

Full Membership Agreement

DLMS User Association

2nd Edition 2018

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Full Membership Agreement

BETWEEN THE UNDERSIGNED:

DLMS USER ASSOCIATION, a not for profit Association duly organized and existing under the laws of Switzerland, having a principal office at Bahnhofstrasse 28, CH-6302, Zug, Switzerland, (hereinafter referred to as "DLMS UA")

and

Company Name: _____

a company duly organized and existing under the laws of *[country of entity origin]*: _____

having its principal place of business at:

Address line 1: _____

Address line 2: _____

City: _____

State/Region: _____

Postcode: _____

Country: _____

Company Registration Number: _____

(hereinafter referred to as the "Member").

"DLMS UA" and "Member" also referred to hereinafter collectively as the "Parties".

The Member's official representatives shall be as listed in Table 1, however these may be changed by written confirmation to the Association at the above contact details.

Table 1: Official Representatives			
Official Representative:	<i>[Name of representative]</i>	<i>[Email Address]</i>	<i>[Telephone Number]</i>
Alternate Representative:	<i>[Name of representative]</i>	<i>[Email Address]</i>	<i>[Telephone Number]</i>
Financial Representative:	<i>[Name of representative]</i>	<i>[Email Address]</i>	<i>[Telephone Number]</i>

WHEREAS

DLMS UA is a not for profit Association governed by its members and a duly elected Board of Directors, to develop, promote, specify and certify conformance to protocols based on DLMS/COSEM in the interests of its members.

and

The Member is a party who consents to be in agreement with the entirety of this document.

THE MEMBER AGREES AS FOLLOWS:**1 Incorporation**

DLMS UA is organised as a not for profit Association under the laws of the Switzerland. The Statutes of DLMS UA are available on request to the above address or from the www.dlms.com. Also see Annex C.

2 Purpose of the User Association

The Purpose of the Association is as described within Article 3 of the Statutes of DLMS UA – See Annex C.

3 Governing Documents

The governing documents associated with this Full Membership Agreement shall be:

- Charter of Membership Rights – See Annex A;
- Charter of Fees – See Annex B;
- The Statutes – See Annex C;
- Internal Regulations – See Annex D;
- Intellectual Property Rights Policy – See Annex E.

The governing documents of the Association referenced from this Full Membership Agreement are subject to change from time to time as per the provisions of the Statutes of DLMS UA (See Annex C).

4 Membership Participation and Fees

Subject to the terms of Section 9, upon acceptance of this signed Full Membership Agreement by the Association and payment of the appropriate fees, Member shall hold the status of a Full Member of the Association for a period of not more than twelve (12) months commencing on the acceptance date and ending on the 31st December of the same year. Subject to the terms of Section 9, Full Member may renew its Full Member status for subsequent twelve (12) month periods by paying any then-current annual fees established by the General Meeting.

Failure to pay annual fees when due may result in termination and/or non-renewal of Full Member's status pursuant to Section 9.4. Full Member's fees are non-refundable. A resolution of a General Meeting may increase or decrease the annual fees required of Full Members in accordance with the Statutes. Subject to the survival provisions of Section 9.5, upon expiration or termination of the Member's status as a Full Member of the Association, all rights and privileges provided and/or granted to Full Member and/or any Affiliate of pursuant to Section 5 of this Agreement and/or pursuant to any policies and procedures of the Association shall terminate.

Full Member understands that the Association shall not be obliged to agree to additional terms and conditions related to the collection of membership fees from Full Member, and any costs associated with such billing activity above and beyond the timely delivery of an invoice or pro-forma invoice to Full Member or Full Member applicant shall be billed to Full Member. Such additional costs include but are not limited to registration to member applicant purchasing systems, or online tools, special registered delivery of invoices or documents, production and delivery of special legal documentation related to the Association.

5 Membership Rights and Obligations

The duties, rights, privileges and obligations of Full Members shall be determined by the Board of Directors from time to time and specified in the Charter of Membership Rights, as referenced in Annex A.

