



CalCharge

## **CalCharge, LLC MEMBERSHIP AGREEMENT**

This Membership Agreement (“Agreement”) sets forth the terms and conditions of membership in CalCharge, LLC (“CalCharge”). Membership in CalCharge entails certain rights and obligations, as set forth in this Agreement, that do not include any profits interest in or voting rights in the governance of CalCharge, or of its sole member, CalCEF Catalyst, a California nonprofit mutual benefit corporation. Although this Agreement refers to “members” and “membership,” entities that are subject to this Agreement do not qualify as members of and have no membership interest in CalCharge for corporate or tax law purposes.

By executing the signature page at the end of this Agreement, the applicant entity (the “Member”) agrees to be bound by the terms of this Agreement and acknowledges that any violation of its terms may be grounds for termination of membership. The Member also agrees that it will pay timely all membership dues and fees as established by CalCharge and will comply with all membership rules and policies as CalCharge may from time to time adopt. Membership in CalCharge shall commence as of the date written on the signature page below (“Acceptance Date”).

### **Qualifications for Membership**

Membership in CalCharge is available to entities only, and not to individuals. Membership includes all subsidiaries, affiliates and divisions, which are expressly stated on the signature page below and approved by CalCharge at the time membership commences. Membership is not transferrable. Any affiliates, subordinates, successors, or other related entities of members not noted on the signature page must obtain separate membership status. Membership in CalCharge is available to entities that meet the following requirements, with qualification for membership to be determined by CalCharge in its sole discretion:

1. Be a business or organization focused on accelerating the innovation, application, adoption, and market impact of electrochemical storage and conversion technologies;
2. Pay all dues and fees established by CalCharge within thirty (30) days of invoice;
3. Comply with all of the terms stated in this Agreement as well as those applicable in connection with any optional member services, such as Cooperative Research Projects, facilitated by CalCharge, in which the Member elects to participate.

## **Assignment of Member Representative**

The Member shall assign and identify an individual as a designated representative, whose name shall be identified on the signature page of this Agreement, to act as a primary point of contact between the Member and CalCharge. The Member must promptly notify CalCharge in writing of any change in its designated representative. All notices provided by CalCharge to the designated representative are deemed to be proper notice to the Member, and CalCharge may assume that the Member has received the notice. CalCharge may continue to treat the individual most recently designated by the Member as the Member's designated representative until otherwise informed in writing by the Member.

## **Membership Levels, Dues, and Benefits**

This Agreement is applicable to all General and Charter Members of CalCharge. The standard membership period is for one year from the date that the Member executes the signature page to this Agreement. For each level of membership, CalCharge will bill members for their dues payment annually in advance of their renewal date. Payment is due thirty (30) days upon receipt of invoice, and in all cases, all dues must be paid prior to the beginning of the membership year. Dues are subject to change at any time. Any such change will be applied at the time of renewal for each Member. The Member represents, and CalCharge is relying on the Member's representation in accepting the entity as a member, that the Member meets and will continue to meet throughout the Member's membership all of the conditions of the applicable level of Membership described in this Agreement.

### *General Members*

General Members are those entities that wish to accelerate innovation, application, adoption, and market impact of such technologies, but who have not committed the time and resources required to become a Charter Member.

General Membership dues are determined on a sliding scale based on either number of employees or assets under management according to the schedule attached to this Agreement and as updated periodically by CalCharge.

General Members are entitled to the following membership benefits:

- Access to the CalCharge Technology Acceleration, Professional Development, Commercialization Support, and Ecosystem Facilitation programs
- Recognition on CalCharge published materials
- Special discounts for CalCharge events and activities
- Use of the CalCharge name and logo for marketing and promotional activities, subject to the terms of this Agreement.

## Charter Members

Charter Members are those entities, which have a vested long-term interest in the development of the energy storage cluster and in providing direct ongoing input into the development of CalCharge. This includes critical support in developing services and strategic planning activities, as well as growing the operations of CalCharge and ensuring its effectiveness. Charter Members commit to an annual contribution for at least three years.

Charter Membership dues are based on General Membership dues, plus an additional \$25,000 annually.

