

# ProActive Celestix Support

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## ProActive Service Level Agreement

**Celestix Support Center**



## Celestix ProActive Support Service Level Agreement

### DIRECT SUPPORT TERMS AND CONDITIONS

This Celestix Direct Support Program Service Level Agreement (the “Agreement”) is an agreement between you (both the individual purchasing the Support and any legal entity on whose behalf such individual is acting) (hereinafter “You” or “Your”) and Celestix Networks, Inc. (hereinafter “Celestix”). The purpose of this Agreement is to specify the services and commitments with respect to direct Software technical support and/or Hardware replacement services for the purchased Celestix products.

#### 1. DEFINITIONS:

“**Advance Hardware Replacement**” means a Hardware replacement service for Customers who have purchased Hardware Support, whereby after Celestix Support Center approves an RMA, Celestix delivers a replacement to Customer’s Site before Customer returns the faulty hardware to Celestix.

“**Partner**” means an authorized Celestix partner to reseller Celestix products.

“**Activation Date**” shall mean the date the support program is activated.

“**Appliance**” shall have the meaning set forth in this Agreement for the term “Hardware”.

“**Business Day**” means normal working day in the time zone where the Customer is located.

“**Celestix**” means Celestix Networks, Inc., the party to this Agreement with Customer to whom an order is issued under this Agreement.

“**Celestix Support Center**” (CSC) shall mean the primary point of contact the *Customer* will use to invoke the Support Service.

“**Customer**” means the party identified as the purchasing organization to this Agreement with Celestix.

“**Designated Contacts**” means Customer named contacts, engineering resource individuals, who are established person-specific email addresses associated with the Customer Support contract. It is expected that these contacts will be certified network Professionals.

“**Device Number**” means a unique identifier of a hardware device, which can be located in a label on a Hardware Product. Celestix uses Media Access Control (MAC) Address, Serial Number (SN), or Service Tag Number (STN) as a Device Number, depending on the type of Hardware.

“**Documentation**” means user and technical manuals provided by Celestix for use with the Software and Hardware.

“**Enhancement**” means all Software changes, including new releases, new versions, product improvements, system modifications, updates, upgrades, Service Packs, Feature Packs, and all Hardware changes, including official Celestix Hardware product enhancements and accessories.

“**Error**” means an Error in the product, which degrades the product as defined by the Severity definitions, as compared to Celestix published functionality and performance specifications.

“**Hardware**” means a computing device and/or its component with a specific function and limited configuration ability. The Hardware is sold by Celestix for the purpose of executing the specific Celestix Software supplied with it.

“**Level 1 Support**” means the ability to provide general pre and post-sales product information; hardware and software configuration; questions on upgrade Support; collect relevant technical problem identification information; perform base problem determination; provide basic Support on the standard products, protocols and features; replace Field Replaceable Units (FRUs) or whole Hardware units.

**“Level 2 Support”** means the ability to provide Level 1 Support plus the ability to resolve the majority of misconfigurations, troubleshoot and simulate complex configuration, hardware, and software problems; perform Hardware diagnostics to determine Hardware malfunction; support problem isolation and determination of product specification defects; provide lab emulation and interoperability and compatibility testing for new software and hardware releases prior to being deployed into a Customer production network; define an action plan; provide advanced Support on all products, protocols and features; have the ability to analyze traces, diagnose problems remotely, and provide Customer with complete steps to reproduce a problem.

**“Level 3 Support”** means the ability to provide Level 1 and Level 2 Support plus the ability to provide software enhancements such as patches and Hotfixes, fixing or generating workarounds that address software bugs; troubleshoot bugs that were not diagnosed during Level 2 Support; work with Customers to resolve critical situations, and building action plans with Customers to address complex issues.

**“ProActive Support Services”** means the ability to provide proactive monitoring services for the Celestix products and limited monitoring of downstream application resources.

**“Network Security Product(s)”** means Celestix product(s) with network security focus.

**“Previous Sequential Release”** means Release of Software or Hardware, which has been replaced by a subsequent version of the product.

**“Release”** means Major Release of the same product.

**“Problem Resolution”** means the use of reasonable commercial efforts to resolve the reported problem. These methods may include (but are not limited to): configuration changes, patches that fix an issue, replacing a failed hardware, reinstalling the software, etc.

