

# Policy for the Protection of Intellectual Property Rights of the OMS-Group (OMS IPR Policy)



*This OMS IPR Policy is Annex 11(4)-1 of the Articles of Association of the OMS-Group as of 2023-12 or later..  
The German version of this OMS IPR Policy is the legally binding version.*

## 1 Definitions

Capitalised terms used in this OMS IPR Policy have the meaning defined in this Section 1.

**"Articles of Association"** refers to the current version of the Articles of Association of the Open Metering System Group – OMS-Group e. V (OMS-Group), which were adopted by the General Meeting of the OMS-Group and entered in the register of associations at the District Court of Cologne under VR 18964.

**"Affiliate"** means a corporation, company, or other legal entity that is owned, or controlled by a Member, but such corporation, company, or other legal entity shall be deemed an Affiliate only so long as such ownership or control exists. For purposes of this definition, "owns or controls" means directly or indirectly owning or controlling more than fifty percent (50 %) of the outstanding shares/stocks or securities (conferring voting rights, director elections or other managerial powers) or an interest in excess of fifty percent (50 %) that includes the right to make decisions for such corporation, company or other legal entity.

**"Contribution"** means a Member's contribution for inclusion in: (a) an existing Draft OMS Specification or part thereof, (b) an existing Final OMS Specification, or (c) a future Final OMS Specification or future Draft OMS Specification or part thereof is proposed, provided that the Contribution was either (i) submitted in writing (including in electronic form) or (ii) expressed orally and accurately recorded in the written minutes of a meeting and correctly attributed therein to the contributing Member, further provided the meeting minutes are immediately made available to the person representing the contributing Member; in both cases, however, only if the contributing Member does not withdraw its proposal in writing as soon as possible, but no later than thirty (30) days after receipt of the meeting minutes.

**"Draft OMS Specification"** means a set of documents developed in a working group and referred to as the Draft OMS Specification.

**"Essential IPR"** means one or more claims contained in one or more utility models, patents, or patent applications anywhere in the world (collectively, "Patents") which, absent a licence, would be directly infringed in producing the Required Parts of a Final OMS Specification (including by contractors), used, marketed, imported, offered for sale, sold, distributed (directly or indirectly) or otherwise commercially exploited in products and services. For the purposes of this definition of Essential IPR, a patent in the absence of a licence gives rise to direct infringement only if there is no commercially reasonable, non-infringing alternative to produce, have produced, use, market the Required Parts of a Final OMS Specification, import, offer for sale, sell, distribute (directly or indirectly) or otherwise commercially exploit in products and services.

**"Final Draft OMS Specification"** means a Draft OMS Specification which has been accepted by the Executive Board as a Final Draft OMS Specification pursuant to § 6 Section (14) lit. (d) of the Articles of Association and this OMS IPR Policy.

**"Final OMS Specification"** means a Final Draft OMS Specification, which has been approved as a Final OMS Specification by the General Meeting pursuant to § 5 Section (8) lit. (d) of the Articles of Association and this OMS IPR Policy.

**"Member"** means a member in good standing of the OMS-Group in accordance with § 3 of the Articles of Association, and also includes the Affiliates of a Member.

**"Granting Member"** means a Member who grants a Royalty-free Licence to Essential IPR to other Members.

**"Licenced Material"** means only those specific parts of a product (hardware, software or combination thereof) that (a) implement and are compliant with all Required Parts of the applicable Final OMS Specification; and (b) to the extent that the product implements one or more optional parts of such Final OMS Specification, those parts of the product that are compliant with all Required Parts that need to be implemented in order to be compliant with those optional parts of the Final OMS Specification.

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"**Required Part**" means a part of a Final OMS Specification that must be implemented to conform to that Final OMS Specification. Where optional parts are defined in a Final OMS Specification, the Required Parts include those parts of the optional part that must be implemented in order for the implementation to meet the requirements of the optional part.

"**Royalty-free Licence**" means a non-exclusive, royalty-free, worldwide, non-transferable, non-sublicensable (except to Affiliates) patent licence to Essential IPR (including future Essential IPR acquired) granted to Members for the duration of their membership under fair, reasonable, and non-discriminatory terms, to make, have made, use, market, import, offer for sale, sell, otherwise distribute, directly or indirectly, or otherwise exploit Licenced Material commercially in products and services. The Royalty-free Licence is void ab initio against any party that takes legal action against the Granting Member for infringement by the Granting Member of an Essential IPR of that party. The Royalty-free Licence shall survive any withdrawal, termination by notice, expiration, or non-renewal of the Granting Member's membership in the OMS Group.

"**Subcontractor**" means any person who is not employed directly by a Member or the OMS-Group, but works for a Member or the OMS-Group under a contract.

## 2 Licencing of IPR relating to the specifications named in § 11 Section (4) of the Articles of Association

### 2.1 Notice to Members

Upon resolution of the General Meeting pursuant to § 5 Section (8) lit. (f) of the Articles of Association, a working group has the task of developing a Draft OMS Specification, which is submitted to the Executive Board for approval pursuant to § 6 Section (14) lit. (d) of the Articles of Association as a Final Draft OMS Specification.

