

LEAP

Information and Intellectual Property Policy

Approved:

1. Introduction. Leadership for Energy Automated Processing (“LEAP”) is a non-profit membership corporation dedicated, among other things, to the promulgation of open standards in the energy trading industry. This Information and Intellectual Property Policy applies to all Members of LEAP and to LEAP Activities (as defined below). Further, this Policy shall apply to a non-Member party wishing to participate (“Participant”) in LEAP Activities. Compliance with and agreement to this Policy is a prerequisite to participation in any LEAP Activity. **This Policy is a term of membership in LEAP and shall be binding upon all Members.**
2. Definitions. The following capitalized terms shall have the following meanings when used herein:
 - a. “Affiliate” means any entity, directly or indirectly, which controls, is controlled by, or is under common control with a Member or Participant, where “control” and its variants means more than fifty percent of the voting interest in such entity.
 - b. “Contribution” means any business or technical information, statement, material, document, work of authorship, idea, improvement or know-how, in whatever form (“Information”) disclosed by a Contributor (as defined below) for use in connection with any LEAP Activity, including but not limited to proposals for new LEAP Work Items, or modifications, enhancements or developments of an existing LEAP Work Item, but excluding any Information, software or product that the Contributor clearly describes in writing in advance of or upon disclosure to any other Contributors in the relevant LEAP Activity and identifies as being disclosed solely for informational purposes, and not for incorporation into or use as a LEAP Work Item.
 - c. “Contributor” means any Member or Participant that participates in a specific LEAP Activity that may or may not result in a LEAP Work Item.
 - d. “Covenant Affiliates(s)” means any Affiliate of Contributor designated as such by Contributor to LEAP in writing from time to time.
 - e. “Designated Affiliate(s)” means all of Contributor’s Affiliates unless Contributor provides to LEAP in writing from time to time a list designating some or none of its Affiliates, in which case “Designated Affiliates” means solely those Affiliates designated on such list. Designated Affiliate(s) do not include any Covenant Affiliate(s).

- f. “LEAP Activity” means any meeting, seminar, conference, workgroup, round table, planning session, online discussion, request for comments or other in-person or electronic activity organized or facilitated by LEAP or any committee or sub-group thereof, and any technical discussion or communication between any personnel of Contributor and LEAP relating to any such activity or any LEAP Work Item.
 - g. “LEAP Work Item” means any technical specification, standard, schema, API, publication, data model, definition, dictionary, software code or other work (a) that is planned, developed, prepared, maintained, or overseen, by LEAP or (b) that is an enhancement, modification or correction by LEAP to such works that are planned, developed, prepared, maintained, or overseen by LEAP but solely as to such enhancement, modification or correction, in each case independently or jointly with one or more Contributors, or as part of any LEAP Activity.
 - h. “Holding Entity(ies)” means collectively, Contributor’s Designated Affiliates and Contributor’s Covenant Affiliates.
- 3. No Disclosure of Confidential Information. Except as otherwise provided in this Policy or as mutually agreed among all Contributors in a LEAP Activity, Contributor shall not disclose its confidential or proprietary information or trade secrets at or in connection with any LEAP Activity, and any information disclosed by Contributor at or in connection with a LEAP Activity shall be deemed to be publicly disclosed, and LEAP and the other Contributors shall have no obligation to keep such information confidential, and shall be free to use such information without accounting.
- 4. No Competitive Information. At LEAP Activities, Contributor shall not disclose or discuss with any other organization or LEAP any competitive information, including, but not limited to, product pricing, costs, sales, marketing or profit margins, non-public product development plans, exploration plans, delivery schedules, plans for bidding on projects or soliciting customer bids or any other commercially sensitive, confidential information. The discussion or disclosure of any such information by Contributor shall be grounds for immediate termination of a Contributor's participation in all LEAP Activities.
- 5. Contributions.
 - a. Contributor understands that the work of LEAP is a collaborative process in which Contributors may participate jointly to develop LEAP Work Items in the context of LEAP Activities. In order for LEAP Activities to be effective for the development of LEAP Work Items, Contributor and its Holding Entities, subject to Sections 3, 6, 7 and 8 herein, grant LEAP certain limited rights in Contributor’s respective Contributions, which LEAP may then sublicense as it decides in its discretion. Contributor and its Holding Entities agree not to permit any of Contributor’s Affiliates to make a Contribution.

