**Template**

**Bilateral Roaming Agreement**

**(e-clearing.net standard model, version 1.0)**

**between**

[company name]

[company address]

Acting under the terms and conditions of this Bilateral Roaming Agreement as ………. *…………………………………………[ Please add the specific role(s): CPO and/or EMP and/or Aggregator]*

**and**

[company name]

[company address]

Acting under the terms and conditions of this Bilateral Roaming Agreement as ……….. *…………………………………………[ Please add the specific role(s): CPO and/or EMP and/or Aggregator]*

Individually also „Party” and jointly „Parties”.

**Whereas**

* this Bilateral Roaming Agreement (“Agreement”) is for usage of the existing participants under the standard e-clearing Platform Agreement;
* e-clearing.net GmbH (“E-clearing”) is expressly no party to this Agreement and is not acknowledged with the final agreed wording between Parties;
* the participants to the Platform Agreement have the right to add new clauses or reword existing clauses of this Agreement for their convenience;
* the purpose of this Agreement is to achieve in a structured and standardised way the interoperability of charging infrastructures and to allow the customers of each Party to charge their electric vehicles (“EV”) at the charging points of the other Party by using the software-based e-roaming platform provided by E-clearing;
* charging services are available at every partner that constitute the CPO network. If further utilities or businesses join the CPO network, their charging infrastructure will be included in the network and will thus be available to the Customers of the new contracting partners as well. As such it will be possible to offer charging services for EV European-wide access to a large number of electric vehicle charge stations and to provide other services;
* by entering into this Agreement the Parties wish to cooperate with a view to the Roaming of the charging for electric vehicles and for this purpose they have decided to enter into this Agreement to define their mutual rights and obligations.

**Therefore, the Parties agreed as follows:**

**1. Definitions**

“Affiliate” means with respect to a Party any corporation or other legal entity that, directly or indirectly, is in control of, or is controlled by, or is under common control with such Party. For purposes of this definition, “control” of such entity means the power, directly or indirectly, either to (i) vote 50% or more of the securities having ordinary voting power for the election of directors of such entity, or (ii) direct or cause the direction of the management and policies of such entity, whether by contract or some other mechanism.

“Aggregator” means the CPO and or EMP servicing as well other market parties for usage on the Platform and as further set forth in the Platform Agreement.

“Agreement” means this Bilateral Roaming Agreement;

“CPOs” (Charge Point Operators) operate one or more Charge Stations in their own name or on behalf of a third party and in such role have entered into a User Agreement with E-clearing. Any entity may act as both a CPO and an EMP and or as an Aggregator at the same time.

“Charge Station” means any technical equipment used to supply energy to electric vehicles. At such stations energy is supplied through one or more sockets, the so-called Charge Points.

“Charging Network” is the total of all accessible Charge Stations of a Party or Parties.

“Charging Point”: technical equipment with communications capability, physically installed on a Charge Station, comprising one or more charging socket outlets and/or one or more attached cables allowing the charging of a single vehicle at a time;

“Customer”: electric vehicle user’s right to use the CPO’s EVCI as defined under the terms and conditions of a valid legal relationship between Customer and the EMP;

“Electric Vehicle Charging Infrastructure” or “EVCI”: set of technical equipment for charging plug-in hybrid and electric vehicles. It can consist of a network of Charging Points, access control means, and various information to the users. The EVCI described in these general terms and conditions of roaming is said to be “communicating”. It allows for example to send information about the operational and availability status of its Charging Points, access and charging authorisation requests, power consumption status, usage time, and receive charging authorisation responses, for launching, stopping and interrupting charge;

“EMPs” (providers of e-mobility services) offer e-mobility services to Customers under respective contracts and in such role have entered into a Platform Agreement with E-clearing; the e-mobility services provided by the EMPs may include charging services, energy supply, parking space, vehicles and other products and services. Any entity may act as both an EMP and a CPO and or as an Aggregator at the same time.

“Platform” means the IT-based roaming platform operated by E-clearing.

“Platform Agreement” means the signed platform agreement between e-clearing.net and a Party;

“Point Of Interest” (POI): digital information about the charging points and EVCI related to this Agreement;

“Roaming” means the possibility for a Customer of the EMP to use the EVCI of the CPO without having any kind of relation with the CPO.