**“Respond”** means addressing the initial request and taking ownership of the issue.

**“Response Time”** means the amount of time elapsed between the initial contact by Customer to CSC and the returned response to Customer by Celestix support staff.

**“RMA”** means Return Material Authorization (RMA), the process of replacing a faulty Hardware or a component of a Hardware product. The process must be authorized by CSC.

**“Service Level Agreement (SLA)”** means the Customer Service Level Agreement (SLA) that identifies the features and defines the processes involved with the delivery by Celestix of various support functions to Customer.

**“Service Request (SR)”** means a single issue opened with CSC. The Case number identifies the Service Request. The format for the unique SR number can be as follows: CAS-nnnnn-wnwn (“n” is a digit, “w” is an alphabet).

**“Severity” Definitions for Network Security product(s):**

**“Severity 1 error”** Shall mean an error that renders product inoperative or causes the product to fail catastrophically; e.g. major-system impact, system down. A reported defect in the licensed product, which cannot be reasonably circumvented, in which there is an emergency condition that significantly restricts the use of the licensed product to perform necessary business functions. Inability to use the licensed product or a critical impact on operation requiring an immediate solution.

**“Severity 2 error”** Shall mean an error that substantially degrades the performance of the product or materially restricts business; e.g. moderate system impact, system hanging. This classification is a reported defect in the licensed product, which restricts the use of one or more features of the licensed product to perform necessary business functions, but does not completely restrict use of the licensed product. Ability to use the licensed product, but an important function is not available and operations are severely impacted.

**“Severity 3 error”** Shall mean an error that causes only a minor impact on the use of the product; e.g. minor system impact, performance/operational impact. A severity level three defect is a reported defect in the licensed product that restricts the use of one or more features of the licensed product to perform necessary business functions. The defect can be easily circumvented. The error can cause some functional restrictions but it does not have a critical or severe impact on operations.

**“Severity 4 error”** Shall mean a reported anomaly in the licensed product that does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions. This is a minor problem and is not significant to operation. Anomaly may be easily circumvented or may need to be submitted to Research and Development as a request for enhancement.

**“Site”** means the physical location where System(s) are installed as specified by Customer.

**“Software”** Shall mean the object code version of the intangible information constituting one or more computer or apparatus programs and the informational content of such programs, together with any documentation supplied in conjunction with, and supplementing such programs, the foregoing being provided to *Customer* by way of electronic transmission or by being fixed in media furnished to *Customer*.

**“System(s)”** means the Hardware, Software and Documentation that have been provided to Customer by Celestix or Celestix’ authorized resellers/partners.

**“Third-party Software”** shall mean the software running on a *Celestix* product if provided by Microsoft or another Celestix partner.

**“Software Subscription”** Shall mean registered access to modifications, corrections, and/ or updates to Software; including hotfixes, service packs, and/ or Major Upgrades, provided to *Customer* by way of electronic transmission or by being fixed in media furnished to *Customer*.

**“Support”** Shall mean Technical telephone and email assistance provided by *Celestix* to the *Customer* technical support contact concerning the use of the then current release of product and the previous sequential release.

**“Support ID”** shall be the unique reference number, which the Customer shall use when invoking the Service Agreement. This number shall be provided to Customer not later than ten Working Days after the Commencement Date.

**“Support Plan”** means the direct Support program offering options and benefits as stated in this agreement.

**“Work-around”** Shall mean a change in the followed procedures or data supplied by *Celestix* to avoid error without substantially impairing use of the product.

## **2. CELESTIX SUPPORT OBLIGATIONS:**

A description of Celestix’s direct Support offerings is set forth on Exhibit A, attached hereto. Upon Celestix’s acceptance of a valid purchase order, and corresponding payment for that Support offering selected, Customer will be entitled to receive Support according to the features and benefits provided under that offering, subject to the terms and conditions of this Agreement. Technical support will not include activities that would be typically made generally available and characterized by Celestix as product training, consulting involving integration, security solutions enablement, security advisory, post-production customization configuration services, which are offered separately.

