



AMDC Firmware Support Agreement

This Agreement is made between:

The company or entity receiving support services in respect of Firmware and on whose behalf the terms of this Agreement are accepted ("the Licensee" and includes its applicable Group companies) and Celoxica, Inc. of 1133 Broadway, Suite 706 New York, NY 10010 ("Celoxica").

It is a condition of the Licensee's use of Celoxica's support and maintenance services that these support terms are accepted.

Background

The Licensee has licensed a version of Celoxica's AMDC Firmware on the terms of a specific end user license agreement and may also have licensed other firmware from Celoxica on the terms of the applicable Celoxica firmware license. This Agreement sets out the terms and details relating to the provision of support for the AMDC firmware as applicable.

1. FIRMWARE LICENSE

1.1. The terms of the applicable Firmware License will continue to apply but where there is any conflict between the provisions of this Support Agreement and the provisions of the Firmware License, this Agreement will prevail.

2. Support Definitions

2.1. In this Agreement the following terms shall apply unless the context otherwise requires:

"AMDC"	Accelerator for Market Data Capture
"Group"	Means, in relation to a company, all majority owned companies in the same group as that company;
"Issue"	Means any problem or defect relating to the Firmware;
"Major Release"	A version of Firmware containing major architectural changes which may be Denoted by a change in the main number (E.g. AMDC1, AMDC2, etc) or other whole number reference (version 1.x, 2.x etc);
"Minor Release"	Means a version of Firmware denoted by a change in the number to the right of the decimal point, a service pack, or other similar new version of the Firmware containing minor changes, bug fixes etc;
"Other Firmware"	Means Celoxica's other firmware as agreed;
"AMDC"	Means Celoxica's AMDC ;
"Firmware"	Means AMDC firmware and other firmware which Celoxica has licensed and Agreed to support; means either an AMDC EULA or other applicable license for the relevant Firmware;
"Firmware License"	
"Support"	Means the support services described in this Agreement (including the Schedule) and the standard Celoxica support documentation and information;
"Unsupported Firmware"	Means firmware for which Celoxica does not provide Support.

2.2. The definitions set out in the applicable Firmware License shall apply in this Support Agreement unless the context otherwise requires.

3. Support Terms

3.1. For so long as the Licensee has a valid AMDC EULA in place, has paid any necessary fees for Support, and has agreed to the terms of any other applicable Firmware License; Celoxica shall provide the Support set out in the Schedule for the Firmware, subject to the terms of this Agreement.

3.2. Celoxica shall provide Licensees who are Academic Institutions with the Support set out in paragraph 3 of the Schedule.

3.3. Celoxica may agree other support terms in its discretion.

4. Licensee's Obligations

4.1. Licensee shall: -

4.1.1. Use every effort to refer to the knowledge base and other resources on the Web site in the first instance;

4.1.2. Allow Celoxica access to, and use of, all information, systems and facilities (at the Licensee's premises if necessary) which are reasonably necessary for Celoxica to provide the Support under this Agreement subject to Licensee's applicable security requirements;

4.1.3. Provide Celoxica will all reasonable assistance in resolving an Issue including providing all code necessary to replicate or otherwise test the Issue;

4.1.4. Follow any procedures and recommendations provided by Celoxica in an effort to resolve Issues;

4.1.5. Ensure that its relevant staff comprehend and follow all operating instructions and procedures as specified in Celoxica's support documentation, and in any other documentation or correspondence relating to

the Firmware;

- 4.1.6. Notify Celoxica of any Issue in accordance with the standard reporting procedure notified by Celoxica to Licensee;
- 4.1.7. Notify Celoxica if it requires Support on a version of the Firmware which is not up to date.