- b. Accordingly, Contributor and its Designated Affiliates hereby grant to LEAP, under all copyrights, data and database rights of Contributor and its Designated Affiliates, a perpetual, worldwide, non-exclusive, non-transferable, irrevocable, fully-paid, royalty-free right and license (including the right to sublicense) to use, modify, reproduce, distribute, display, perform, transmit, and create derivative works of its Contributions solely within the field of energy trading, without any obligation to acknowledge, or pay any amounts to, Contributor and its Designated Affiliates, solely for the purpose of developing, using, modifying, enhancing, distributing, promoting and publishing LEAP Work Items. Contributor's Covenant Affiliates hereby covenant not to sue LEAP or any sublicensee of LEAP under the license in the foregoing sentence, under all copyrights, data and database rights of such Covenant Affiliates with respect to Contributions by Contributor and its Designated Affiliates solely within the field of energy trading, solely for the purpose of developing, using, modifying, enhancing, distributing, promoting and publishing LEAP Work Items. Contributor and its Holding Entities also waive all moral rights with respect to their Contributions. LEAP and other Contributors acknowledge that this paragraph shall not grant any right or license under any patent or patent application held by a Contributor or its Holding Entities.
- c. LEAP and other Contributors shall obtain no ownership interest or other rights in or to any Contribution under this Policy except for the licenses granted herein.
- d. There shall be no limitation hereunder on a Contributor's right to continue to modify, enhance or change its Contributions following their disclosure to LEAP; provided, however, that any such modification, enhancement or change that Contributor, in its sole discretion, submits to LEAP as a Contribution shall also be subject to the provisions of this Policy. LEAP shall have no obligation to use any Contribution or modification, enhancement or change thereto, and shall have the sole discretion as to its use and modification of Contributions.
- e. In certain cases, LEAP and one or more Contributors may deem it beneficial to document a significant Contribution in a separate writing, either to describe the Contribution with particularity, or to impose additional terms on its use. Any such writing shall reference this Policy, shall not seek to limit LEAP's license rights as set forth in Section 5(b) above, and require approval by the LEAP board of directors to become effective. In addition, a separate writing shall be required if the Contributor desires to license or contribute one or more trademarks to LEAP, to be used in connection with a specific Contribution.

6. IPR Disclosures.

- a. All Contributors in a LEAP Activity shall disclose to LEAP in writing (an "IPR Disclosure") any patent or patent application in any jurisdiction owned

by Contributor or any of its Designated Affiliates, or which Contributor or its Designated Affiliates have the right to license or enforce, the claims of which may cover any aspect in the field of energy trading of a Contribution or LEAP Work Item associated with said LEAP Activity. The burden shall be on such Contributor to identify said IPR Disclosure within three (3) months from the time it knew or should have known that the IPR Disclosure covered any aspect in the field of energy trading of a Contribution or LEAP Work Item. Such IPR Disclosure shall be made as soon as reasonably practical after Contributor is aware that the IPR relates to the LEAP Activity or LEAP Work Item. In addition, Contributor is encouraged, but not required, to disclose any third party patent or patent application of which it is aware and which the Contributor believes may cover any aspect of a LEAP Activity or LEAP Work Item.

