

# ROEV Association, Inc.

## Member Participation Agreement

This Member Participation Agreement (this “**Agreement**”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the ROEV Association, Inc. (the “**Association**”), and \_\_\_\_\_ (“**Member**”).

**WHEREAS**, the Association has been formed as a nonprofit non-stock corporation formed for purposes including, but not limited to, designing, publishing, and promulgating industry protocols that will permit electric vehicle (“**EV**”) drivers to use a single access card to charge at charging stations operated by multiple EV charging networks; and

**WHEREAS**, the Association has established tiers of participation which include Member and Associate level participation (Members and other Association participants are collectively referred to herein as “**Participants**”);

**WHEREAS**, Member would like to participate in the Association as a member of the Member participation class;

**NOW, THEREFORE**, the Association agrees to allow Member to join on the terms and conditions contained herein, and Member agrees to abide by the terms and conditions contained herein.

### Agreement

#### 1. INCORPORATION

The Association is organized as a nonprofit non-stock corporation under the laws of the State of Delaware. The Articles of Incorporation and the Bylaws of the Association (the “**Bylaws**”) are set forth in **Exhibit 1** (collectively, the “**Corporate Documents**”). Member acknowledges that the Corporate Documents may be amended from time to time without the consent of or notice to Member in accordance with the provisions of the Corporate Documents and as may be allowed by law. The Association intends to file for tax-exempt status under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended. Member agrees not to engage in activities for or on behalf of the Association that may adversely affect the nonprofit or tax-exempt status of the Association.

#### 2. PARTICIPATION

**2.1 Rights and Privileges.** The rights and privileges of the Member class are specified in the Bylaws. All participation in the Association by Member shall be in accordance with applicable Association policies as set forth below. Member acknowledges and agrees that the rights and privileges of Member participation as a class in the Association may be changed from time to time by action of the Board of Directors in accordance with the Bylaws and that any such amendment shall be binding upon Member on a prospective basis.

**2.2 Adherence to Association Policies.** Member agrees to adhere to the Bylaws and all other policies and procedures established by the Association, as they currently exist and as they may be

amended from time to time. Such policies and procedures of the Association may include without limitation an Intellectual Property Policy ("**IP Policy**") set forth in **Exhibit 2** and an Antitrust Policy set forth in **Exhibit 3**, and other policies approved by the Board of Directors from time to time. Rights and privileges of participation in the Association, including but not limited to use of the Association's logo and certification marks, participation in Committees or Working Groups and access to "members only" section of the Association's web site, shall extend only to current Members in good standing.

**2.3 Member Dues.** Member agrees to pay all applicable dues duly imposed on Members by action of the Board of Directors. The term of participation of Member shall be on a year-to-year basis, expiring on the 365th day from the effectiveness of this Agreement pursuant to Section 7.9. Member may renew its Member status for subsequent twelve (12) month periods by paying the then-current annual dues established by the Board of Directors. Failure to pay annual or specially assessed dues when due shall result in termination and/or non-renewal of Member's membership pursuant to Section 5. In the event that Member withdraws from the Association within ninety (90) days of the written notification by the Association of a resolution imposing dues, fees or assessments, Member shall not have any liability for payment of such dues, fees or assessments. If a Member does not withdraw within ninety (90) days of such notification of passage of a resolution concerning such dues, fees or assessments, Member shall be responsible for such payment, even if Member subsequently withdraws from or Member's participation is subsequently terminated from the Association.

**2.4 Costs and Expenses.** Member shall bear its own costs and expenses for its participation in the Association, including without limitation compensation of its employees, and all travel and expenses associated with Member's participation in the Association's meetings and conferences, and Member understands that it has no right of reimbursement from the Association for such expenses.

**2.5 Publicity.** The following provisions shall govern publicity relating to the Association and its Participants:

(a) Media Releases and Use of Names, Trademarks and Logos of Participants. Association agrees that Member shall have the right to list the Association's name and logo on Member's web site and advertising and promotion materials in accordance with guidelines adopted by the Association as may be provided to Member from time to time. Member shall not use the name or logo of another Participant in any form of publicity without the written permission of the other Participant or Participants. By executing this Agreement, Member agrees that the Association shall have the right to list Member's name and logo on the Association web site and advertising and promotion materials to indicate participation in the Association only for so long as Member continues to participate in the Association; provided that any such use of Member's logo was not rescinded by Member in writing and Member's logo is used in accordance with Member's guidelines as may be provided to the Association from time to time.

