

INTERLOCAL PARTICIPATION AGREEMENT

This Interlocal Participation Agreement ("Agreement") is entered into by and between Axeon Interlocal Inc. ("AI" or "Corporation"), a Texas non-profit political subdivision corporation organized under Chapter 22 of the Texas Business Organizations Code and Chapter 304 of the Texas Local Government Code, and the undersigned, a political subdivision of the State of Texas ("Participating Member").

WHEREAS, the Corporation is organized exclusively to act on behalf of Participating Members to negotiate the purchase of electricity, natural gas and related services, or to likewise aid or act on behalf of the political subdivisions for which the Corporation was created, with respect to their own electricity use for their respective public facilities and to undertake all other lawful acts not prohibited to be undertaken by a political subdivision corporation described in Texas Local Government Code §304.001 et seq.;

WHEREAS, Participating Member has passed a Resolution authorizing membership participation in Axeon Interlocal Inc.;

WHEREAS, Participating Member approved the Certificate of Formation, Bylaws, and this Interlocal Participation Agreement; and

WHEREAS, Participating Member may utilize its AI membership to obtain electricity, natural gas and related services for its public facilities through AI.

NOW, THEREFORE, for and in consideration of the mutual agreements and promises set forth herein, the Corporation and Participating Member agree as follows:

ARTICLE ONE: AI RESPONSIBILITIES

1.01 At the direction of Participating Member (or Aggregating Participating Members), AI agrees to engage in the competitive solicitation of electricity on behalf of Participating Member, either individually or as part of an Aggregation created by AI and

its Energy Consultant (the “Consultant”) in accordance with applicable laws of the State of Texas. AI agrees to solicit pricing from competitive retailers and to negotiate the terms of a contract for energy services on behalf of Participating Member, or Aggregation Participating Members, with the selected supplier.

1.02 AI will assist Participating Member with the addition or deletion of metered accounts with a supplier during the duration of Participating Member's participation with AI.

1.03 At the request of Participating Member, AI will make a good faith effort to negotiate on Participating Member's behalf settlements of reasonable disputes regarding Participating Member's electric or natural gas service; provided, however, AI assumes no liabilities or responsibilities to (a) engage in protracted negotiations; (b) reach any settlement; or (c) reach any settlement to Participating Member's satisfaction.

1.04 At Participating Member’s request, AI will provide, or cause to be provided, routine market updates and assist in evaluation of renewable energy supplies, the development of price formation strategies, and other related energy services (e.g. natural gas, demand management, generator procurement).

ARTICLE TWO: PARTICIPATING MEMBER RESPONSIBILITIES

2.01 Participating Member may utilize AI for electricity and related procurements and represents that its governing body has authorized a resolution to allow it to participate in AI. If Participating Member agrees to utilize AI for a specific procurement(s), that AI will be its sole agent for the procurement for the specific supply terms directed by the Participating Member. When Participating Member decides to utilize AI, Participating Member agrees to cooperate with AI and its energy consultant during the competitive solicitation and negotiation process.

2.02 Participating Member shall designate an individual as its authorized representative ("Member Representative") to act as its authorized agent with respect to AI. Participating Member reserves the right to change its Member Representative, which

change shall be effective when given in the manner prescribed by the Notice provisions contained in Section 5.03 of this Agreement and confirmed in writing by AI.

2.03 Participating Member agrees to provide information reasonably necessary for AI to provide service to Participating Member, which shall include, but not be limited to, account information, including service addresses, ESI ID numbers, account numbers, current electricity supply contract, expansion plans and load data for all of Participating Member's accounts located in areas of competitive choice. Participating Member warrants and represents that the account information it provides to AI is accurate to the best of its knowledge, and Participating Member agrees to verify the accuracy of the accounts submitted for bid in the solicitation process and in the agreement negotiated by AI with a supplier. This information shall be provided to IA by Participating Member as required by AI pursuant to this Agreement.

2.04 Participating Member agrees to execute those documents reasonably necessary for AI, including a letter of authorization, to allow AI and/or Consultant to obtain Participating Member's electricity usage data from the local utility or utilities.