## 2.1. **Celestix Technical Support Responsibilities:**

For Celestix customers covered under a valid Celestix Support offering, technical Support will be provided pursuant to the terms of **Section 5 TECHNICAL SUPPORT**. Celestix agrees to provide Support, where appropriate, which may include but is not limited to, the following actions:

- a) Provide customer with access to product update releases, related Documentation and knowledge articles, upon general commercial release;
- b) Provide customer with access to CSC Technical Representatives, who will work customer to diagnose issues, and provide Problem Resolutions, including escalating the issue through CSC management as needed.
- c) Provide pro-active monitoring of appliances under contract.
- d) Provide remote monitoring and remote administration of appliance with valid support contract.
- e) Provide patch updates for Operating System and Support Software
- f) Provide remote hardware troubleshooting and support

2.2. **Hardware Replacement.** For Customers covered under Hardware Support, Celestix will use commercially reasonable efforts to provide Hardware replacement in accordance with the terms set forth in **Section 4 HARDWARE REPLACEMENT**.

## 2.3. **Support Lifecycle.**

- a) Celestix provides Support on the then-current Major Release and the Previous Sequential Release of all the Software products covered under a valid Software support plan. Celestix will also provide commercially reasonable technical assistance on all Software Products for a minimum of four (4) years, starting from the general availability date of the product's Major Release version. 'General availability date' is defined as the date on which a product is officially made available for purchase, but Problem Resolution may be limited to the current Major Release of the product.
- b) Celestix usually ends Software Support for a Major Release version only when the second subsequent major version has been released, or at least four (4) years have elapsed since the release of the major version in question. Celestix will provide End of Support notification for discontinued Software to Customer through an announcement posted on the Celestix Software Support Timeline website at URL: <https://www.celestix.com/support/end-of-life-policy/>
- c) Celestix provide support to Third-party Software including Microsoft security Software for a Major Release only. Celestix will provide End of Support notification for discontinued Microsoft Software to Customer through an announcement posted on the Celestix Software Support Timeline website at URL: <https://www.celestix.com/support/end-of-life-policy/>
- d) Celestix provides a comprehensive support lifecycle for its Hardware. CSC is available for Technical Assistance for up to five (5) years after Celestix's new appliance Celestix Direct Support Program Service Level Agreement availability announcement. The supported version includes the combination of the exact Hardware model number and the specification with the Celestix Software installed on it.
- e) For Software or Operating System installed on Celestix Hardware:
  - a. The then-current Major Release of the Software that was installed on the Hardware is fully supported until one (1) year after Celestix's new appliance availability announcement.
  - b. Maintenance releases/bug fixes are supplied for up to three (3) years after new appliance availability announcement. These fixes may require a Software upgrade by the Customer.

- c. Fixes and Software upgrades will be supplied to handle support issues for up to five (5) years after Celestix's new appliance availability announcement. New Software releases may require the purchase of Hardware upgrades by the Customer.
- f) Celestix provides Hardware Replacement for up to five (5) years after Celestix's new appliance availability announcement. Hardware shall be repaired or replaced with same or similar products when needed, at Celestix's discretion.
- g) Celestix will provide the date of Celestix's new appliance availability announcement and End of Support notification for discontinued Hardware to Customer through an announcement posted on the Celestix Appliance Support Timeline website at URL: <https://celestix.com/support/>
- h) Celestix reserves the right to modify Support Lifecycle policy at any time; notifications regarding changes in policy will be posted on the websites in Section 2.4 (b), 2.4 (d) and 2.4 (g).

2.4. **Nonconformance.** If Celestix determines the problem is due to nonconformance to published specifications of a Software version, or another substantial Celestix related problem, then under Celestix's Support plan, Celestix shall provide any Software fix for the reported nonconformance that may be available at the time the problem is reported. If no such fix is available, Celestix will use commercially reasonable efforts to remedy such nonconformance, which may include a Workaround or other temporary fix to the Software.

2.5. **Exclusions.**

Celestix shall have no obligation to Support:

- a) An altered, damaged, or modified product or any portion of the product incorporated with or into other software, hardware, or products not specifically approved by Celestix;
- b) Product problems caused by Customer negligence, misuse, misapplication, or use of the product other than as specified in the Celestix user manual, or any other causes beyond the control of Celestix;
- c) Product installed on any computer hardware that is not supported by Celestix;
- d) Product not purchased from the Celestix Price List;
- e) Products subjected to unusual physical or electrical stress, misuse, negligence or accident, or used in ultra-hazardous activities;
- f) Products that are past their End-of-Support date.
- g) Hardware that are not under hardware warranty. **Note:** All Celestix appliances come with 12 months hardware warranty.