(b) Compliance with Association Communications Policies. All publicity related to the Association, whether promulgated by the Association or by Member, shall be in compliance with the policies and procedures adopted by the Board of Directors from time to time.

### **3. CONFIDENTIALITY**

All exchanges of information between Members and between the Association and its Participants, which relate to Association activities, are confidential and shall be subject to the confidentiality provisions of the

Bylaws. After resignation, suspension, exclusion, expulsion or non-renewal as a Member, for any reason, Member has a continuing duty to comply with such confidentiality obligations.

#### **4. INTELLECTUAL PROPERTY POLICY**

Member agrees to the terms and conditions of the IP Policy attached hereto as **Exhibit 2**. Member acknowledges and understands that the IP Policy may be revised to reflect changes proposed by Participants or future Participants or to address special circumstances of such Participant or future Participants; provided, however, that such revisions to the IP Policy shall require the affirmative vote of the Board of Directors as specified in the Bylaws. Member agrees that all other Participants, as defined in the Bylaws, are third party beneficiaries to the IP Policy and subject to its rights and obligations.

#### **5. PRIVACY**

All personally identifiable information and other information collected by Association from Member's representatives through Alliance's website (located at <https://www.roev.org/> as of the date of acceptance of this Participation Agreement by Association) or otherwise is subject to Association's website privacy statement. This includes, including without limitation, but is not limited to, all personally identifiable information and other information required to register for an account through the website and otherwise use the website and other Association tools, and all other personally identifiable information and other information collected by Association from Member's representatives, is subject to Association's website privacy statement. Association's website privacy statement is located at <https://www.roev.org/Privacy-Statement> as of the date of acceptance of this Participation Agreement by Association. Member agrees to inform all Member representatives that if they use the Association website or otherwise provide their information to Association, all such information will be collected, processed, used, and stored in accordance with Association's then-current website privacy statement.

#### **6. TERMINATION OF PARTICIPATION**

The following provisions shall apply in the event of the termination of the participation of Member in the Association, whether by voluntary withdrawal or expulsion:

**6.1 Termination.** Member may withdraw from participation in the Association by filing a written notice with the Secretary of the Association, in which case withdrawal and termination of participation shall be effective as of the date of notification. Participation of Member in the Association may also be terminated by the Association under the conditions set forth in the Bylaws.

**6.2 No Refund of Dues.** Member shall have no right to a refund of any dues, fees or assessments paid prior to the termination of its participation in the Association, including but not limited to withdrawal by Member for any reason. Moreover, Member shall remain fully liable for any dues, fees or assessments then due and owing to the Association, except as provided in Section 5.3 below.

**6.3 Obligations for Additional Assessments.** In the event that Member's participation in the Association terminates within 90 days of the written notification by the Association of the passage of a resolution imposing fees, dues or assessments, Member shall not have any liability for payment of such dues, fees or assessments. Furthermore, a Member may terminate without any liability for payment of fees, dues or assessments due or outstanding if terminated in compliance with Section 5.1 within 90 days after notification of a change in the Corporate Documents, the IP policy or any other policies or procedures that

affect its legitimate interests. After such 90-day period, Member shall be responsible for any dues, fees or assessments, even if Member's participation is subsequently terminated.

**6.4 Survival.** Upon termination of participation pursuant to Section 5.1, this Agreement shall be automatically terminated with respect to Member except with regard to Sections 2.2, 2.4, 3, 4, 5 and 6 of this Agreement, and any other provisions that by their nature would survive termination or expiration of this Agreement, which sections shall survive indefinitely unless limited to a shorter period by any statutes of limitations imposed by law or by express language of the surviving provision. Notwithstanding the foregoing, any Association policies or agreements which contain specific survival provisions following termination of participation shall not be affected by this Section 5.4 and shall survive pursuant to their terms.

