3rd Party Software Agreement README for
OpenAir™ VAV Compact Controller BACnet MS/TP

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- **GDB181.1E/BA (S55499-D168)**

- **GLB181.1E/BA (S55499-D169)**

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OpenRTOS - 7.5.2 - for TM4C1xx & GCC

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including
SUPPORT and MAINTENANCE AGREEMENT
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in Appendix A (the "Effective Date") by and between the Licensee defined in Appendix A and
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information of the other party as it takes with respect to its own confidential information
of like or similar importance, but in no event less than reasonable care. The obligations
set forth in this Clause 3.2 shall not apply to information that:
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Agreement; c) is received at any time by the recipient from a third party without an obligation of confidentiality; d) is disclosed by the disclosing party to a third party without an obligation of confidentiality; or e) which the recipient is required by law to disclose and the recipient gives the disclosing party 8 days'
prior written notice of such disclosure or authorisation of disclosure (or such lesser period as may be reasonable in the circumstances); or f) is independently developed by the recipient.

4. SUPPORT AND MAINTENANCE

4.1 The Support and Maintenance provided by WHIS to the Licensee is set out in Appendix B.

4.2 The period and scope of the support is set out in Appendix C. Appendix C may be reissued at each support renewal without change to the rest of this licence to extend the period of Support and Maintenance.

5. REPRESENTATIONS AND WARRANTIES

5.1 WHIS represents and warrants that:

a) it has all rights and authority to enter into this Agreement and to grant the rights and perform the obligations set forth herein;

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6.1 Termination. Without prejudice to any other right or remedy which may be available to it, either party may terminate this Agreement by giving written notice in the event that the other party commits a material breach of this Agreement and fails to cure such breach (where capable of remedy) within sixty (60) days of receiving written notice thereof from the non-breaching party.

6.2 Licensee Fee. The Licensee shall pay WHIS the licence fee in the amount and in the manner set out in the Order Acknowledgement issued by WHIS. Failure to pay the fee within fourteen (14) days of the agreed timescale will automatically terminate this Agreement and the Licensee must return all the Software and Documentation in its possession and related materials to WHIS immediately.

6.3 Removal of Information. After termination of this Licence the Licensee agrees to destroy or otherwise place out of use all Software and Documentation or materials relating to the Software including Derivative Works until such time as a new valid licence is agreed.

6.4 Survival. Upon termination of this Agreement for any reason, Clauses 1, 3, 4, 7, 8 and 9 shall survive.

7. LIMITATION OF LIABILITY

7.1 In no event will WHIS be liable to the other party for any lost profits, lost revenues or loss of business advantage or any indirect, special, incidental or consequential damages arising out of or related to this Agreement, whether based on breach of contract, tort (including negligence) or otherwise, and whether or not such party has been advised of the possibility of such damage.

7.2 If the Licensee reports that the Software does not provide the functions described in the Documentation then within a period of one year from delivery of the Software to the Licensee, WHIS shall at its sole discretion, rectify the software, issue a patch or other work around.

7.3 Except for the obligations of WHIS in Clause 4 under no circumstances shall the liability of WHIS to the customer exceed the price paid for the Software licence.

7.4 The limitations specified in this Clause 7 shall survive and apply even if any limited remedy specified in this Agreement is found to have failed in its essential purpose.

8. GENERAL PROVISIONS

8.1 Assignment. The Licensee may not assign this Agreement or any rights or obligations hereunder without the prior written consent of WHIS. Consent shall be deemed given when the assignment is to an entity that has become the owner of the Licensee provided the assignee notifies WHIS in writing of the new Licensee Name and Business Unit/Division identity to replace those shown in Appendix A below.

8.2 Notices. All notices required or permitted under this Agreement shall be made in writing

and shall be sent by courier service or by registered or certified mail, addressed to the other party.

8.3 Other Activities. Each party reserves the right to be engaged in, solely or jointly with third parties, marketing, development, or other activities with respect to technologies or products which are competitive with technologies or products purchased, used or implemented in conjunction with this Agreement and the relationship between the parties hereunder shall not prevent any such activities by either party.

8.4 Governing Law. This Agreement shall be governed by, interpreted and construed, and performance hereunder shall be determined in accordance with the laws of England. The application of the UN Convention on Contracts for the International Sale of Goods is expressly excluded. In the event of disputes or claims relating to this Agreement, both parties agree to seek an amicable settlement. Should an amicable settlement not be reached, then any controversy or claim arising out of or in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris by three arbitrators appointed in accordance with said rules. The arbitration shall be held in Zürich, Switzerland and shall be conducted in the English language.

8.5 Relationship of the Parties. Nothing in this Agreement shall be construed to create a relationship of employer and employee, principal and agent, joint venture, partnership or association between WHIS and the Licensee.

8.6 Non-Waiver. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way, or act as a waiver of, the right to require the other party to perform in accordance with this Agreement at any other time, nor shall the waiver of either party of a breach of a provision of this Agreement be held or taken to be a waiver of the provision itself.

8.7 Severability. If any term of this Agreement is held to be invalid or unenforceable for any reason, the remainder of the provisions shall continue in full force and effect, and the parties shall substitute a valid provision with the same intent and economic effect.

8.8 Headings. The paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such paragraph, or in any way affect such agreements.

8.9 Disclosure. The parties agree that a party shall not publicly disclose the terms or content of this Agreement without the prior written approval of the other party.

8.10 Entire Agreement. This Agreement and the documents referred to herein contains the parties' entire understanding with respect to the matters contained herein and supersedes any prior oral or written understandings with respect to the subject matter hereof. There are no promises, covenants or undertakings other than those set forth herein and therein. This Agreement may not be modified except by written amendment signed by both parties.

