede any and all previous discussions, correspondence, understandings and communications (whether written or oral) between the parties with respect to its subject matter, provided that the terms of any non-disclosure agreement signed between the parties shall continue to apply notwithstanding the terms of this Licence.
- 12.4 This Licence may not be amended, varied, supplemented or otherwise modified except by an instrument in writing signed by all the parties.
- 12.5 Save as otherwise provided herein, the benefits and obligations of each party under this Licence are personal and no party may assign, charge, delegate or transfer all or any part of its benefits or obligations hereunder without the prior written consent of the other parties hereto save that Celoxica may freely assign or novate its rights and obligations hereunder to any Associated Company of Celoxica.
- 12.6 Each party hereto represents and warrants to the other party that the signatories hereto for and on behalf of that party (and, in the case of the Licensee, the representative of the Licensee accepting the terms of this Licence by clicking to accept the terms in the "click through" version of this Licence) have been fully empowered to execute this Licence on its behalf and that all necessary action has been taken and all requisite approvals have been obtained to authorise such execution.
- 12.7 Any notice given by either party hereunder shall be in writing and may be sent by pre-paid first class post or fax to either party to the respective addresses set out in this Licence or the principal place of business of the relevant party from time to time. Any notice served by post shall be deemed to have been served three days after posting.
- 12.8 Neither party shall be liable to the other for any failure to perform or delay in performance of its obligations hereunder caused by any circumstances beyond its reasonable control including without limitation inaccessibility of the Internet, government action, war, act of God, all types of industrial disputes, lock-outs and strikes whether of their own employees or those of any third party.
- 12.9 There shall be no waiver of any term, provision, or condition of this Licence unless such waiver is evidenced in writing and signed by the waiving party. No omission or delay on the part of any party hereto in exercising any

right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies.

### **13 U.S. Government**

13.1 The Firmware and the Documentation are "commercial items" as that term is defined in 48 CFR 2.101 of the U.S. Code of Federal Regulations ("CFR"). The Firmware is classified as "commercial Firmware" and the Documentation is classified as "commercial Firmware documentation" as those terms are used in 48 CFR 12.212, Section 2.212 of the U.S. Federal Acquisition Regulations ("FAR") and Section 227.7202 of the Defense FAR ("DFAR"). Accordingly, pursuant to 48 CFR 12.212, Section 2.212 of the FAR, and Section 227.7202 of the DFAR, U.S. Government licensees shall have only those rights specified in this Licence, and Celoxica shall not be required to: (1) furnish technical information related to the Firmware or the Documentation that is not customarily provided to the public; or (2) relinquish to, or otherwise provide, the U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose the Firmware and the Documentation except as mutually agreed by the parties. The manufacturer is Celoxica Limited, 66 Milton Park, Abingdon, Oxfordshire England OX14 4RX. Unpublished rights reserved under the copyright laws of the United States. For U.S. government end users, Celoxica agrees to comply with all applicable equal opportunity laws.

### **14 Export Matters**

14.1 Notwithstanding any other restrictions in this Licence, Licensee will comply with all applicable laws, rules, and regulations governing the export, import or re-export or re-import of the Firmware or any products or work deriving from the use of the Firmware ("Export Controls") and will obtain all necessary licences, permits or similar. Licensee will, if reasonably requested by Celoxica, provide all necessary or appropriate assistance and information to Celoxica at all relevant times to enable Celoxica to comply with all such Export Controls, including information regarding the end user and the end use of the Firmware.

### **15 Law**

15.1 If Licensee's purchase order or other purchasing information specifies a delivery address in the United States, Canada or Mexico, this Licence shall be construed in accordance with and governed by the laws of the State of California, U.S.A., excepting those portions related to conflict of laws, and each party agrees to submit to the exclusive jurisdiction of the Federal and State courts in New York, New York. If Licensee's purchase order or other purchasing information specifies a delivery address anywhere else, or if there is no delivery address specified in Licensee's purchase order or other purchasing information, then, this Licence shall be construed in accordance with and governed by English Law, and each party agrees to submit to the exclusive jurisdiction of the English Courts.