**6.5 Transfers from Classes of Participation.** In the event that a Participant decides to transfer from one class of participation in the Association to another, and complies with the admission criteria for the new class of participation as provided in the Bylaws, the Participant's first membership will be deemed terminated and a new participation will be deemed to be created in the new class of participation, upon written notice filed with the Secretary of the Association and satisfaction of any other requirements of the Bylaws.

## **7. DISPUTE RESOLUTION**

The following provisions apply in the event of disputes between Member and Association. Notwithstanding anything else herein, this Section 6 shall apply only to disputes between Association and its Participants and shall not apply to any disputes between the Participants or between the Participants and third parties.

**7.1 Mediation.** The parties agree to first submit any controversy or claim between Member and Association and arising out of or relating to this Agreement, or the breach thereof, to non-binding mediation in California by a mediator to be selected by the parties from among the New York, New York chapter of the American Arbitration Association ("**AAA**") mediation or commercial arbitration panelists. The parties agree to mediate in good faith over a minimum period of thirty (30) days.

**7.2 Arbitration.** Any controversy or claim between Member and Association not resolved by mediation, arising out of or relating to this Agreement, or the breach thereof, or any rights or materials licensed hereunder, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules (the "**Rules**") of the AAA, and the procedures set forth below. In the event of any inconsistency between the Rules of AAA and the procedures set forth below, the procedures set forth below shall control. Judgment upon the award rendered by the arbitrators may be enforced in any court having jurisdiction thereof.

(a) Location. The location of the mediation and arbitration shall be in New York, New York.

(b) Selection of Arbitrators. The arbitration shall be conducted by a panel of three (3) neutral arbitrators who are independent and disinterested with respect to the Association and Member, this Agreement, and the outcome of the arbitration. If the parties are unable to agree to arbitrators, the arbitrators shall be appointed by AAA from among the AAA commercial arbitration panelists with relevant expertise.

(c) Case Management. Prompt resolution of any dispute between Member and the Association is important to all parties and the parties agree that the arbitration of any such dispute shall be conducted expeditiously. The arbitrators are instructed and directed to assume case management initiative and control over the arbitration process (including scheduling of events, pre-hearing discovery and activities, and the conduct of the hearing), in order to complete the arbitration as expeditiously as is reasonably practical for obtaining a just resolution of the dispute.

(d) Remedies. The arbitrators may grant any legal or equitable remedy or relief (including injunctive relief) that the arbitrators deem just and equitable, to the same extent that such remedy or relief could be granted by a state or federal court, provided however, that such remedy or relief is consistent with the remedies and limitations set forth in this Agreement and extend only to disputes between any Participant and the Association.

(e) Expenses. Each party will bear its own expenses of the arbitration, including expert witness fees, and attorneys' fees. Both parties shall share equally in the payment of the arbitrators' fees as and when billed by the arbitrators.

(f) Arbitration Confidentiality. Except as set forth below, the parties shall keep confidential the fact of the arbitration, the dispute being arbitrated, and the decision of the arbitrators. Notwithstanding the foregoing, the parties may disclose information about the arbitration to persons who have a need to know, such as a party's Affiliates and their respective directors, trustees, management employees, witnesses, experts, investors, attorneys, accountants, auditors, lenders, insurers, and others who may be directly affected. Additionally, if a party or an Affiliate of a party has stock that is publicly traded, such party may make such disclosures as are required by applicable securities laws. Once the arbitration award has become final, if the arbitration award is not promptly satisfied, then these confidentiality provisions shall no longer be applicable.

(g) Patents. There shall be no arbitration of issues of the validity, infringement or enforceability of patents, copyrights or the Confidential Information of the Association or Member.

(h) Intellectual Property. Notwithstanding anything else herein, this section does not apply to the enforcement of any intellectual property rights of a Member with respect to other Participants or third parties.

**7.3 Governing Law; Venue; Jurisdiction**. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the United States and the State of Delaware without regard to its conflict of laws provisions. For the limited purposes of enforcement of the arbitration provisions of this Agreement and the enforcement of any arbitration award, the parties irrevocably consent to the exclusive personal jurisdiction (except as to actions for the enforcement of a judgment, in which case the jurisdiction will be non-exclusive) of the federal and state courts located in the State of Delaware.