### 2.2 Procedure for Objecting Members

If a Member ("Contributing Member") makes a Contribution to a working group meeting that would result in another Member's intellectual property ("Objecting Member") becoming an Essential IPR, the Objecting Member may request that the Contribution is not included in the Draft OMS Specification and/or the Final OMS Specification. The Objecting Member must identify the specific technology and part of the Contribution that it believes would be considered Essential IPR if the Contributing Member's Contribution were included in a Final OMS Specification, including patent(s) and/or patent application(s) by number and claims. The request must be submitted in textual form to the head of the working group. The other Members of the working group will try to remove the section of the Draft OMS Specification that could make the Objecting Member's patent an Essential IPR. If the working group decides to include the Contribution after the Objecting Member's request for removal, the Objecting Member may submit its request for removal to the Executive Board for further consideration of the matter. If the Objecting Member does not agree with the decision of the Executive Board, he can withdraw from the OMS-Group. In that case, the Objecting Member's patent(s) will not be subject to the licence obligations of this Section 2.

### 2.3 Licence Review Period

Before accepting a Final Draft OMS Specification as the Final OMS Specification, the OMS-Group shall distribute the Final Draft OMS Specification to all Members and grant them a review period of at least sixty (60) days (the "Licence Review Period") before the period specified in § 5 Section (2) in the Articles of Association during which each Member may review the Final Draft OMS Specification with respect to intellectual property licencing issues, including but not limited to consideration of the Member's licencing obligations with respect to Essential IPR that may be contained therein. All Members agree that failure to declare their withdrawal from the OMS-Group pursuant to § 3 Section (5) of the Articles of Association before the end of the Licence Review Period will subject the Member and its Affiliates to the Licence Terms of Section 2.6 in relation to the disclosed and undisclosed Essential IPR of that Member and its Affiliates, whether or not any person participating on that Member's behalf is aware of it.

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## 2.4 Withdrawal Rights

Any Member may withdraw from the OMS-Group for any reason during the Licence Review Period in accordance with § 3 Section (5) of the Articles of Association, including if the Member determines that the Final Draft OMS Specification contains Essential IPR that the Member does not provide to be licenced in accordance with Section 2.6. If a Member does not withdraw before the end of the Licence Review Period, the licence terms of this Section 2 apply and the Member is required to licence Essential IPR related to the Final Draft OMS Specification when it is adopted as the Final OMS Specification. Only if a Member resigns as a Member pursuant to § 3 Section (5) of the Articles of Association prior to the expiration of the Licence Review Period the Member is not required to grant licences to Essential IPR under the provisions of this OMS IPR Policy in relation to the Final Draft OMS Specification if this Final Draft OMS Specification is adopted as the Final OMS Specification. Notwithstanding the foregoing, a Member may not escape its obligation to licence Essential IPR under the terms of this OMS IPR Policy with respect to any Contribution it has made to a Final OMS Specification, and such licence obligation shall survive notwithstanding withdrawal, termination by notice, expiration, or non-renewal of the Member's membership in the OMS-Group.

## 2.5 Action of the Executive Board after the Expiry of the Licence Review Period

After the Licence Review Period has expired, the Executive Board will review the information received from any withdrawing Members regarding Essential IPR that the withdrawing Members do not wish to licence as Essential IPR. The Executive Board may return the Draft OMS Specification to the working group for revision of the Draft OMS Specification in accordance with feedback, proposed revisions, or proposed procedures as requested by the Executive Board. Any new revision of the Draft OMS Specification shall be treated as the original Draft OMS Specification and shall be subject to a new Licence Review Period in accordance with the provisions of Section 2.3. If the working group decides not to make any further changes to a Draft OMS Specification, the Executive Board may, at its discretion, either reject the draft or accept it as the Final Draft OMS Specification in accordance with § 6 Section (14) lit. (d) of the Articles of Association.

## 2.6 Royalty-free Licence

Each Member hereby grants (on its own behalf and on behalf of its Affiliates) to each other Member a Royalty-free Licence, as defined above, to its Essential IPR in the Final OMS Specification(s), as provided in § 11 Section (2) and Section (4) of the Articles of Association, provided that each other Member also grants the Granting Member a corresponding licence to the same extent in its Essential IPR.

## 2.7 Licence Restriction

The Royalty-free Licence pursuant to Section 2.6 need not extend to features of the Licenced Material that do not need to be compliant with the Required Parts of the Final OMS Specification(s) as set forth in § 11 Section (4) of the Articles of Association.