The designated contacts and representatives of Full Member are identified by Full Member on page 2 of this Agreement. The designated contacts and representatives of Member may be changed by Member from time to time upon prior written notice to the Association.

A Full Member may also put forward additional representatives to participate in Working Groups, Task Forces and Committees as allowable under the Governing Documents specified in Section 3.

In any vote of the Association on any business and in any Working Group, Committee, Task Force, Project Team or ballot only one vote may be submitted per Full Member.

If Full Member is a consortium, Association or other similar organization or otherwise has members or sponsors, the rights and privileges granted to Member as a Full Member shall extend only to Full Member, and not to Full Member's members or sponsors. Such consortium, or Association membership should be fulfilled through a bilateral liaison agreement, separate and distinctly different from the Full Membership Agreement.

6 Intellectual Property Rights

Full Member agrees to the terms and conditions of the Intellectual Property Rights ("IPR") Policy referenced in Annex E. Full Member acknowledges and understands that the IPR Policy may be revised from time to time in accordance with the provisions of the Statutes and Internal Regulations of DLMS UA.

7 Confidential Information

Except as otherwise identified by Full Member, any information Full Member submits or discloses to the Association, including any committee or working group thereof, shall be treated as non-confidential and shall be available to all Members of the Association without restriction.

Any information pertaining to the business of the Association that Full Member submits or discloses to the Association, including any committee or working group thereof, and which is:

- a) marked by Full Member as "Confidential" information, or
- b) if orally disclosed, identified as confidential prior to disclosure and recorded in writing marked as "Confidential"

shall be treated as Confidential information with respect to third parties, except for any portion thereof that constitutes information:

- i) rightfully in the public domain other than by a breach of a duty to the disclosing party;
- ii) rightfully received from a third party without any obligation of confidentiality;
- iii) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party;
- iv) independently developed by employees of the receiving party; or
- v) generally made available to third parties by the disclosing party without restriction or disclosure.

Such Full Member's Confidential information shall be maintained by each Member of the Association in confidence with at least the same degree of care that it uses to protect its own proprietary information and in no event with less than reasonable care. Each Member of the Association that receives such Full Member's Confidential information shall only use such Confidential information for the Association purpose for which it was submitted.

In the event a Member of the Association breaches the obligation of confidentiality with respect to Confidential information of Full Member, the sole and exclusive remedy of Full Member shall be to seek recourse against the breaching Member of the Association and the Association shall have no liability with respect to such breach.

Third parties seeking access to Full Member's Confidential information that has been provided to the Association must reach an agreement with Full Member as a condition for being provided with the Full Member's Confidential information.

Full Member's Confidential information will not be included in any Association Adopted Specification unless Full Member waives its confidentiality.

The rights and obligations set forth in this Section 7 shall expire three (3) years after the date the Full Member discloses or submits the Full Member's Confidential information to the Association or to any other Member of the Association.

Any information including but not limited to documents, papers, specifications, contributions, accounts, budgets, communications internal to the Association and intended for the Membership only, shall not be disclosed outside of the Membership of the Association by any Member, without first obtaining the relevant written permission of the Association.

8 Application to Affiliates

a) Definition

"Affiliate" shall mean, with respect to Full Member, any entity controlling, controlled by or under common control with Full Member, where Control, Controlling and Controlled shall have the same definition as stated in Article 1 of the Statutes of DLMS UA (See Annex C). Notwithstanding the foregoing, Affiliate shall not mean any entity that is currently a Member of the Association in their own right.

b) Rights of Affiliate

As of the effective date, and subject to all the terms of this Agreement, including without limitation, this subsection b) and subsection c) below, Affiliates of Full Member shall have the right to exercise the rights and benefits granted to Full Member hereunder, provided that such Affiliates acknowledge and agree to be bound by:

- (i) all terms and conditions set forth in Sections 6 through 22 of this Agreement; and
- (ii) any policies and procedures applicable to Full Members and/or Affiliates of Full Members as may be determined by the Board of Directors from time to time. For purposes of the foregoing Sections of this Agreement, all references to "Full Member" shall be deemed to also include such Affiliates of Full Member. The rights granted under this Section 8 shall terminate immediately upon:
 - a. the Affiliate's material breach of any of its obligations under this Section 8; or
 - b. termination or expiration of this Agreement pursuant to Section 9.

c) Right to Bind

An Affiliate of Full Member shall not have the right to exercise the rights granted to Full Member hereunder until the Board of Directors, or at the direction of the Board of Directors, an Officer of the Association reviews and approves of such Affiliate's participation in the Association through this Agreement. As a condition of such approval, the Board of Directors, or at the direction of the Board of Directors, an officer of the Association may require written documentation that such Affiliate has duly authorized Full Member and/or Full Member has the corporate authority to bind such Affiliate.

The Board of Directors, or at the direction of the Board of Directors, an officer of the Association, may require additional proof of the relationship between Full Member and such Affiliate and/or may impose additional conditions or terms governing such Affiliate's participation in the Association through this Full Membership Agreement at any time,

including, without limitation, prior to any access and/or use of any intellectual property or Confidential information by Full Member and/or any Affiliate under the terms of this Agreement.

9 Term and Termination

9.1 Term

Full Member acknowledges that the Association shall have a perpetual duration. This Full Membership Agreement shall commence on the acceptance date and remain in effect until the earlier of:

- a) dissolution of the Association;
- b) such time as Full Member elects not to renew its Full Member status as provided in Section 4;
- c) such time as Full Member elects to voluntarily withdraw as a Full Member of the Association as provided in Section 9.2; or
- d) termination of Full Member's status as a Full Member as provided in Section 9.3; or
- e) signing of a new membership agreement and/or change of membership class.

9.2 Voluntary withdrawal or cancelation of membership

Upon 6 months advance written notice to the Association, Full Member shall have the right to withdraw as a Full Member of the Association. Upon such withdrawal, Full Member shall have no right to receive a refund of any previously paid fees, and the terms of Section 9.5 shall apply.

9.3 Termination of Participation

Upon the affirmative vote of a majority of the Board of Directors, and confirmation by resolution of a General Meeting, the Association shall have the right to terminate Full Member's status as a Full Member for cause. The term "for cause" shall mean Full Member's failure to comply with its obligations under this Agreement. Upon such termination, Full Member shall have no right to receive a refund of any previously paid fees and the terms of Section 9.5 shall apply.

9.4 Failure to Pay Fees

Full Member acknowledges that Full Member status is conferred on an annual basis in line with the Article 4 of Statutes of DLMS UA and that any renewal of participation is contingent upon payment of the applicable fees. If Full Member fails to pay the applicable annual fees when required:

- a) Full Member's status in the Association will not be renewed in the case of failure to pay the annual fees or will not be granted in the case of failure to pay the appropriate fees upon first application;
- b) Full Member shall be entitled to continue participation only upon reapplication to the Association;
- c) Full Member waives any notice or process requirements in connection with such non-renewal and/or termination of participation status; and
- d) the terms of Section 9.5 shall apply.

9.5 Survival

Upon expiration or termination of a Full Member's status as a Full Member of the Association, the following terms shall survive:

- i) this Section 9.5 and Sections 7, 11 and 12 of this Full Membership Agreement; and
- ii) Sections 2 and 3 of the IPR Policy with respect to:

- Necessary Claims of the Full Member and of other Members incorporated into or a part of any approved specifications existing prior to the effective date of expiration or termination of such Member's status as a Full Member; and
- the terms of Sections 2.1, 2.2 and 2.3 of the IPR Policy shall not apply to any portions of draft specifications which have been expressly identified and affirmatively withdrawn from the draft specifications by such Full Member prior to the effective date of expiration or termination of such Member's status as a Full Member.