5. Support Limitations

- 5.1. Celoxica shall have no obligation to provide Support: -
 - 5.1.1. For any firmware, which is licensed as Unsupported Firmware or which is not specified as being supported unless otherwise agreed;
 - 5.1.2. For any Firmware licensed to an Academic Institution under an Academic End User License other than on the terms of paragraph 3 of the Schedule;
 - 5.1.3. For Firmware, which is altered, damaged or modified other than as recommended by Celoxica, or any part of the Firmware which is combined with or integrated into any third party firmware other than as obviously intended by Celoxica;
 - 5.1.4. Where the Licensee has not used the Celoxica Support Website or other standard Support resources available or has not complied with the requirements of Clause 4 above;
 - 5.1.5. Where the Licensee's Support requests are unduly onerous;
 - 5.1.6. For any version of firmware other than (1) the current Release (whether it is a Major Release or a Minor Release) and (2) the previous release (whether it is a Major Release or a Minor Release) and Celoxica may opt to resolve an Issue by requiring Licensee to upgrade to the most current release);
 - 5.1.7. For Issues caused by the Licensee's negligence, abuse or misapplication, lack of training, use of Firmware other than as specified in Celoxica's documentation or support information provided on Celoxica's Website;
 - 5.1.8. For Issues caused by matters beyond the reasonable control of Celoxica; or
 - 5.1.9. For Firmware installed on any hardware, operating system version or network environment that it is not designed for.
- 5.2. Where ongoing Support fees are payable, for example, for perpetual licenses, they shall be paid annually in advance and Celoxica shall have no obligation to provide any Support for any Firmware until due payment (including arrears) is made. Where the Licensee fails to make payment of the Support fees on time, Celoxica reserves the right to withdraw Support for the Licensee at any time and without notice, or suspend all or part of the Support until all due payments (including arrears) are made in full.
- 5.3. Celoxica shall have no obligation to port retrospectively new functionality or firmware fixes to previous releases as part of standard Support.
- 5.4. Licensee and Celoxica may agree on pro rata payments in order to consolidate the termination dates for all Licensee's Firmware Licenses.
- 5.5. Support shall automatically terminate upon termination of the applicable Firmware License (and in any event on termination of the AMDC EULA with no obligation on Celoxica to refund any Support fees previously paid.
- 5.6. Celoxica has the right to make changes to the Support services provided to its customers on giving reasonable notice.

6. Support Warranty

- 6.1. Celoxica warrants that Support will be provided with the same degree of skill and care as shown by similar persons performing support services of a similar nature.

7. Limitation of Liability

- 7.1. CELOXICA'S MAXIMUM LIABILITY UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTORY LIABILITY OR OTHER LEGAL THEORY, SHALL BE LIMITED TO THE AMOUNT PAID BY LICENSEE FOR THE SUPPORT IN ANY ONE YEAR, OR, IF SUPPORT FEES ARE INCLUDED WITHIN THE FIRMWARE LICENCE FEE, AN AMOUNT EQUAL TO 15% OF THE LICENCE FEE FOR ONE YEAR.
- 7.2. UNDER NO CIRCUMSTANCES SHALL CELOXICA BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE USE THE FIRMWARE AND DOCUMENTATION.

8. Law

- 8.1. If Licensee has its principal place of business outside the United States, this Agreement shall be construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts. If Licensee has its principal place of business in the United States, this Agreement shall be construed in accordance with and governed by the laws of the State of New York, 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.

Support Services

1. Technical Support

- 1.1. Celoxica shall use reasonable efforts to correct any Issues or provide work-around solutions and provide technical advice to customers. The Support services include:
 - 1.1.1. Access to online knowledge base – www.celoxica.com/support
 - 1.1.2. Email support – support@celoxica.com
 - 1.1.3. Telephone support (available Monday to Friday local business hours - US (East Coast local time), Europe (GMT);
 - 1.1.4. Other Support services further described on the Celoxica website at www.celoxica.com.
- 1.2. Celoxica shall prioritize any particular Issue in terms of importance and urgency.
- 1.3. Support shall not include training, consultancy services, debugging of customer code and on-site Support

- although these are available on a chargeable basis.
- 1.4. In addition Support shall not include installation, configuration, relocation (other than providing advice), operating system support or the support of firmware or hardware developed through the use of Firmware.

2. Firmware Updates

- 2.1. Celoxica shall provide bug fix releases, service pack releases, and Minor Releases for each current Firmware License as and when made available. These may be made available by making a Web download (FTP) accessible by notice to customers or may be sent direct to customer contacts or by other agreed means.
- 2.2. Celoxica may also opt in its discretion to provide certain Major Releases to customers at no extra charge.

Trial/Evaluation Support Services

3. Trial/Evaluation Support

- 3.1. At busy times preference may be given to commercial support requests.