Celestix shall have no obligation to Support Customer if:

- a) Appropriate payment for Support has not been received by Celestix and Customer is unable to show reasonable proof of such payment to a reseller; or
- b) Customer's annual Support term has expired without renewal.

2.6. **Reporting Non-Celestix Errors to Customer.** Upon working the Service Request under normal processes, and with appropriate management review, if at that point Celestix believes that a problem reported by Customer may not be due to an error in the Celestix product, Celestix will notify Customer. At that time, Customer may: (a) instruct Celestix to proceed with problem determination at Customer's possible expense as set forth herein; or (b) instruct Celestix that Customer does not wish the problem to be pursued at Customer's possible expense. If Customer requests that Celestix proceed with problem determination at Customer's possible expense and Celestix determines that the error was not due to the error in the product, Customer shall pay Celestix, at the Celestix then-current standard consulting rates, for all work performed in

connection with such determination, plus reasonable related expenses incurred therewith. Customer shall not be liable for:

- a) problem determination or repair to the extent the problems are due to anomalies in the Celestix product; or
- b) Work performed after Customer has notified Celestix that it no longer wishes problem determination to be continued at Customer's possible expense (such notice shall be deemed given when actually received by Celestix).

If Customer instructs Celestix that it does not wish the problem pursued at Customer's possible expense or such determination requires effort in excess of Customer instructions, Celestix may, at its sole discretion, investigate the anomaly with no liability thereof.

### 3. CUSTOMER OBLIGATIONS:

- 3.1. **Named Designated Contacts.** Customer agrees that contact with Celestix will be through the specified number of Designated Contacts. Customer is responsible for specifying and updating valid Designated Contacts via CSC with person-specific email addresses. Customer agrees that access to any Support deliverable, Software Subscription downloads and Documentation will be through these Designated Contacts, not any alias. The ability to add additional contacts may be done via contacting CSC.
- 3.2. **Network Access.** To the extent possible, and as requested by Celestix, Customer understands that it may be necessary to provide Celestix or its authorized Technical Representative access to the affected network environment for any Severity 1 issue, or when Celestix determines that its Technical Representative needs to access Customer's network in order to remotely diagnose an issue. Customer understands that if access is not provided as requested by Celestix, problem determination will be slower or impaired.
- 3.3. **Configuration Files.** Customer agrees to maintain a backup of the configuration that can be used to restore the Hardware.
- 3.4. **System Information.** Customer must provide to Celestix information for each System under a Support Plan by registering all products with CSC with accurate details:
  - a) Serial Number; (Serial will be on the system for verification)
  - b) Support ID
  - c) Model (WSA, MSA, etc....)
  - d) Physical Site location of the Hardware product; and
  - e) Site contact person.
- 3.5. If Customer physically moves any Hardware from the original Site to another location, Customer must inform Celestix of such change immediately with updated Site location and contact. It is Customer's responsibility to contact CSC to update such change. Prior to Celestix's receipt of such notification from Customer, Celestix shall not be liable for any lapses in service coverage or Hardware delivery delays with respect to such Hardware.
- 3.6. **Backup and Removal of Data.** To reconstruct lost or altered Customer files, data, or programs, Customer must maintain a separate backup system or procedure that is not dependent on the Software or Hardware products under Support.

Where applicable, before receiving Hardware Replacement Services or before disposal or return of Hardware to Celestix, Customer agrees to:

- (a) Backup and secure all programs and data contained in the Hardware;
- (b) Securely erase all programs and data not provided by Celestix with the Hardware product. Customer acknowledges that, to perform its responsibilities under this Replacement Service, Celestix may ship all or part of the Hardware product or its Software to third party locations around the world, and Customer authorizes Celestix to do so; and

(c) Remove all features, parts, options, alterations, and attachments not provided by Celestix with the Hardware product, and ensure that the Hardware is free of any legal obligations or restrictions that prevent its exchange.