10 Disclaimer of Warranties

Neither Party hereto makes any representations or warranties, express or implied, with respect to any software, documentation, interfaces, sample implementations, specifications or any other items provided or made available to Full Member, the Association or any other Member of the Association, or with respect to any standard or interface or specifications approved, promoted or endorsed by the Association or any other Member of the Association, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose, or that any of the foregoing items do not infringe or constitute a misappropriation of the proprietary rights of any third parties. Each Party agrees that all such items are provided or made available hereunder "as is".

11 Limitation of Liabilities

Except for the indemnity obligations under Section 12 below, neither party shall be liable to the other for any indirect, special, exemplary, consequential, or punitive damages, including but not limited to, lost profits even if advised of the possibility of such damages. In addition to the foregoing, with respect to Full Members' participation in the Association, the Association shall not be liable to Full Member for any direct, indirect, incidental, consequential, special or punitive damages including, but not limited to, lost profits, sustained or incurred by Full Member which are attributable to the actions or inactions of the Association under this Full Membership Agreement.

12 Indemnification

Full Member shall indemnify, defend and hold harmless the Association and its directors, officers, employees, representatives, agents, attorneys, successors and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, suits, proceedings, liabilities, obligations, judgments, causes of action, costs and expenses (including reasonable legal fees) to the extent arising out of or resulting from Full Member's failure to materially comply with any of its obligations under this Members Agreement. The Indemnified Parties promptly shall notify Full Member of any such claims, suits or proceedings and, at Full Member's sole cost and expense, reasonably cooperate with Full Member in the defence of such claims, suits or proceedings. Full Member's cumulative liability pursuant to this **Section 12** shall not exceed Fifty Thousand Swiss Francs (50,000 CHF).

13 Insurance

The Association may purchase and maintain insurance, within the limitations of the Swiss Civil Code, and at the discretion of the Board of Directors, on behalf of any person whom is or was a director, committee member, officer, employee or working group member of the Association covering the activities of such persons related to the business of the Association.

14 Notices

Any written notice required or permitted to be delivered pursuant to this Full Membership Agreement shall be in writing and shall be deemed delivered:

(a) upon delivery if delivered in person;

(b) three (3) business days after deposit in the mail, registered or certified mail, return receipt requested, postage prepaid;

(c) upon transmission if sent via email or fax, with a confirmation copy sent via overnight mail, provided that such overnight delivery confirmation is received by the sender; and/or

(d) one (1) business day after deposit with an overnight courier, provided that such overnight delivery confirmation is received by the sender, in each case addressed to the following:

If to Full Member:

The Contact/Representative at the address identified in the second paragraph of this Full Membership Agreement

If to the Association:

DLMS UA,
Bahnhofstrasse 28,
CH-6302,
Zug,
Switzerland

Attention:

Executive Director ed@dlms.com,

Office: dlms@dlms.com

or to such other individual or address as may be specified by either party hereto upon notice given to the other.

15 Binding and Transfer of Interests

This Full Membership Agreement shall be binding on the parties and their successors and assignees. Full Member shall not assign or otherwise transfer its participation interest nor this Full Membership Agreement, or any part hereof, except in the case of merger or acquisition where the new entity shall assume the rights and responsibilities of the Full Member. Full Member shall inform the Association as soon as possible of the change of details.

16 Use of Trademarks and Logos

Association agrees that Full Member shall have the right to list the Association's name and logo on Full Member's web site and advertising and promotion materials in accordance with guidelines adopted by the Association within Internal Regulations. By executing this Full Membership Agreement, Full Member agrees that the Association shall have the right to list Full Member's name and logo on the Association's web site and advertising and promotion materials, in accordance with written instructions and limitations provided to the Association by Full Member. Except as provided above or as may be allowed pursuant to written instructions or guidelines issued by a party, neither party shall use the name or any trademark or logo of the other party without such other party's prior consent.

17 Counterparts

This Full Membership Agreement may be executed in one (1) or more duplicate originals, all of which together shall be deemed one and the same instrument.

18 Severability

If any provision of this Full Membership Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other part of this Full Membership Agreement, but this Full Membership Agreement shall be construed as not containing the particular provision or provisions held to be invalid or unenforceable.