**2. Subject matter**

2.1 The Parties have each entered into a subscription agreement (the ‘Platform Agreement”) with E-clearing.net and are thus benefiting from the exchange of data services offered by E-clearing.

The data exchange includes but is not limited to authorization tokens, charge detail records (CDRs) and POI-information (static and dynamic) jointly referred to as the “Platform”.

2.2 The execution of this roaming agreement (Agreement) is subject to the fact that the Platform Agreement, which each Party has entered into with E-Clearing, is in force. This Agreement ends automatically without further notice in case the Platform Agreement with any of the Parties is terminated for any reason.

In such case shall the terminated Party inform the other non-terminated Party without delay via [OPTION: email OR by registered letter with acknowledgment of receipt ("notification by letter")].

2.3 As defined under the Platform Agreement in case a CPO or EMP acts as well as Aggregator all rights and obligations defined under this Agreement shall apply mutatis mutandis for such aggregated market parties whereas the respective Aggregator accepts sole responsibility for its aggregated market parties to adhere to the terms and conditions of this Agreement.

2.4 The provisions of this Agreement do not apply to any charging transaction in which a Customer charges at a Charging Point where the CPO is also the EMP of such Customer.

**3. Basic principles of commitments**

3.1 The Charging Network of Parties includes the total charging infrastructure as operated under the respective CPO-ID.

3.2 While using the charging infrastructure of the respective CPO, the contractual relationship to the Customer remains solely with the EMP. The delivery of electrical energy to the charging infrastructure is the sole responsibility of the CPO.

3.3. The Parties agree to allow each other’s Customers access to their respective public Charging Stations *[OPTIONAL*  *specify in which country/ies]*. Such obligation is subject to any free capacity at the respective Charge Station.

3.4 The CPO shall:

- provide its POI via the E-clearing’s Platform in order to enable the EMP to integrate them in its digital applications;

- make available to the EMP and its Customers safety and usage instructions for the use of the Charge Stations either via its Charging Points or its website;

- maintain its EVCI for professional functioning taking into account the applicable regulations.

- maintain the features required for the exchange of data via the E-clearing’s Platform.

- provide the EMP with technical support as further agreed between Parties *[OPTIONAL: and as added under Annex …of this Agreement]* in order to enable the EMP to provide assistance to its Customers.

3.5 In addition to article 9 Parties agree:

the CPO cannot be held liable for the exclusive action of a third party – unless attributable to its aggregated market parties - or an external event in the following cases:

- Improper use of the service by the EMP’s Customers or by a third party in a fraudulent manner; - Deterioration of vehicles or equipment not provided by the CPO;

- Damage to the EVCI of the CPO for a cause not attributable to the CPO and preventing the CPO from providing the service to Customers of the EMP;

- Unavailability of parking spaces;

- Civil works on the road network, the stations, the electric grid or the telecommunication networks;

- Power cut;

- Loss, failure, partial/total malfunctions or degradation of the GSM/GPRS/3G, 4G, 5G or any follow-up version/ GPS signal;

- for the surveillance of a vehicle being charged;

- any deterioration or disappearance not resulting from the CPO’s action, in particular in the event of vandalism acts during charging and/or parking

If the events mentioned above lead to the unavailability of one of its Charging Points, the CPO is responsible for promptly updating all information on its EVCI and sending a status update through the Platform.

The EMP cannot be held liable in case the damages or the deteriorations of the EVCI are exclusively caused by the misconduct, neglect or carelessness of its Customers who are obliged to have their own insurance.

3.6 The EMP shall:

1. be responsible for providing its Customers clear, transparent and comprehensive information on the EVCI made available under this Agreement;
2. inform the Customers of the CPO’s identity or commercial brand of the charging network;
3. define and clarify to the Customers the scope of the services offered and related rates;
4. define and clarify to the Customers the rights, obligations and responsibilities when using the services including but not limited to the exclusions defined under article 3.5; and,
5. include in its general terms and conditions that its Customers must (i) read the safety and usage instructions of the CPO and (ii) follow these instructions when using the EVCI of the CPO in order to avoid, in particular, any damage to its equipment.

3.7 The EMP shall ensure that the contracts concluded with its Customers are not conflicting in any way with the terms and conditions of the Platform Agreement and this Agreement.