#### **4. HARDWARE REPLACEMENT:**

- 4.1. **Hardware Return Procedure.** If a Hardware product or one of its component parts does not function during the Hardware Support period, and such nonconformance can be verified by Celestix, at its election, will provide Advance Hardware Replacement service with a refurbished part /unit for the Hardware under the type of Hardware Support Plan Celestix designates for that Hardware.

A defective Hardware product or one of its component parts may only be returned to Celestix upon Celestix's prior written approval. Any such approval shall reference a Returned Material Authorization ("RMA") number issued by an authorized Celestix service representative. To request an RMA number, Customer must contact CSC and open a Service Request. Support ID will be required for all RMA cases.

Celestix will make every attempt to replace the defective unit within 24 hours upon receipt of RMA request. Because of variations in shipping services and when cases are opened, Celestix will make a best effort to ship the defective within 24 hours of receipt of the RMA request, however this cannot be guaranteed since Celestix has no control over shipping services.

Celestix will ship the replacement unit before the customer sends the original defective unit to Celestix. Celestix will charge the full retail value of every unit that is not received back within 7 calendar days of receipt of replacement unit.

Transportation costs, if any, incurred in connection with the return of a defective item to Celestix shall be borne by Customer. Any transportation costs incurred in connection with the redelivery of a repaired or replacement item to Customer by Celestix shall be borne by Celestix; provided, however, that if Celestix determines, in its sole discretion, that the allegedly defective item is not covered by the terms and conditions of the Hardware Support Plan or that a claim is made after the Hardware Support period, the cost of the repair or replacement by Celestix, including all shipping expenses, shall be reimbursed by Customer.

- 4.2. **Hardware Replacement Procedure.** For Customers who have purchased Support for their Hardware, Celestix will attempt to diagnose and resolve problem over the phone or web. Upon determination that the Hardware issue is related to a malfunction of one of the Hardware components, an RMA process will be initiated by CSC. CSC will either issue a replacement of the faulty part (like Power Supply, Fan, Hard Disk, etc.) or a full Unit Replacement. Celestix will send the required hardware to the Site location, as it appears in Customer's support contract and as verified with Customer when opening the Support Service Request, in accordance with the Hardware Support Plan Celestix designates for that Hardware.

Customer must ship back the faulty Hardware product (or replaceable unit) suitably packaged according to the guidelines, as specified by Celestix in the RMA letter shipped with the replacement, to a location that Celestix designates; return shipment of the faulty Hardware should be made within seven (7) business days of the arrival of the replacement.

#### **5. TECHNICAL SUPPORT:**

- 5.1. **Hours of Operation**  
The CSC will be available to respond to 24x7 Celestix Support Plan Customers during Business Hours.
- 5.2. **By Telephone**



Dial the Celestix Networks office number for your area.

- a) US Toll Free - +1 888 717 5666
  - b) US Local - (510) 668.0700
  - c) Singapore - +65 6958 0822
  - d) United Kingdom - +44 (204) 900 3737
  - e) Dedicated MS Contact - +44 118 991 9271 **EMEA Only**
- 5.3. A Celestix Tech Support engineer will be ready to work on <Customer Name> support request during Business Hours. Customer will be asked for company Support ID and serial number of the appliance is referencing in order to verify the support program in respect of the applicable appliance. After Customer Support ID and serial number have been verified, the Celestix Support staff will create a trouble ticket for the customer in the Celestix Support database.
- 5.4. Customer will be asked to provide or verify some of the following information. If it is not possible to provide this information, Celestix may be hindered in its ability to bring resolution to an issue in a timely fashion and may be prevented from operating within the stated Service Level.
- 5.5. In the event of incomplete and/or inaccurate communication information and/or inaccurate/incomplete problem description given to Celestix Networks, Celestix will not be held liable for support which extends beyond any stated Service Level and time windows.
- 5.6. Customer must provide the following:
- 5.7. Complete contact information, (name, title, company name, email address, phone number, pager number, fax number, onsite phone number, and time zone) for all parties involved in the issue. If the issue is related in any way to licensing, please provide certificate keys and purchase order numbers for the applicable product. Note: Service SLA Certificate is not-applicable for US customers.
- 5.8. State the model number and serial number of Celestix appliance. (For example: MSA3000b, 04564000054211).
- 5.9. State the firmware version of the appliance (For example: 2.3.00).
- 5.10. Describe the software involved in this issue, including the version number and feature patch level information.
- 5.11. A description of customer's network topology and the network addresses relating to the Celestix installation and the problem that is being experienced.
- 5.12. Provide a detailed description of the problem or issue.
- 5.13. If the technician who initially responds to the case cannot resolve the issue, the call will be escalated to the next level of support within Celestix who will manage the resolution to the issue in compliance with Celestix escalation procedures and this SLA.
- 5.14. **By Internet (Web Form)**