In addition to the benefits provided General Members, each Charter Member will also receive:

- A reserved seat on the Leadership Council, which meets quarterly and provides feedback and guidance on programs, new initiatives, and membership development strategies
- Increased insight, and ability to interact with, Partner and General Members
- Recognition as a Charter Member on all CalCharge published materials
- Annual meeting sponsorship – Entity logo prominently displayed, special accommodations and presentation slots
- Lead sponsorship of one CalCharge seminar or webinar of the Member's choice per year, including ability to moderate and/or serve as presenters
- Preferential Cooperative Research Project services - if a Charter Member elects to engage in a Cooperative Research and Development project with the Lawrence Berkeley National Laboratory's Environmental Energy Technologies Division ("Berkeley Lab"), and/or SLAC National Accelerator Laboratory ("SLAC") the Member will have the right to locate up to two employees at the selected lab(s) ("embedded researcher(s)") for the period that the entity continues to be a member in good standing of CalCharge, subject to the terms set forth in this paragraph. Embedded researcher(s) at Berkeley Lab will also be eligible to participate in all Battery Group meetings during this period. Member acknowledges that both Berkeley Lab and SLAC at their sole discretion and at anytime may approve or reject any proposed project and any embedded researcher. Based on physical capacity of both labs the total number of embedded research positions available at each is capped at 10. As CalCharge operations expand, it is possible that similar opportunities for Charter Members may be negotiated with other academic and research institutions.

## **Use of Member Name and Identifiers**

Member agrees that, throughout the duration of its membership in CalCharge, CalCharge may identify the Member, by name or logo, as a member of CalCharge in any public statements, press releases, or other promotional or informational materials to the extent reasonably related to CalCharge.

CalCharge may not use or reproduce Member's name, logo, or trade or service marks for anything other than as representation of Member's membership in CalCharge, unless otherwise permitted by Member in writing.

## **Use of CalCharge Name and Identifiers**

Throughout the duration of its membership in CalCharge, Member may represent in any promotional or informational materials that it is a member of CalCharge.

Neither party may use or reproduce the other party's logos, certification marks, service marks, trademarks and copyrighted materials for anything other than as representation of its membership in CalCharge, without the prior written consent of the other party.

Neither party may take any action or make any statement on behalf of the other party without express written authorization of the other party. Neither party shall be considered an agent of the other, and neither party has authority to enter into any contract or to incur any liability on behalf of the other. This Agreement does not create a partnership between the Member and CalCharge.

## **Additional Activities**

Member understands and acknowledges that if it elects to participate in certain optional membership activities (such as technology acceleration services, pre-commercialization support, education, and other events) it may be obligated to pay additional fees and/or undertake specific additional contractual obligations with CalCharge or its affiliated organizations. While choosing to participate in those activities is optional, adherence to the corresponding contractual obligations once Member agrees to participate is not. Member agrees that it will faithfully perform any contractual obligation to CalCharge or any of its affiliated organizations that Member undertakes. Member understands and acknowledges that the breach of any such agreement shall be a basis for suspension, revocation, or non-renewal of membership in CalCharge.

For Technology Acceleration services provided through the Cooperative Research and Development Agreement (CRADA) with Berkeley Lab, and SLAC, Member must execute a CRADA Access Agreement before Member may participate in any of the services. The Access Agreement will specifically preserve the right of Berkeley Lab and SLAC at their sole discretion and at anytime to approve or reject each proposed project and embedded researcher. General Members will also be charged a CRADA Administration Fee by

CalCharge based on the projected budget included in the Task Order. This fee will be a flat rate of (i) \$5,000 for projects under \$100,000, and (ii) \$10,000 for any project valued at \$100,000 or above. This fee is not applicable to Charter Members.

### **Support of Competition: Adherence to Antitrust Guidelines**

Members may and are encouraged to compete for sales of products or services. Members recognize that cooperation within the framework of CalCharge is intended to maintain and respect competition. No communication, activity, or procedure of CalCharge is intended to encourage or result in any action by any Member or members that may in any way have an anticompetitive impact or that may result in any unfair or unlawful trade practice. Applicant acknowledges that it has read the CalCharge Antitrust Guidelines, attached to this Agreement as Exhibit A and incorporated herein by reference, and that it will comply with these Guidelines at all times while it is engaged in CalCharge-related activities.