15.2 Nothing in this Licence shall prevent Celoxica from taking equitable, injunctive or similar proceedings to enforce any of the obligations herein.

15.3 The Licensee undertakes to comply with any applicable statutes, laws, regulations or similar of any jurisdiction within which it uses the Firmware.

### **16 Definitions**

In this Licence unless the context otherwise requires: -

"Associated Company" means a company which is in the same group as a party where "group" means, in relation to a company, that company and its direct and indirect holding companies and subsidiaries, and any of their direct and indirect subsidiaries, (and if the Licensee is registered in England or Wales, then those terms shall be as defined in Section 736 et seq of the Companies Act 1985);

"Confidential Information" means trade secrets and other confidential information including (but not limited to) financial, staff, management, customer and supplier information and databases, business strategies, business plans, internal systems, concepts and test results, Firmware etc. However, Confidential information shall not include any information (i) which is public knowledge or which subsequently becomes public knowledge other than by any act or failure to act by either party; (ii) which is already known to the recipient party (as evidenced by its written records) at the time this Licence is entered into and was not acquired directly or indirectly from the other party or is not otherwise subject to an obligation of confidentiality; (iii) which is acquired by the relevant party from any third party who did not acquire such information directly or indirectly from the providing party in breach of any obligation of confidence; or (iv) which is independently developed by, or for the recipient party by a third party, without access to the Confidential Information;

"AMDC Firmware Product Description" means the document describing the functionality of the Firmware from time to time which is available from Celoxica and also at <http://www.celoxica.com/aboutus/legal.html>;

"Documentation"	means the related documentation, instructions and reference materials supplied with the Firmware on whatever media;
"Floating"	means a licence which specifies the permitted number of concurrent users of the Firmware and is designated as either a single Licence Server or a triple-redundant set of three Licence Servers;
"Licence Server"	means, in relation to Floating, a computer which manages and controls the number of concurrent users of the Firmware;
"Node Locked"	means a licence which restricts use of the Firmware to a single computer and does not allow access to the Firmware through or from other computers, including via any remote control or remote access Firmware;
"Permitted Users"	means, employees of the Licensee and its Associated Companies whose normal place of work is within the Use Area, independent contractors or consultants who have agreed in writing (addressed to Licensee) to be bound by the terms of this Licence and who use the Firmware within the Use Area and any other person associated with the Licensee permitted in writing by Celoxica to use the Firmware on the terms set out in this Licence;
"Quote"	means the quote or acknowledgement of order or other applicable document;
"service pack"	means a patch which fixes a particular bug or bugs or a new version of the Firmware that contains only bug fixes and no extra features and which is therefore not an Update;
"Simulation"	means programs produced by the Firmware for the purpose of emulation or de-bugging the hardware produced by the Handel C language;
"Firmware"	means (i) the object code of the agreed version of the AMDC design suite featuring Handel-C as further detailed in the Help, About dialog of the Firmware itself, in the format provided to the Licensee hereunder, (ii) any Updates that may be licensed by Celoxica to the Licensee from time to time but excluding any Upgrades, and (iii) any libraries, algorithms, circuit and logic elements bundled with or incorporated into the AMDC design suite;
"Update"	means a new release of the Firmware represented by an increase in the version number to the right of the decimal point and generally containing corrected errors, fixed bugs and minor improvements, minor architectural changes or minor new features and/or functionality to the Firmware;
"Upgrade"	means a new release of the Firmware represented by a change in the main number or the number to the left of the decimal point in the version number designation and generally containing major improvements or architectural changes;
"Use Area"	means the single business premises of the division or business unit of the Licensee at which the Firmware is to be used (normally the delivery address on the Licensee's purchase order or other purchasing information) and any agreed area around those premises or any other agreed premises, but such agreement may be subject to price adjustments or other conditions.