Customers may choose to submit a support issue directly into our support database using a webform that can be found at: [http://www.celestix.com/support/supportform/support\\_form.htm](http://www.celestix.com/support/supportform/support_form.htm)

Support requests submitted online through this webform will be automatically entered into the Celestix Customer Support CRM database. A trouble ticket case number will be generated and emailed to the customer once the webform has been submitted.

You will be asked to provide or verify some of the following information. If it is not possible to provide this information, Celestix may be hindered in the ability to bring resolution to an issue in a timely fashion and will prevent Celestix from operating within the stated service level agreement.

In the event of incomplete and/or inaccurate communication information and/or inaccurate/incomplete problem description entered into the web form, Celestix will not be held liable for support which extends beyond any stated service level agreement and time windows. Customer must provide the following:

- a. Complete contact information, (name, title, company name, email address, phone number, pager number, fax number, onsite phone number, and time zone) for all parties involved in the issue. If the issue is related in any way to licensing, please provide certificate keys and purchase order numbers for the applicable product.
- b. State the model number and serial number of Celestix appliance. (For example, MSA3000b , 04564000054211)
- c. State the firmware version of the appliance (for example: 2.3.00)
- d. Describe the software involved in this issue, including the version number and feature patch level information.
- e. A description of your network topology and the network addresses relating to your Celestix installation and the problem that you are experiencing.
- f. Provide a detailed description of the problem or issue.

A Celestix technician will contact the customer via email or phone regarding this support matter.

All electronic mail transactions to CSC regarding this issue must be sent using a REPLY back to the technician handing the issue. This will allow all email correspondence to be tracked until completion of the issue. (Important: CSC has designed its system to speed service to customers. Sending an email to CSC without using the webform (initially) and a REPLY for ongoing correspondence could result in a significantly longer turnaround time for your support issue).

If you do not receive an email reply acknowledging receipt of your email request for support within two (4) hours, you should assume that the email link is down, and proceed to make a voice call to CSC.

In order to expedite the processing and resolution of individual issues, and to maintain and improve Celestix service quality, it is essential that the fields of the webform are filled out as completely as possible.

- 5.15. **Escalation, Severity Level Response Time and Resource Commitment.** Celestix agrees to use commercially reasonable efforts to respond to Customer requests based on the Severity of the issue as follows:

Severity	Standard	Premium	Proactive	Proactive +
<b>Severity 1</b>				
Case open method	Web & Phone	Web & Phone	Web & Phone	Web & Phone
Response Time	1 hour during local business hours	1 hour during local business hours. 2 hours during after hours	30 minutes during local business hours. 1 hour during after hours	30 minutes during local business hours. 1 hour during after hours
<b>Severity 2</b>				
Response Time	4 hours during local business hours	2 hours during local business hours. 4 hours during after hours	1 hour during local business hours. 2 hours during after hours	1 hour during local business hours. 2 hours during after hours
<b>Severity 3</b>				

Response Time	12 hours during local business hours	8 hours during local business hours. No after-hours support from Sev3 and below	4 hours during local business hours. No after-hours support from Sev3 and below	4 hours during local business hours. No after-hours support from Sev3 and below
Severity 4				
Case open method	Web & Phone	Web & Phone	Web & Phone	Web & Phone
Response Time	24 hours during local business hours	12 hours during local business hours. No after-hours support from Sev3 and below	8 hours during local business hours. No after-hours support from Sev3 and below	8 hours during local business hours. No after-hours support from Sev3 and below

## 6. COMMUNICATIONS

Critical Sev1 situations may require the parties to use the telephone for immediate communications. The parties may follow up such communications via an electronic interface, such as email. For tracking and recording purposes, each party is responsible for funding the cost of this communication at their own location.