### **Confidential Information**

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

Any information pertaining to the business of CalCharge which Member submits or discloses to CalCharge, including any committee or working group thereof, and which is marked by Member as "Confidential" information, or if orally disclosed, identified as confidential prior to disclosure and reduced to writing and marked as "Confidential" within three (3) business days from the date of disclosure, shall be treated as confidential information with respect to third parties, except for any portion thereof that constitutes information: (a) rightfully in the public domain other than by a breach of a duty to the disclosing party; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party; (d) independently developed by the receiving party; or (e) generally made available to third parties by the disclosing party without restriction or disclosure.

Such member confidential information provided by any other member shall be maintained by the Member in confidence with at least the same degree of care that the Member uses to protect its own proprietary information and in no event with less than reasonable care, and the Member shall only use any confidential information that it receives for the purpose for which it was submitted.

In the event Member breaches the obligation of confidentiality with respect to confidential information of any other member, the sole and exclusive remedy of the member suffering the breach shall be to seek recourse against the breaching member, and CalCharge shall have no liability with respect to such breach.

## **Intellectual Property Rights**

Member shall respect any intellectual property rights that CalCharge owns or that CalCharge may acquire from time to time and shall not take any action with respect to those rights that is inconsistent with CalCharge's ownership of those rights. CalCharge also agrees to respect any intellectual property rights that Member owns or that Member may acquire from time and time and shall not take any action with respect to those rights that is inconsistent with Member's ownership of those rights.

## **Termination or Suspension of Membership**

Member's failure or refusal to comply with the terms of this Agreement may be grounds for suspension, termination, or non-renewal of membership. CalCharge may choose in its sole discretion to suspend a member's membership until such time that the member satisfies CalCharge that it has met all of the requirements of membership. However, CalCharge reserves the right to terminate a member's membership without first suspending the member.

The following specific acts, without limitation, will result in termination of membership, unless otherwise agreed upon by CalCharge:

- Failure to pay annual or specially assessed dues.
- Attempted transfer of membership to an entity without prior approval from CalCharge. (An acquisition or change of control of a Member results in an automatic suspension of membership until CalCharge determines that the entity following the acquisition or change of control satisfies CalCharge's membership requirements.)
- Any other violation of the terms of this Agreement or a breach of any agreement made between CalCharge and the Member.
- Failure to abide by the terms and conditions required in any other agreement between Member and CalCharge (e.g. an agreement for Member to access an optional program such as Technology Acceleration services).

Upon expiration or termination of Member's status as a member of CalCharge, all rights and privileges provided and/or granted to Member shall terminate. If Member is suspended by CalCharge or ceases to be a member, whether or not termination is voluntary, no refund of dues or fees paid shall be made, and Member shall remain liable for all dues and fees owed to CalCharge that are unpaid as of the date of termination or suspension of membership.

Membership in CalCharge shall commence on the Acceptance Date and shall remain in effect until the earlier of: (i) such time that Member elects not to renew its membership status; (ii) termination of Member's membership status, for any reason; or (iv) dissolution of CalCharge.

By signing below, the Member agrees to be bound by the terms of this Membership Agreement as a condition of membership in CalCharge, LLC, and acknowledges that any violation of the terms of this Agreement may be grounds for termination of membership.