3.8 Notwithstanding any commitments made by the CPO, the EMP is solely liable to its Customers for the supply of the services provided and the management of any complaints from its Customers. This includes the obligation of the EMP to limit in its (general) terms towards the Customers the possibility of liability claims – both by a) limiting the warranties and b) by an overall clause to limit liabilities for costs and damages as far as legally possible under applicable law towards the Customers.

3.9 The EMP shall provide its Customers with its own hotline number to call, in case of technical issues. In addition, the EMP is required to report without delay, to the CPO, any emergency situation, any issue, or any malfunction of a Charging Station by using the technical support service provided by the CPO.

**4 Exchange of data**

4.1 The exchange of data starts latest within 30 days as of date of signing of this Agreement.

4.2 Each Party undertakes to transmit only the data necessary for the charging processes of its own Customers, therefore preventing third parties other than the aggregated market parties to have access to the Platform.

4.3 Authorization of Customers at the Charge Stations of the other Party is ensured by

• Presenting the RFID card by the Customer

Or

• by remote access using the EMP’s app.

4.4 The authorization of Customers to charge is carried out upfront according to the whitelist procedure, meaning the EMP informs - via the Platform - the CPO *[CHOOSE OPTION: hourly/ on a daily basis/weekly]* of the specific RFID cards permitted to charge.

Both Parties will store such authorization data under the same security standards as their own information.

4.5. Parties agree under the terms and conditions of the Platform Agreement to publish *[CHOOSE OPTION: hourly/ on a daily basis/weekly]* the data of their operational and publicly available Charge Stations and the service transactions through the Platform. [*OPTIONAL: Parties will not share such information with third parties, except their Affiliates and their respective aggregated market parties - if applicable.]* The CMP will provide its Customers derivative information.

4.6. Independently to the pricing for charging processes as set forth under article 5.1 the EMP is free to define at its sole discretion the pricing of charging services towards its Customers.

4.7 Each Party will assume full liability for the data it transmits to the other Party and to the Platform.

**5 Remuneration and billing**

5.1. For the use of the charging infrastructure, the EMP will be charged by the CPO who registered such Charge Station with the Platform.

*[OPTIONAL:*

*as follows:*

|  |  |  |  |
| --- | --- | --- | --- |
| *Power* | *Session* | *Time* | *Price* |
| *AC* | *0* | *0* | *0* |
| *DC* | *0* | *0* | *0* |

*OR do not add the afore scheme and add: The CPO has the right to differentiate its prices for different groups of Charging Points e.g. price on the highway differs from the one in the city, provided that the differentiation has been transparently communicated to the EMP under this Agreement.*

5.2 Billing of the energy component is specified in watt-hours.

5.3 The invoice amount corresponds to the sum of all charging sessions of the other Party in the respective accounting period. A charging session is a unit in which the electric vehicle is charged, lasts 1 minute or longer and consumes 0.1 kWh or more. Charging sessions must be submitted and billed in accordance with the protocols supported by the Platform.

5.4. Invoicing shall be handled by the CPO directly to the EMP and is carried out by electric means within 30 days of the end of the month. The payment deadline is 30 days after date of invoice by bank transfer.

5.5. Objections against the correctness of invoices must be sent in writing to the respective Party within one month of receipt of the invoice. Otherwise the invoice amount is deemed to have accepted. Objections do not imply the maturity of the total invoice amount, the failure to object in due time does not prevent the assertion of claims by the Party. In case of conflict between the computer records of the Parties, it is expressly agreed between the Parties that the computer records of E-clearing will prevail and shall be the only ones applicable.

5.6 Except upon motivated protest about an invoice, if the EMP fails to pay the amounts owed on their due date to the CPO in addition to any other rights and remedies the CPO may have under applicable law: a) interest will accrue on all late payments at the rate of eighteen percent (18%) per calendar year or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full and, b) the CPO has the right to suspend the provision of its services to the EMP and, c) a fixed compensation by the EMP to the CPO shall apply of [XX] euro’s for recovery costs. Such right of compensation shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

5.6. The EMP is responsible for collecting the commercial revenues for the subscriptions and charges of its Customers. In no event may the EMP invoke a failure to collect the subscription or charge price from its Customers to be exempted from making payment due to the CPO.