- b. Each IPR Disclosure shall state (1) the jurisdiction in which such patent or patent application is issued or filed, and the relevant patent number or application number (which number, in the case of a patent application that is unpublished at the time of disclosure, shall be provided promptly after publication), (2) the specific Contribution, LEAP Work Item(s), or LEAP Activities covered or potentially covered, and (3) whether Contributor intends to exclude the IPR Disclosure from the provisions of Section 8(a) herein. LEAP and its Contributors expressly agree to abide by any request to exclude any IPR Disclosure from such LEAP Work Item and LEAP Activity. The foregoing notwithstanding, in the event such Contributor fails to identify said IPR Disclosure within the time period set forth in Section 6(a), the Contributor shall be deemed to have agreed that such IPR Disclosure is subject to the terms of Section 8(a), which shall be LEAP's and the other Contributors' sole remedy for such failure. It is expressly agreed to by LEAP and other Contributors that any statements made by a Contributor pursuant to Section 6(b) of this Policy shall not serve as a basis for LEAP or any Contributor to file a declaratory judgment action under applicable federal or state law.

7. Sublicense to Members and Participants. It is LEAP's goal and policy to make LEAP Work Items in their final forms widely available to the industry for adoption and take-up.

- a. Members. LEAP hereby grants to Member and its Designated Affiliates (for which Member shall be responsible and liable) a royalty-free, perpetual, worldwide, nonexclusive, nontransferable, irrevocable, license with respect to copyrights and any other intellectual property rights LEAP owns or has the right to license in all LEAP Work Items created during Member's term of membership to make, have made, use, modify, reproduce, distribute, display, perform, transmit, and create derivative works solely in the field of energy trading, further including the terms and conditions under which LEAP generally licenses such LEAP Work Items. The Member acknowledges that

LEAP Work Items may be licensed generally to the public on terms set forth on LEAP's web site or otherwise.

- b. Participants. LEAP may offer to Participant a license under any intellectual property rights LEAP owns or has the right to license in all LEAP Work Items in which a Participant participated in developing, solely in the field of energy trading. Such licenses may be royalty-free or royalty bearing, at LEAP's sole discretion, provided that royalties are charged and terms and conditions tendered to all Participants on a non-discriminatory basis.

8. Contributor Cross-Licensing to Members

- a. Patent Grant and Covenant. When a Contributor or its Designated Affiliates makes a Contribution, including any IPR Disclosure pursuant to Section 6 or when LEAP formally adopts a LEAP Work Item, (i) the Contributor and its Designated Affiliates hereby grant to Members and their Designated Affiliates a nonexclusive, nontransferable, worldwide, royalty-free license under their Necessary Claims to allow Members and their Designated Affiliates to make, have made, use, import, offer to sell, lease and sell and otherwise distribute Compliant Portions, provided that such grant shall not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion and (ii) the Covenant Affiliates of Contributor covenant not to sue Members and their Designated Affiliates, under their respective Necessary Claims in the field of energy trading, with respect to Compliant Portions, provided that such covenant shall not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion. Each Contributor and each of its Designated Affiliates agrees that it will not transfer patents having Necessary Claims for the purpose of circumventing this Section.
- b. Transfer of Necessary Claims to Third Parties. Any transfer by a granting Contributor or its Holding Entities to a third party of a patent having Necessary Claims shall be subject to: (i) the terms and conditions of this Agreement, including the covenant not to sue LEAP under its Necessary Claims in Section 8.f, and (ii) the license grants and covenant not to sue by the granting Contributor and its Holding Entities pursuant to Section 8.a.
- c. Compliant Portion. Compliant Portion means only those specific portions of products (hardware, software or combinations thereof), processes and services that (i) implement and are compliant with all relevant portions of a LEAP Work Item, and (ii) are within the bounds of the Scope.
- d. Necessary Claims. Necessary Claims means those claims of all patents, patent applications, and utility models, other than design patents and design registrations, throughout the world which a granting Contributor or its Holding Entities has the right, at any time during the term of this Policy, to grant licenses or covenants not to sue of the nature agreed to be granted herein

without such grant resulting in payment of royalties or other consideration to third parties (except for payments to Affiliates or employees), which claims are necessarily infringed by an implementation of a LEAP Work Item adopted and approved for release by Steering Committee of LEAP and which are within the bounds of the Scope, where such infringement could not have been avoided by another commercially reasonable non-infringing implementation of such LEAP Work Item. Necessary Claims do not include any claims other than those set forth above even if contained in the same patent as Necessary Claims.