In circumstances where materials, units have to be exchanged using facsimile, courier services, or other delivery services, each party is responsible for funding the cost of these exchanges at their own location.

## 7. MAINTENANCE PRICING, PAYMENT, AND REINSTATEMENT FEE POLICY

- a) Customer shall pay the charge for the Support Services annually within 15 days of the invoice.
- b) An invoice will be issued to the Customer no later than 30 days prior to the renewal date.
- c) In the event that Customer fails to pay an invoice within the period set out in sub-clause 7.1, Celestix shall have the right on 5 days written notice to Customer to suspend the provision of the Support Services with immediate effect.
- d) The fees for the Support Services are fixed for 12 months beginning on the Commencement Date. Thereafter, the fees for the Support Services may be increased on an annual basis by no more than the United States Consumer Price Index – All Cities during the most current 12-month period as determined by the United States Bureau of Labor Statistics (“CPI”) plus two percent (2%), not to exceed five percent (5%).
- e) Celestix requires continuous coverage for support agreements. Appliances with an expired warranty or lapsed support agreement greater the 60 days or longer are considered to be "out of support compliance." Support Services Reinstatement provides the opportunity to bring these appliances back into compliance and up to date for a nominal fee. The fee is 25% of the value of one-year support contract. New agreements are retroactively activated to the expiration date of the most recent warranty or support agreement. Customers with appliances that have an expired warranty or support agreement who purchase Celestix Support Services Reinstatement and a new one-year support agreement receive a full 12 months of support from the original expiration date..
- f) Customer must provide proof hardware appliance is in working order prior to renewal by providing the associated mac address of the appliance.

*Example: Current Support Agreement expires on July 30, 2015. Support Services Reinstatement requested on Oct 30, 2015. Customer must purchase a one year Support and Maintenance Agreement plus pay the 25% reinstatement fee. Support Agreement will be retroactive to the July 30, 2015 and expire on July 29, 2016.*

## **LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, CELESTIX WILL IN NO EVENT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL, CONTRACTUAL OR EQUITABLE THEORY FOR: (I) ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER OR NOT ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; OR (II) DAMAGES FOR LOST PROFITS OR LOST DATA; OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY OR THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITATION OF LIABILITY OR LIMITED REMEDY, CELESTIX'S ENTIRE AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, UNDER ANY LEGAL THEORY (WHETHER IN CONTRACT, TORT, INDEMNITY OR OTHERWISE), SHALL BE LIMITED TO THE AMOUNTS RECEIVED BY CELESTIX UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE FOR THE PARTICULAR CELESTIX PRODUCT(S) THAT CAUSED THE LIABILITY.

### **8. FORCE MAJEURE**

Neither Party shall be liable to the other for any delay or non-performance of its obligations hereunder in the event and to the extent that such delay or non-performance is due to an event of Force Majeure.

### **9. GOVERNMENT REGULATIONS**

Each Party hereto shall be solely responsible for complying with all applicable legislation when performing their obligations and activities or in connection with this Service Agreement.

### **10. CONFIDENTIALITY**

Each Party ("Receiving Party" for the purposes of this Clause 10) shall not disclose to third parties nor use for any purpose other than for the proper fulfillment of the purpose of this Service Agreement any technical or commercial information ("Information") received from the other Party ("Disclosing Party") in whatever form under or in connection with this Service Agreement (whether before or during the term of this Support Agreement) without the prior written permission of the Disclosing Party except Information which;

- a) Was in the possession of the Receiving Party prior to disclosure hereunder; or
- b) Was in the public domain at the time of disclosure or later became part of the public domain without breach of the confidentiality obligations herein contained; or
- c) Was disclosed by a third party without breach of any obligation of confidentiality owed to the Disclosing Party; or
- d) Was independently developed by personnel of the Receiving Party having no access to the Information; or

A Receiving Party is obliged to disclose under then prevailing English law by a court of law or other competent authority.

All information disclosed under this clause shall remain confidential throughout the duration of the contract and for a period of two years thereafter.

**ADDENDUM:** Please review below updates to the Celestix Support and Maintenance Agreement.

Section 5.5.2 Support Telephone Contact Update. 2/15/2024

Section 7e, 7f – Support Agreement Reinstatement fee update. 7/13/2015