2.05 Participating Member may execute the electricity supply contract (the "Electricity Supply Contract") negotiated by AI to purchase electricity to satisfy all of Participating Member's electricity requirements for all of Participating Member's accounts in areas of competitive choice commencing upon the expiration of Participating Member's current electricity supply contract (or, if Participating Member is not subject to a current electricity supply contract, commencing with other periods documented by Participating Member and AI, based upon the prices obtained by AI. The parties agree that time is of the essence, and agree to execute the Electricity Supply Contract within the time period required by the supplier. Participating Member's governing board hereby authorizes the Superintendent, Chief Executive Officer, or Member Representative to execute the Electricity Supply Contract negotiated by AI.

2.06 Participating Member agrees to notify AI and/or the Consultant and the supplier in the event of additional metered accounts or disconnected metered accounts during the term of the Electricity Supply Contract.

ARTICLE THREE: PRICING, DUES, AND CONSIDERATION

3.01 As consideration for participation in AI, Participating Member agrees to pay AI the fees (“AI Fees”) described in Section 3.02 below. Unless otherwise agreed, the AI Fees shall be generated by the Electricity Supply Contract and shall be collected by the supplier and paid to AI and/or Consultant. In the event that the supplier does not make payment to AI and/or Consultant, Participating Member shall be responsible for payment of AI Fees to AI and/or Consultant upon invoice by AI and/or Consultant. Participating Member agrees that all amounts payable to AI and/or Consultant under this Agreement are fair compensation for the services provided by AI and/or Consultant under this Agreement. In the event that Participating Member does not utilize AI for an electricity procurement, then Participating Member is not obligated to pay any AI Fees, either directly or through an electricity supply contract.

3.02 The AI fee shall be .00010 per kWh.

3.03 Participating Member shall be permitted to designate a representative to participate in the AI Advisory Committee. As requested by AI, the Advisory Committee shall review supplier’s responses to AI’s requests for proposals (“RFP”), shall vote to approve qualified supplier(s) for participation in AI solicitations, shall receive periodic market updates from AI, and shall provide advice to AI regarding member interest in energy related issues.

ARTICLE FOUR: TERM, TERMINATION, AND RELATIONSHIP OF THE PARTIES

4.01 The initial term of this Agreement shall commence upon execution of the Resolution Authorizing Political Subdivision Participation in Axion Interlocal Inc. (“Resolution”) by Participating Member and shall continue through the expiration of the Electricity Supply Contract. Thereafter, this Agreement shall automatically renew for successive one-year terms unless sooner terminated in accordance with this Agreement or through a written notice of nonrenewal by either party. The conditions of this Agreement shall apply to the initial term and to all renewal terms. If Participating Member does not terminate this Agreement at least six (6) months prior to the expiration of the Electricity Supply Contract

awarded through AI, then this Agreement automatically renews, and AI may continue, or begin, to solicit pricing for Participating Member for a new Electricity Supply Contract. AI Participating Member, in its sole right, must agree to a new electricity contract and is not obligated to utilize AI as its sole option to pursue a new electricity contract.

4.02 In the event of material breach of this Agreement by AI, Participating Member may terminate this Agreement by providing AI with written notice of such breach and providing AI thirty (30) days' opportunity to cure such breach after AI's receipt of such notice. Notwithstanding the foregoing, Participating Member may not terminate unless all Fees and dues set forth in Article 3 have been paid in full.

4.03 In the event Participating Member fails to pay any required AI Fees, AI may terminate this Agreement by providing notice of such breach and providing Participating Member twenty (20) days' opportunity to cure after Participating Member's receipt of such notice. In the event of any other material breach of this Agreement by Participating Member, AI may terminate this Agreement by providing written notice of such breach and providing thirty (30) days' opportunity to cure such breach after Participating Member's receipt of such notice.

4.04 In the event of termination by either party during the term of this Agreement, Participating Member shall be solely responsible for any increases in cost of electricity after termination and for any unpaid amounts due under this Agreement. AI may seek all amounts due and owing from Participating Member, including fees from any Electricity Supply Contracts awarded through AI, and Participating Member shall not be entitled to a refund of any AI Fees paid or due to AI.