- e. Scope. Scope means the protocols, electrical and mechanical requirements, register models, data structures, and processes solely to the extent disclosed with particularity in a LEAP Work Item and in the field of energy trading. Notwithstanding the foregoing, the Scope shall not include (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a LEAP Work Item, but are not themselves expressly set forth in a LEAP Work Item; or (ii) the implementation of other published specifications not developed by or for LEAP but referred to in a LEAP Work Item.
- f. Covenant Not to Sue LEAP. Contributor and its Holding Entities covenant not to sue LEAP under its Necessary Claims in the field of energy trading.
- g. Late Membership and License Grant. A party who becomes a Member after receiving notice of a possible patent claim from a granting Contributor or its Holding Entities will not receive any grant under this Section 8 for such Necessary Claims within any patent of which it received notice.

9. Trademarks.

- a. Contributor agrees not to register or reserve as a trademark, trade name, corporate name or domain name any trademark, logo, service mark, corporate name or domain name owned or used by LEAP from time to time, including, without limitation, LEAP and confusingly similar variations of LEAP (collectively, "LEAP Marks"), provided Contributor has not used or filed an intent to use application to register such marks or names prior to LEAP's use or filing for registration thereof.
- b. Contributor agrees to credit LEAP in writing in a reasonable and conspicuous manner with respect to each copy of a commercial product or service offering of Contributor that makes material use of any LEAP Work Item. Such credit may take the form of a written statement in the product documentation, packaging, on-screen About box, introductory splash screen or similar location, to the effect that "XYZ Product incorporates technology/standards provided by LEAP." A credit may include display of the relevant LEAP Mark(s) in a form agreed in advance by LEAP. Contributor shall not use any

LEAP Mark, or make any such statement, with respect to products and services that do not make material use of LEAP Work Items.

- c. Contributor agrees that each usage of an LEAP Mark must be accompanied by the TM or ® symbol, as appropriate, or the relevant non-U.S. symbol, and a notation must be placed at the bottom of the first page on which such usage occurs stating: "[INSERT LEAP MARK] is a trademark or registered trademark of LEAP"
 - d. In the event that the quality level of the products or services with which Contributor associates LEAP Marks is below the quality requirements of LEAP, LEAP shall notify the Contributor and the Contributor shall use reasonable efforts to improve such quality. If such quality is not improved after a reasonable period of time, in LEAP's discretion, then LEAP may suspend Contributor's right (and requirement) to use the relevant LEAP Marks in connection with such products or services until such time as LEAP determines, in its sole judgment, that the relevant products and services meet its quality requirements.
10. Disclaimer. While the information contained in each Contribution is believed by the Contributor and LEAP to be accurate, THE CONTRIBUTOR AND ITS HOLDING ENTITIES AND LEAP MAKE NO WARRANTY, EXPRESS OR IMPLIED, WRITTEN OR ORAL, UNDER THIS AGREEMENT, AS TO ANY CONTRIBUTION OR ANY MATTER SUBJECT TO A LICENSE OR COVENANT NOT TO SUE OR ITS SUITABILITY FOR USE OR ADOPTION IN ANY LEAP WORK ITEM OR OTHERWISE, AND ANY SUCH WARRANTY IS EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
11. Amendment. This Policy may be amended only by written consent of Members holding two-thirds of the aggregate voting power of LEAP, and no amendment shall apply retroactively without the written consent of the affected Contributor(s).

APPROVED as of the 3rd day of November, 2008.