## 3 Review of OMS Specifications by new Members

Subject to the execution of any confidentiality and/or non-disclosure agreements that OMS-Group deems necessary, a prospective Member applying for membership in the OMS-Group will be given sixty (60) days' notice to make any such at such time to check the Draft OMS Specifications under examination according to Section 2.3 and all previously approved Final OMS Specifications of the OMS-Group for all Essential IPR. If a prospective Member believes in good faith that the implementation of Essential IPR in the Draft OMS Specification under consideration or in an already approved Final OMS Specification would require a licence from it and the prospective Member is unwilling to grant a licence for its Essential IPR rights pursuant to Section 2.6, or if the prospective Member otherwise elects to terminate its membership for any reason within this 60-day period, it must withdraw its application for membership and may, at its sole discretion, identify patents and/or patent applications that it does not intend to licence, but such disclosure is not mandatory. Such a Member is not required to grant licences to identified Essential IPR under Section 2.6 if it withdraws its application for membership within the 60-day review period. If a prospective Member does not withdraw its membership application within the 60-day review period, then that Member will continue to have any licencing obligations under Section 2.6.

## 4 Additional IPR Clauses

### 4.1 Disclosure

Where disclosure of patents is required under this OMS IPR Policy, the following minimum disclosure efforts must be made and the following minimum information must be provided to satisfy the various disclosure requirements:

With respect to granted patents and published pending patent applications, the disclosure must include (a) the identity of the patent right holder and/or applicant, (b) the patent number or application number of the patent rights, and (c) the actual patent claims within the filed or granted patent, which may constitute Essential IPR. Disclosure is not mandatory for unpublished pending patent applications, but disclosure of the existence of the application, which may contain Essential IPR, is encouraged. Nothing in this OMS IPR Policy precludes broader disclosure of unpublished pending patent applications on a voluntary basis or pursuant to a non-disclosure agreement.

Where disclosure of patents is not required under this OMS IPR Policy, voluntary disclosure of the following information is encouraged but not mandatory:

With respect to granted patents and published pending patent applications, (a) the identity of the patent right holder and/or applicant; (b) the patent number or application number of the patent rights; and (c) the actual patent claims within the filed or granted patent, which may constitute Essential IPR. Disclosure is also not mandatory for unpublished pending patent applications, but disclosure of the existence of the application, which may contain Essential IPR, is encouraged.

### 4.2 Transfer of Essential IPR

All licences granted under this OMS IPR Policy shall be construed to survive any transfer of a patent containing Essential IPR. For purposes of this provision, a transfer of title includes any transfer of control by the holder of Essential IPR by any legal means, and includes the grant of exclusive licences and the transfer of title.

### 4.3 Ownership of Rights

All IPR of Members in their Contributions, contained in the Draft OMS Specification and the Final OMS Specification, remain with the Members who made the Contribution. These Members may, but are not obligated to, obtain patents, copyrights, registrations and similar other protections for such IPR on their own behalf.

### 4.4 No Other Licence

The Members agree that, except as expressly provided in this OMS IPR Policy regarding the granting of licences, no Member grants, directly or by implication, any patent licence, immunity or other right under this OMS IPR Policy.

### 4.5 Affiliates

All rights granted to a Member under this OMS IPR Policy and all obligations arising for the Member under this OMS IPR Policy also extend to its Affiliates, regardless of whether the term "Affiliate" is expressly mentioned in the relevant provision named or not. However, under no circumstances may an Affiliate claim more rights under this OMS IPR Policy than a Member. Any rights granted to Affiliates of a Member under this OMS IPR Policy shall terminate without any notice if the Affiliate ceases to be an Affiliate of that Member, or if the Member's rights terminate. Any obligations arising under this OMS IPR Policy for a Member's Affiliate will survive even if the Affiliate ceases to be an Affiliate of a Member, to the full extent of the obligations arising under this OMS IPR Policy prior to the cessation of Affiliate status. Each Member must ensure that its Affiliates comply with the Member's and its Affiliates' obligations under this OMS IPR Policy.

## 5 Continuation of the Obligation to Grant a Licence

Notwithstanding the dissolution of the OMS-Group or the withdrawal, termination by notice, expiration or non-renewal of a Member's membership in the OMS-Group (or his or her departure from a working group) and except as expressly provided in this OMS IPR Policy, the obligation of a Member to grant a licence pursuant to Section 2.6 shall remain in full force for (a) all Essential IPR in any Contribution of such Member or former Member (or its Affiliate) which becomes part of the relevant version of the Final OMS Specification for which the Contribution was made, and (b) all Essential IPR in a Final OMS Specification approved by the OMS-Group and for which the Licence Review Period expired before the effective date of withdrawal, termination by notice, expiration, or non-renewal of the Member's membership.

Notwithstanding the generality of the foregoing, the obligations set forth under (a) and (b) additionally survive to the extent such Essential IPR (i) are necessary for future Final OMS Specifications to be backwards compatible with previous Final OMS Specifications (i.e., they are designed to fully interoperate with, communicate with, or connect with products compliant with the previous Final OMS Specifications) and (ii) are used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the same Essential IPR were used in a previous Final OMS Specification for which the Member is obligated to grant licences.

Except as provided in this Section 5, a former Member shall not be subject to any additional obligation to licence its Essential IPR.

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