4.05 Nothing in this Agreement will be construed to make AI or its Consultant a financial, investment, or legal advisor to Participating Member. AI and/or Consultant is not, and is not to be construed as, the "agent" of Participating Member or acting in any similar capacity or standing, unless otherwise expressly provided herein, and then, only for the limited circumstances under which such designation applies.

4.06 AI and Consultant will provide services consistent with prevailing industry

processes and practices and will endeavor to ensure that the bidding, solicitation, and award of the Electricity Supply Contract is conducted at commercially reasonable market-based prices based on conditions that prevail at the time the Electricity Supply Contract is executed. AI and Consultant do not and cannot guarantee any particular financial result under this Agreement or the Electricity Supply Contract, and are not responsible for changes in market conditions and electricity prices either before or after this Agreement or before or after award of the Electricity Supply Contract. Nothing set forth in this Agreement is intended to establish a standard of care applicable to fiduciary or similar trust relationship. Except as expressly stated in this Agreement, neither of the parties have any separate obligations or duties, including without limitation, any fiduciary duties or other implied duties with respect to their obligations under this Agreement. Neither AI and/or Consultant, nor their Affiliates, will be responsible for any business opportunities that may not be realized by Participating Member. Participating Member waives, to the fullest extent permitted by applicable law, any fiduciary or other similar duties that may arise in connection with the Agreement.

ARTICLE FIVE: MISCELLANEOUS

5.01 This Agreement shall be construed in accordance with the laws of the State of Texas. Any cause of action, claim, or dispute arising out of this agreement shall be subject to the laws of the state of Texas, and venue shall be in the courts in Harris County, Texas.

5.02 Participating Member agrees that it will comply with any reasonable requests for information and records made by AI, or its Consultant.

5.03 All notices required to be provided under this Agreement shall be sent by certified mail, return receipt requested, to the following:

If to Participating Member:

If to AI:

Axeon Interlocal Inc.
c/o Acclaim Energy Advisors
1321 Upland Dr. #18060
Houston, Texas 77043

All changes in notice address shall be submitted per the terms of this subsection.

5.04 AI AND/OR ITS CONSULTANT DO NOT WARRANT THAT THE OPERATION OR USE OF SERVICES UNDER THIS AGREEMENT WILL BE UNINTERRUPTED OR FREE FROM ERROR. AI, ITS CONSULTANTS AND CONTRACTORS, HEREBY DISCLAIM ANY AND ALL WARRANTIES EXPRESS OR IMPLIED WITH RESPECT TO ANY INFORMATION, PRODUCT, OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT NEITHER AI AND/OR CONSULTANT NOR PARTICIPATING MEMBER SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES RELATING TO OR ARISING FROM THIS AGREEMENT, THE ELECTRICITY SUPPLY CONTRACT, OR ANY ACTIONS OF THE PARTIES RELATING IN ANY WAY THERETO FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, BUSINESS INTERRUPTION, PUNITIVE, OR EXEPLARY DAMAGES, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE AND REGARDLESS OF THE FAULT, NEGLIGENCE (IN WHOLE OR IN PART) OR STRICT LIABILITY OF THE PERSON WHOSE LIABILITY IS LIMITED), BREACH OF CONTRACT OR BREACH OF WARRANTY, OR OTHERWISE.

5.05 The illegality, invalidity, or unenforceability in whole or in part, of any provision of this Agreement will not affect the legality, validity and enforceability of the remaining provisions of this Agreement.

5.06 No modification, amendment, or other change to this Agreement will be binding on any party unless consented to in writing executed by both parties.

5.07 Failure by a party to exercise any of its rights or remedies under this Agreement does not constitute a waiver of such rights or remedies. Neither party will be deemed to have waived any right or remedy to which it may be entitled, any provision of this Agreement, or any failure of default of the other party unless it has made such waiver

specifically in writing.

5.08 This Agreement may be executed in one or more counterparts and by different parties in separate counterparts, each of which will be deemed an original and all of which will be deemed one and the same Agreement. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually executed counterpart.

IN WITNESS WHEREOF, the Parties have caused this this Agreement to be duly executed and delivered as of the Execution Date.

AXEON INTERLOCAL INC.

By: _____

Name: _____

Title: _____

Aransas Pass Independent School District

By: _____

Name: _____

Title: _____

Date: _____