5.7 The CPO may adjust the tariffs. These adjustments must be notified to the other Party by an online notification. The notified Party shall have a period of [ X ] weeks to accept or refuse these changes in text form. In case of refusal this Agreement will terminate at date the mentioned period of [ X ] weeks ended. In the absence of reply, the changes will apply automatically at the end of the period of [ X ] weeks.

**6. Taxes and royalties**

6.1 Parties agree that no other payments are due by the EMP other than the CPO pricing as set forth in Article 5.1. As such the CPO pricing under article 5.1 includes all relevant taxes and liabilities in the corresponding country of operation *[CPO should address per applicable country the relevant taxes in its pricing]*. This includes but is not limited to any energy taxes, CO2-taxes, liabilities, or any other legal, regulatory or governmental regulations or directives related to the generation, sale, acquisition, transmission, distribution, carriage, net usage or consumption of electrical energy.

**7 Data protection and privacy**

7.1. The Parties confirm that they shall comply with the Data Privacy Regulations/laws applicable in their respective countries. If required, the Parties shall agree additional terms by separate data processing agreement.

7.2. With respect to any (personal) data and especially authorization tokens, the following is agreed:

• Authorization tokens are exchanged exclusively in anonymized form. Each Party is expressly not allowed to grant the other Party access to any personal data in general and especially not in association with authorization tokens in order to guarantee aforementioned anonymity.

• Authorization tokens and other data are to be stored with appropriate care in order to prevent misuse. Misuse is amongst others defined as usage of the data for roaming with third parties and use for advertising purposes.

• Parties guarantee that only authorized persons gain access to the anonymous authorization tokens.

• In case of loss or theft of authorization tokens, misuse or other non-authorized use, each Party will inform the other Party immediately upon gaining such knowledge.

**8 Duration, Termination**

8.1 This Agreement enters into force with the signature of both Parties. Unless terminated earlier pursuant to article 5.7 or article 8.2 this Agreement shall have a duration until December 31, of the year of signature. Afterwards this Agreement will be extended automatically for additional periods of one (1) calendar year, unless terminated in writing with a six months’ notice by the end of the month.

8.2 Either Party may terminate this Agreement, (1) if the other Party materially breaches any obligation set forth herein, which breach has not been cured within seven (7) days after receipt of written notice of such breach from the non-breaching Party, or within such additional cure period as the non-breaching Party may so authorize; or (2) if the other Party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or any insolvency law, whether domestic or foreign, or has wound up or liquidated its business voluntarily or otherwise.

8.3 Any notifications shall be sent to the other Party without delay via [OPTION: email OR by registered letter with acknowledgment of receipt ("notification by letter")].

8.4 Any claims – including EMP to remain liable for the amounts owed to the CPO - that have already arisen under or in connection with this Agreement at such point in time remain unaffected by any Party's ceasing to be a Party hereto.

9 **Liability**

9.1. No Party is liable for any loss or damage or any expenses incurred by the other Party, irrespective of the legal grounds on which any such claim may be based (breach of obligation, contract, tort etc.).

9.2. The mentioned limitation of liability for a Party as defined under 9.1 do not apply in case such damages are caused by a) gross negligence or wilful misconduct or b) in case of personal injury or death attributable to such Party or c) under the provisions of the applicable product liability law.

9.3. If any Customer asserts or intends to assert any claim for compensation against any Party, or if any Party asserts or intends to assert any claim for compensation on grounds of the behavior of any Customer during or in connection with the use by such Customer of any Charge Station, either of the Party affected shall notify the other Party thereof without undue delay and cooperate with the other Party in trying to establish the facts and, without limitation, provide to each other the information required to establish such facts, if and to the extent that they are known to such Party or may be ascertained by employing justifiable resources. Without prejudice to this, the liability towards Customers shall be governed by the applicable terms and conditions of the EMP and as such EMP shall indemnify the CPO and E-clearing for any claims to the extent permitted by applicable mandatory law.

9.4 For sake of clarity any rights and obligations versus E-clearing incurred by any Party under the Platform Agreement - as entered into with E-clearing - remain unaffected by this Agreement.

