

# Adopter Membership Agreement

## DLMS User Association

2<sup>nd</sup> Edition 2018

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

Adopter Member may upgrade to Full Membership at any time subsequent to submission of a signed Full Membership Agreement and payment of the appropriate fees.

Failure to pay annual fees when due may result in termination and/or non-renewal of Adopter Member's status pursuant to Section 9.4. Adopter Member's fees are non-refundable. A resolution of a General Meeting may increase or decrease the annual fees required of Adopter 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 an Adopter Member of the Association, all rights and privileges provided and/or granted to Adopter Member and/or any Affiliate of Adopter Member pursuant to Section 5 of this Agreement and/or pursuant to any policies and procedures of the Association shall terminate.

Adopter Member understands that the Association shall not be obliged to agree to additional terms and conditions related to the collection of membership fees from Adopter Member, and any costs associated with such billing activity above and beyond the timely delivery of an invoice or pro-forma invoice to Adopter Member or Adopter Member applicant shall be billed to Adopter 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 Adopter 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 Adopter Member are identified by Adopter 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.

In any vote of the Association on any business where Adopter Member may participate pursuant to the Charter of Membership Rights, as referenced in Annex A, only one vote may be submitted per Adopter Member.

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

## 6 Intellectual Property Rights

Adopter Member agrees to the terms and conditions of the Intellectual Property Rights ("IPR") Policy referenced in Annex E. Adopter 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 Adopter Member, any information Adopter 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 Adopter Member submits or discloses to the Association, including any committee or working group thereof, and which is:

- a) marked by Adopter 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 Adopter 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 Adopter 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 Adopter Member, the sole and exclusive remedy of Adopter 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 Adopter Member's Confidential information that has been provided to the Association must reach an agreement with Adopter Member as a condition for being provided with the Adopter Member's Confidential information.

The rights and obligations set forth in this Section 7 shall expire three (3) years after the date the Adopter Member discloses or submits the Adopter 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 Adopter Member, any entity controlling, controlled by or under common control with Adopter 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 Adopter Member shall have the right to exercise the rights and benefits granted to Adopter 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 Adopter Members and/or Affiliates of Adopter 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 "Adopter Member" shall be deemed to also include such Affiliates of Adopter 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 Adopter Member shall not have the right to exercise the rights granted to Adopter 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 Adopter Member and/or Adopter 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 Adopter Member and such Affiliate and/or may impose additional conditions or terms governing such Affiliate's participation in the Association through this Adopter Membership Agreement at any time, including, without limitation, prior to any access and/or use of any intellectual property or

Confidential information by Adopter Member and/or any Affiliate under the terms of this Agreement.

## **9 Term and Termination**

### **9.1 Term**

Adopter Member acknowledges that the Association shall have a perpetual duration. This Adopter 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 Adopter Member elects not to renew its Adopter Member status as provided in Section 4;
- c) such time as Adopter Member elects to voluntarily withdraw as an Adopter Member of the Association as provided in Section 9.2; or
- d) termination of Adopter Member's status as an Adopter 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, Adopter Member shall have the right to withdraw as an Adopter Member of the Association. Upon such withdrawal, Adopter 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 Adopter Member's status as an Adopter Member for cause. The term "for cause" shall mean Adopter Member's failure to comply with its obligations under this Agreement. Upon such termination, Adopter 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**

Adopter Member acknowledges that Adopter 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 Adopter Member fails to pay the applicable annual fees when required:

- a) Adopter 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) Adopter Member shall be entitled to continue participation only upon reapplication to the Association;
- c) Adopter 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 an Adopter Member's status as an Adopter Member of the Association, the following terms shall survive:

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

- Necessary Claims of the Adopter 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 an Adopter 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 Adopter Member prior to the effective date of expiration or termination of such Member's status as an Adopter 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 Adopter 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 Adopter Members' participation in the Association, the Association shall not be liable to Adopter Member for any direct, indirect, incidental, consequential, special or punitive damages including, but not limited to, lost profits, sustained or incurred by Adopter Member which are attributable to the actions or inactions of the Association under this Adopter Membership Agreement.

## 12 Indemnification

Adopter 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 Adopter Member's failure to materially comply with any of its obligations under this Membership Agreement. The Indemnified Parties promptly shall notify Adopter Member of any such claims, suits or proceedings and, at Adopter Member's sole cost and expense, reasonably cooperate with Adopter Member in the defence of such claims, suits or proceedings. Adopter 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 Adopter 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 Adopter Member:

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

If to the Association:

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

Attention:

Executive Director [ed@dlms.com](mailto:ed@dlms.com),

Office: [dlms@dlms.com](mailto: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 Adopter Membership Agreement shall be binding on the parties and their successors and assignees. Adopter Member shall not assign or otherwise transfer its participation interest nor this Adopter 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 Adopter Member. Adopter Member shall inform the Association as soon as possible of the change of details.

## **16 Use of Trademarks and Logos**

Association agrees that Adopter Member shall have the right to list the Association's name and logo on Adopter Member's web site and advertising and promotion materials in accordance with guidelines adopted by the Association within Internal Regulations. By executing this Adopter Membership Agreement, Adopter Member agrees that the Association shall have the right to list Adopter 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 Adopter 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 Adopter 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 Adopter 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 Adopter Membership Agreement, but



this Adopter 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 Adopter 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 Adopter Membership Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Adopter 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 Adopter 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 Adopter 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 Adopter Membership Agreement may be modified only pursuant to a writing executed by authorized representatives of the Association and Adopter 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 20<sup>th</sup> February 2018.

## **Annex A: Membership Rights**

A copy of the latest issue of the Charter of Membership Rights may be provided with this Adopter 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](http://www.dlms.com).

**Annex B: Charter of Fees**

A copy of the latest issue of the Charter of Fees may be provided with this Adopter 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](http://www.dlms.com).

**Annex C: Statutes**

A copy of the latest issue of the Statutes may be provided with this Adopter 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](http://www.dlms.com).

### **Annex D: Internal Regulations**

A copy of the latest issue of the Internal Regulations may be provided with this Adopter 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](http://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, third 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 7: Third paragraph from the end: The sentence "Adopter Member Confidential information will not be included in any Association Adopted Specification unless Adopter Member waives its confidentiality." Deleted, as Adopter members do not contribute to the development of the specification.
- 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"