9. PUBLICITY

9.1 Unless otherwise notified by the other Party, both Parties have the right to give favourable reference to the other's use of the Software for marketing and general publicity purposes. Such publicity by either Party shall not make specific reference to any product of the Licensee without the Licensee's approval.

APPENDIX B – Support and Maintenance Provision

This Appendix defines the Support and Maintenance provided by WHIS to the Licensee for the support period set out in Appendix C. Appendix C may be reissued at each support renewal without change to the rest of this licence to extend the period of the support and maintenance set out in this appendix; the Support and Maintenance Provision (SMP).

B.1 ADDITIONAL DEFINITIONS

The following additional definitions are used in this Appendix and shall have the meaning hereby assigned to them unless the context would obviously require otherwise.

B.1.1 "Business Days" are Monday to Friday from 9:00am to 5:00pm UK time, excluding UK Public holidays.

B.1.2 "Documentation" means the documents including third party documents specified in the Licence referenced in Appendix C, any documents supplied by WHIS with the Software and such other additional documents as WHIS may supply to the Customer during the term of the SMP.

B.1.3 "Error" means any behaviour or feature of the Software which causes it not to perform, function or operate in accordance with the Documentation.

B.1.4 "Supported User" means a User registered to receive support via the WHIS support forum. The maximum number of registered users is given in Appendix C.

B.1.5 "Remedy" means WHIS's correction of an Error, which will ensure that an identified Error does not reoccur and will restore functionality of the Software set out in the Documentation. The correction may include a work around, or patch as determined by WHIS.

B.1.6 "Support Period" is the period from the later of the date of payment for the SMP and the Support Activation Date to The Support End Date set out in Appendix C (inclusive).

B.1.7 "Support Request" or "SR" means a request for Services issued by a Supported User.

B.1.8 "Temporary Remedy" means any action by WHIS to alleviate an Error which ensures that reasonable functionality of the Software is restored until a Remedy is implemented.

B.2 SCOPE OF AGREEMENT

B.2.1 This Appendix sets out the terms and conditions under which the Licensee purchases, and WHIS provides to the Licensee support and maintenance services for the Software during the Support Period.

B.2.2 Support and maintenance is only provided to the Licensee for the Software defined in Paragraph 1.2 and is restricted by the limitations given in Error! Reference source not found..

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B.2.3 Support and maintenance does not cover any modifications to the Software by the Licensee or any third party or any effect of such modifications on unmodified parts of the Software or any part of the Product.
B.2.4 WHIS is under no obligation to provide support and maintenance to a licensee who has not maintained a continuous SMP since taking first delivery of the Software.
B.2.5 The technical approach and location for resolving any Errors shall be determined by WHIS.
B.2.6 Support is only provided to Supported Users who are registered to receive it. The maximum number of Supported Users under this agreement is defined in Appendix C.
B.2.7 ……..
B.2.8 Questions concerning the nature and scope of support and maintenance should be sent to the above email address.
B.3 WHIS'S OBLIGATIONS
B.3.1 WHIS undertakes to provide the Services with respect to the Software during the Support Period set out in Appendix C in accordance with the terms of this Appendix.
B.3.2 WHIS shall provide the Services with all reasonable care and skill and in accordance with all applicable laws and regulations and shall ensure that suitably qualified and competent personnel provide the Services as set out in this Appendix.
B.4 LICENSEE'S OBLIGATIONS
B.4.1 The Licensee shall take care to nominate as Supported Users persons competent in the use and application of real time operating systems in embedded software applications.
B.4.2 The Licensee's Supported Users shall provide all the data requested by WHIS when making a Support Request (SR) and make all reasonable efforts to support any fault finding or problem resolution process identified by WHIS.
B.5 SUPPORT
B.5.1 WHIS shall provide the Supported Users with support consisting of consultation and advice regarding installation, operation and maintenance of the Software during Business Days. Support does not include training.
B.5.2 This support shall be provided by telephone, email and online for matters registered online using the WHIS SR mechanism.
B.5.3 All communications to the Licensee concerning a Support Request shall be made to the Supported User that has raised it.
B.5.4 Registered Support Requests will be managed by WHIS using a ticket system allowing the Supported Users to view the progress towards resolution of the problem.
B.5.5 When WHIS agrees that the Support Request has identified an Error is shall use its best efforts to find a Temporary Remedy and a Remedy within a reasonable period of time.
B.6 MAINTENANCE
B.6.1 All communications to the Licensee concerning maintenance shall be made initially to the Supported Users. Subsequent communications on a particular topic may be direct between WHIS and the individual responding to the matter in hand on behalf of the Licensee.
B.6.2 WHIS shall provide to the licensee:
a) Problem resolutions relating to the Software as such resolutions are released.
b) Updates that adjust the behaviour of Software or wording of the Documentation that WHIS classify as Errors in a currently supported version of the Software or its Documentation,
c) Modifications, refinements and enhancements to the Software that WHIS elects to incorporate into and make a part of the Software and does not separately price or market; and
d) New releases of the Software that WHIS elects to make available to its general Licensee base free of charge.
B.6.3 Any Documentation or Software updated, corrected or replaced shall be transmitted electronically to the Licensee except as described in Clause B.6.4.
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B.7 WHIS Employees
B.7.1 WHIS alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of all officers, employees, agents or subcontractors of WHIS involved in the performance of support and maintenance and acknowledges that they are not employees of agents of the Licensee.
B.7.2 Under no circumstances will the Licensee or his agents offer any officer, employee, agent or subcontractor of WHIS any contract of employment or contracted work directly or indirectly during the Support Period or for 12 months after the termination of this SMP without the written permission in advance of WHIS.

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GNU Tools for ARM Embedded Processors - 4.7-2012-q4-major

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