19 Waiver

No delay or omission by either party to exercise any right occurring upon any noncompliance or default by the other party with respect to any of the terms of this Full Membership Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

20 Governing Law and Jurisdiction

This Full Membership Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Full Membership Agreement or the transaction(s) contemplated by it, as well as the membership at DLMS UA shall be governed by and construed in accordance with the Swiss law to the exclusion of the conflict of law rules.

All disputes arising out of or in connection with membership at DLMS UA as well as this Agreement including disputes on its conclusion, validity, binding effect, enforceability, amendment, interpretation or termination, shall be exclusively submitted to the ordinary courts in Zug, Switzerland.

21 Relationship of Parties

Nothing set forth in this Full Membership Agreement shall be deemed or construed to render the parties as joint ventures, partners or employer and employee.

22 Entire Agreement and Modifications

This Full Membership Agreement, together with the Governing Documents listed in Section 3, sets forth the entire, final and exclusive agreement between the parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties. This Full Membership Agreement may be modified only pursuant to a writing executed by authorized representatives of the Association and Full Member.

23 Signatures

Date:		Date:	<i>[date of signature]</i> _____
Signatory:		Signatory:	<i>[Name of signatory]</i> _____
On behalf of:	DLMS User Association	On behalf of:	<i>[Name of Member Company]</i> _____
Signature:		Signature:	

Original: English, last revised on 20th February 2018.

Annex A: Charter of Membership Rights

A copy of the latest issue of the Charter of Membership Rights may be provided with this Full Membership Agreement, however the membership rights and responsibilities are subject to change from time to time by resolution of the Board of Directors as per the Statutes Article 4.1 and Article 7. The current issue of the Charter of Membership Rights can be seen on the DLMS UA Website: www.dlms.com.

Annex B: Charter of Fees

A copy of the latest issue of the Charter of Fees may be provided with this Full Membership Agreement, however the membership fees are subject to change by authority of a General Meeting as per the Statutes Article 6 and Article 12. The latest decision on Fees can be seen on the DLMS UA Website: www.dlms.com.

Annex C: Statutes

A copy of the latest issue of the Statutes may be provided with this Full Membership Agreement, however the Statutes are subject to change from time to time by resolution a General Meeting as per the Statutes Article 6.3 and Article 16. The current issue of the Statutes can be seen on the DLMS UA Website: www.dlms.com.

Annex D: Internal Regulations

A copy of the latest issue of the Internal Regulations may be provided with this Full Membership Agreement, however the Internal Regulations are subject to change from time to time by resolution of the Board of Directors as per the Statutes Article 7.1. The current issue of the Internal Regulations can be seen on the DLMS UA Website: www.dlms.com.

Annex E: Intellectual Property Rights Policy

The DLMS User Association has adopted the “Common Patent Policy for ITU-T/ITU-R/ISO/IEC” currently in force:

(<http://www.dlms.com/downloads/appendixdirectivespart1ed6.pdf>).

It is incorporated into this membership agreement by normative reference per clause 6, and the Member therefore is agreeing to abide by and comply with this policy. With respect to this reference, where the “Common Patent Policy for ITU-T/ITU-R/ISO/IEC” refers to:

- ITU-T/ITU-R/ISO/IEC, replace with “DLMS User Association”;
- Deliverables or Recommendations of ITU-T/ITU-R/ISO/IEC, replace with “DLMS User Association Deliverables”;
- The TSB, BR, Offices of CEOs of ISO and IEC, replace with “The DLMS User Association Executive Director, Staff, Directors and Officers”.

Annex F: Main changes to Revision 1

- Clause 4, second paragraph, second sentence: the second part of the sentence deleted: "...except in the case of a distribution upon the event of a dissolution as set forth in the Statutes."
- Clause 9.1: new item e) added: signing of a new membership agreement and/or change of membership class.
- Clause 9.5, first bullet point: "...and of other Full Members, Adopter Members and/or Associate Members" replaced by "and of other Members"