**7.4 Alternative Dispute Resolution Provisions**. In the event that any official policy adopted by Association provides for different dispute resolution procedures, the terms of such policy shall supersede the dispute resolution provisions set forth herein, to the extent of such difference, provided that such new terms are executed by Member and limited to disputes with the Association.

## **8. GENERAL**

**8.1 Definitions.** All capitalized terms used herein or in an Exhibit shall have the meaning assigned in the Bylaws.

**8.2 Amendment.** This Agreement may only be modified pursuant to a writing executed by Member and the Association.

**8.3 No Implied Joint Venture.** This Agreement does not create a joint venture, partnership or other form of business association between the Participants nor an obligation to develop, make available, use, license, buy, sell or provide any information, product, services or technology.

**8.4 Licenses and Permits.** Member shall possess or obtain at its own expense all necessary licenses or permits required by it in order to participate in the Association.

**8.5 Enforceability and Interpretation.** If any provision of this Agreement is held for any reason to be invalid or unenforceable, the remaining provisions of this Agreement will be unimpaired and, unless a modification or replacement of the invalid or unenforceable provision is further held to deprive a party of a material benefit, in which case the Agreement will immediately terminate, the invalid or unenforceable provision will be replaced with a provision that is valid and enforceable and that comes closest to the parties' intention underlying the invalid or unenforceable provision. The headings in this Agreement are for reference only. They will not affect the meaning or interpretation of this Agreement.

**8.6 Limitation of Liability.** No party shall bear any responsibility or liability for any losses arising out of any delay or interruption of its performance of obligations under this Agreement due to any act of God, act of governmental authority, or due to war, flood, civil commotion, labor difficulty, severe or adverse weather conditions, lack or shortage of electrical power malfunctions of equipment or software programs or any other cause beyond the reasonable control of the party delayed. All documents, software and any other materials and information submitted by Member to the Association, or to another Participant under this Agreement, are provided on an "AS IS" basis, and MEMBER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY, MEMBER OR THE ASSOCIATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER MEMBER NOR ASSOCIATION WARRANTS OR ASSUMES ANY LIABILITIES IN CONNECTION WITH THE RIGHTS GRANTED, NOR THE ACTIONS ANTICIPATED OR TAKEN UNDER THIS AGREEMENT. EXCEPT WITH RESPECT TO ANY BREACH BY A MEMBER UNDER THE IP POLICY, IN NO EVENT SHALL MEMBER BE LIABLE TO ANY OF THE OTHER PARTICIPANTS OR TO ASSOCIATION, AS APPLICABLE, NOR SHALL THE ASSOCIATION BE LIABLE TO MEMBER OR ANY OTHER PARTICIPANT FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OF DATA, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL OR EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, ARISING OUT OF OR RELATING TO MEMBER'S PARTICIPATION IN THE ASSOCIATION.

**8.7 Waiver.** No approval, consent or waiver will be enforceable unless signed by the granting party. Failure to insist on strict performance or to exercise a right when entitled does not prevent a party from doing so later for that breach or a future one.

**8.8 Counterparts.** This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

**8.9 Effectiveness.** This Agreement shall come into effect when the Executive Director of the Association has received a signed copy of this Agreement and all required dues from Member. At such time, the Executive Director of the Association shall promptly countersign this Agreement and transmit a countersigned copy of the Agreement to Member.

**8.10 Integration.** This Agreement, including all the Exhibits and policies referenced herein constitutes the entire agreement between Member and the Association concerning this subject matter. Notwithstanding the foregoing, Member shall be obligated to observe and comply with all policies of the Association, and receive all the benefits of such policies, as delineated in Section 2.2.

ACCEPTED AND AGREED TO:

**ROEV Association, Inc.**

**Member:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDRESS:**

**ADDRESS:**

2400 Camino Ramon, Suite 375  
San Ramon, CA 94583  
USA

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# **EXHIBIT 1: CORPORATE DOCUMENTS**

## **EXHIBIT 2: IPR POLICY**

**EXHIBIT 3: ANTITRUST POLICY**