<b>Signature of Designated Representative</b>	<b>Date</b> <i>(effective date of membership)</i>
<b>Name and Title of Designated Representative</b>	<b>Name of Entity Receiving Member Status</b>

**List of all Subsidiaries, Affiliates, and Divisions Included in this Membership**

<b>Membership Level:</b> <i>(check one)</i>	<input type="checkbox"/> <b>General</b>	<input type="checkbox"/> <b>Charter</b>
<b>Number of Employees:</b> <i>(based on the attached chart)</i>	<b>Assets Under Management:</b> <i>(based on the attached chart)</i>	
<b>Address:</b> _____ _____ _____	<b>Phone</b>	
	<b>Email Address</b>	

<b>Additional Representative(s):</b>	
<b>Name(s):</b>	<b>Email Address(es):</b>

<b>Accounts Payable Primary Contact information:</b>	
<b>Contact Name:</b>	<b>Position:</b>
<b>Phone #:</b>	<b>E-mail:</b>

<b>Received and Approved by CalCharge LLC:</b>	
<b>Signature of CalCharge Representative</b>	<b>Date of Approved Membership</b>
<b>Name and Title of CalCharge Representative</b>	

## **EXHIBIT A**

### **CalCharge, LLC Antitrust Guidelines**

It is the policy of CalCharge, LLC (“CalCharge”) to strictly comply with all laws and regulations applicable to its activities, including federal and state antitrust laws. It is further the policy of CalCharge to assist its members in complying with federal and state antitrust laws. CalCharge will neither knowingly permit nor condone anti-competitive behavior, whether willful or inadvertent, in connection with any CalCharge activity.

#### **Antitrust Laws**

Antitrust laws seek to preserve a free competitive economy. As a general rule, competitors may not restrain competition among themselves through understandings or agreements as to fixing prices, allocating geographic markets, unfair or deceptive practices, setting profit levels, boycotts, and most other anticompetitive actions. A more complete discussion of federal and state antitrust laws is available upon request from CalCharge.

Antitrust laws are sometimes unclear in terms of applicability to any given conduct. Whether or not an antitrust violation exists depends purely on the specific conduct and facts involved in each instance. Notwithstanding the nebulous nature of antitrust law, penalties for violating these laws, both civil and criminal, are severe.

#### **Member Responsibilities**

CalCharge makes every effort to design and monitor its programs to ensure compliance with antitrust laws. Every CalCharge member has a duty and responsibility under the law to avoid and prevent antitrust violations, including to overtly object and refuse to participate in any activity that poses antitrust risk until that risk is properly assessed and cleared by legal counsel or other qualified advisor. Specifically, members of CalCharge agree to abide by the following terms:

1. Neither CalCharge nor any of its committees or programs shall be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, among and between competitors with regard to prices, terms or conditions of sale, distribution, volume of production, territories, customers, credit terms, or marketing practices.
2. CalCharge and its members shall not discuss, communicate or engage in any other exchange between or among members with regard to prices, pricing methods, production quotas or other limitations on either the timing, costs, or volumes of production or sale, or allocation of territories or customers.



3. Neither CalCharge nor its members shall engage in any activity or communication that might be construed as an attempt to prevent any person or business entity from gaining access to any market or customer for goods and services, or to prevent any business entity from obtaining a supply of goods or services or otherwise purchasing goods or services freely in the market.
4. No applicant for membership who otherwise meets the qualifications set forth therein, shall be rejected for any anti-competitive purpose
5. If information, materials or reports of CalCharge for the use of the membership or participation is significant to third parties or others in the industry, then such information, material and reports will be made available by CalCharge to all such persons, on such reasonable terms and conditions as it may prescribe, in order to carry out its purposes.
6. To the extent that the purposes of CalCharge require collaboration among two or more members or representatives of members in furthering those purposes, the members or their representatives shall undertake such collaboration only to the extent necessary to achieve such purposes, and shall report the results of any collaboration undertaken on behalf of CalCharge to CalCharge. Any such collaboration shall exclude:
  - a. The exchange of information between or among members relating to any aspect of competition among the members, except to the extent that the exchange is reasonably required to accomplish the purposes of CalCharge and is unlikely to have any impact on competition between or among members. In case of doubt, the collaborating members should consult counsel for CalCharge with regard to the proposed exchange or the format in which the exchange should take place.
  - b. Any agreement or conduct restricting the production of any product by any member, limiting the manner in which any member markets or promotes any product, requiring the purchase or sale of any product by any Member, or limiting the sharing of intellectual property by, between, or among members. The collaborating members should consult counsel for CalCharge with respect to any limitation CalCharge may desire lawfully to impose on behalf of CalCharge with respect to the results of the collaboration.