**10. Confidentiality**

10.1 The Parties agree that all information, which is disclosed by one Party, to the respective other Party (“Information”), is to be considered as proprietary information and shall be treated as confidential and kept strictly confident by the recipient Party. As such any Party shall:

a) use such Information only to the extent necessary for the performance of this Agreement, and otherwise keep such Information confidential and not make such Information accessible to any third party without the consent of the respective Party affected;

b) convey such Information only to such of its employees as require such Information for the purpose of this Agreement; and

c) apply in the handling of such Information the same degree of care that the receiving Party uses when handling its own Information; as a minimum, however, either Party must apply a reasonable degree of care.

10.2 The restrictions set forth hereinabove do not apply to any such Information:

a) which at the time of receipt by the receiving Party is already in the public domain or later becomes publicly available other than through any act or omission by the receiving in violation of an obligation to maintain the confidentiality of such Information;

b) which is already known by the receiving Party prior to receiving such Information from the disclosing Party and which is not subject to any confidentiality requirement or which is developed by the receiving Party itself;

c) which the receiving Party legitimately received by any third party who is not subject to a confidentiality obligation in respect of such Information;

d) the disclosure of which is authorised in writing by the respective Party; or

e) which is disclosed by a Party pursuant to a court or administrative order following the exhaustion of any and all legal defences at the disposal of such Party; however, in such cases the disclosing Party must notify the affected Party in good time of such court decision.

10.3 The receiving Party’s obligation to hold in confidence any information that is disclosed under this Agreement continues to be in effect even after expiry or termination of this Agreement.

**11. Force majeure**

Neither Party will be liable for failure or delay in performance hereunder if such failure or delay is due to an act of God, war, fire, governmental acts or requirements or other causes reasonably beyond the Party's control. In the event of such force majeure, the Party claiming the occurrence thereof shall promptly inform the other Party in writing and shall use its best efforts to resume performance of its obligations, or any part thereof, as soon as possible. In the event either Party is prevented from fulfilling its obligations of offering certain services during a period of more than thirty (30) days, the other Party may cancel such services with immediate effect and without incurring any liability to the other Party.

**12. Intellectual property rights**

12.1 Each Party holds and retains ownership of its intellectual property rights and/or industrial property rights, including all design, model, topography, patent, trademark, database and copyrights, relating to the objects used and/or delivered and services rendered by such Party and to the know-how connected therewith. This Agreement does not imply any transfer or assignment of any intellectual property rights and /or industrial rights and or know how.

12.2 A Party shall indemnify the other Party against any claims in respect of infringement of any intellectual property rights of third parties as a consequence of any modification of an object supplied by other Party or of any use of such object in any manner other than that prescribed by other Party or of integration of the object with any object not supplied by other Party.

**13 Contact persons**

Contact person for ………………..shall be……………

* Email ………………………………….
* Telephone number……………………

Contact person for ………………..shall be……………

* Email ………………………………….
* Telephone number……………………

**14 Miscellaneous**

14.1 OPTION IN CASE OF ANNEXES ADDED: In case of conflict between the Annexes and the main wording of this Agreement the main wording of the Agreement prevails.

14.2 Any Party is authorized, due to singular succession, to transfer all rights and obligations arising from this Agreement to a legal successor any time with the prior consent of the other Party. Such consent may only be refused if there are reasonable doubts regarding the technical or commercial fitness of the successor. Any transfer is to be notified in writing immediately to the other Party. A transfer to an Affiliate is allowed without consent of the other Party.

14.3. Changes or additions to this contract must be submitted in writing and signed by both Parties. This also applies to changes or invalidation of the written form requirement.

14.4 If any fundamental changes arise or there is essential need for adaptation, Parties will seek as soon as possible but latest within 10 working days a jointly acceptable solution while this Agreement and the actual roaming are paused.

14.5 Should a provision of this contract or any future stipulation be or become invalid or unenforceable, this shall not affect the validity of this contract. The contract partners shall be obligated to cooperate in the replacement of the invalid or unenforceable provision with a valid or enforceable clause that comes as close as possible to the invalid or unenforceable provision in terms of economic result.

14.6. This Agreement is governed by and construed in accordance with the laws of Germany. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Aachen, Germany.

**Thus agreed and signed**

For and on behalf of For and on behalf of

## ##

Name: Name:

Title: Title:

Place: Place:

Date: Date: