

## **ANNEX IV**

### **SERVICES AGREEMENT**

**MASTER SERVICES AGREEMENT  
BY AND BETWEEN  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
AND  
ASTORIA ENERGY LLC**

This Master Services Agreement, dated this 27<sup>th</sup> day of October, 2003, is by and between Consolidated Edison Company of New York, Inc., a New York corporation ("Con Edison") and Astoria Energy LLC, a Delaware limited liability company ("Buyer") (Con Edison and Buyer sometimes are referred to herein collectively as the "Parties" or individually as a "Party").

**WHEREAS**, Con Edison may possess certain capabilities to provide certain services, goods and/or materials; and

**WHEREAS**, from time to time, Buyer may desire to purchase and Con Edison may desire to sell certain services, goods and/or materials pursuant to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and of the covenants contained herein, Con Edison and Buyer agree as follows:

**1. Definitions.**

"Contract" as used herein means the agreement between Con Edison and Buyer concerning Con Edison's provision of specific services, goods and/or materials to Buyer and consists of this Master Services Agreement, the Transaction Form as defined below, and any documents attached to or incorporated by reference into the Transaction Form. The words "hereof," "herein," "hereto," and "hereunder" as used herein shall be deemed to refer to the Contract.

"Buyer" as used herein has the meaning provided in the introductory paragraph of this Master Services Agreement.

"Con Edison" as used herein has the meaning provided in the introductory paragraph of this Master Services Agreement.

"Parties" and "Party" as used herein have the meanings provided in the introductory paragraph of this Master Services Agreement.

"Transaction Form" as used herein has the meaning provided in Section 2 of this Master Services Agreement.

**2. Transaction Forms.** Whenever the Parties agree that Buyer shall purchase and Con Edison shall perform specific services and/or supply certain goods or materials and the performance of such services and/or supply of such goods or materials are not governed by a separate agreement between Con Edison and Buyer, they shall draft and execute, by their respective authorized representatives, a written transaction form (each a "Transaction Form") that describes, without limitation, (a) the specific services, goods and/or materials that will be purchased and sold, (b) the rate/price to be paid by Buyer to Con Edison for such services, goods and/or materials (which may by reference to a Con Edison pricing sheet then in effect), (c) the term during which or the schedule pursuant to which such services, goods, and materials will be furnished, (d) the contact person(s) for each Party with regard to the provision of such services, goods and/or materials, and (e) any other terms and conditions that apply to the provision of such services, goods and/or materials.

**3. Invoices; Terms of Payment.** Invoices shall contain a brief description of the services, goods and/or materials furnished. For services furnished on an hourly rate basis, the period covered by the invoice, the hours of service furnished during such period and the applicable hourly rate shall be stated in the invoice. For services furnished on a weekly, monthly, annual or other periodic rate basis, the period to which the invoice applies and the applicable rate shall be stated in the invoice. For services furnished on a lump sum basis, the portion of services performed and the corresponding payment due for such portion shall be stated in the invoice. For goods or materials furnished, the quantity of goods or materials furnished and their applicable prices shall be stated in the invoice. Taxes, charges and fees, if any, that are to be paid by Buyer to Con Edison or reimbursed by Buyer to Con Edison in accordance with Section 4 shall be stated in invoices. Payment of invoices containing the foregoing information is due 30 days from the date of the invoices. Payments received more than 30 days after the date of invoice shall be subject to a late charge equal to 18% per annum/.04932% per day, compounded monthly, for each day beyond such 30 day period that the payment is not received (the "Late Charge"); provided, however, that if the highest late charge permitted by applicable law is lower than the Late Charge, the highest late charge rate permitted by law shall be applied instead of the Late Charge. Within 15 days from the date of an invoice, Buyer may in good faith dispute any portion of such invoice upon written notice to Con Edison received within such time which sets forth the reason(s) for Buyer's dispute. Con Edison and Buyer shall confer to expeditiously resolve such dispute. Buyer shall be required to pay the portion of any invoice that is not disputed in good faith upon written notice as described above and any such portion that is not timely received shall be subject to the Late Charge. Any portion of an invoice that is disputed in good faith by Buyer in accordance with the foregoing, but which ultimately is determined to be due, shall be subject to the Late Charge calculated from the original due date.

**4. Taxes/Permit Fees.** The rates and/or prices set forth in a Transaction Form do not include any federal, state or local license, privilege, sales, use, excise, gross receipts, value added or other like taxes which may now or hereafter be applicable to, measured by or imposed upon the services, goods and/or materials furnished hereunder and/or any payment due or collected for such services, goods and/or materials. Buyer agrees to pay any such taxes and to reimburse Con Edison for any such taxes which Con Edison is required to pay. The rates and/or prices set forth in a Transaction Form also do not include any charge or fee for any governmental or non-governmental permits, authorizations, consents or approvals that may be required in connection with any services, goods and/or materials furnished hereunder. Buyer agrees to pay any such charges and fees and to reimburse Con Edison for any such charges and fees which Con Edison is required to pay.

**5. Force Majeure.** Con Edison shall not be liable for failure to perform or for delay in performance due to any cause beyond its reasonable control, including without limitation, act of war, terrorist act, fire, flood, strike or other labor difficulty, act of God, act or failure to act of any governmental authority or of Buyer, riot, sabotage, embargo, fuel or energy shortage, wreck or delay in transportation, major equipment breakdown, discovery of environmental or safety conditions not disclosed prior to the Transaction Form for the particular services, goods and/or materials being executed, or inability to obtain necessary labor, materials, or facilities from usual sources. In the event of delay in performance due to any such cause, the time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay, and Con Edison will be entitled to any reasonable additional costs it incurs as a result of the delay.

**6. Warranty.** Con Edison warrants that the services performed under a Contract will be performed competently by qualified persons in accordance with generally accepted standards (the "Applicable Warranty").

If any of the services performed under a Contract are found to fail to conform to the Applicable Warranty within six months after completion of such services, Con Edison shall at no additional cost to Buyer, if notified in writing by Buyer of the specific non-conformity within six months after completion of such services, make reasonable efforts to correct the portion of the services that do not conform to the Applicable Warranty. If, in the opinion of Con Edison, it is not reasonably possible to correct any services that fail to conform to the Applicable Warranty, Con Edison shall refund the price paid by Buyer for the portion of the services that do not conform to the Applicable Warranty. Without limitation of the matters that are not covered by the Applicable Warranty and for which Con Edison shall have no responsibility, it is specifically understood and agreed that the Applicable Warranty does not cover, and Con Edison shall have no responsibility for any matter caused by the acts or omissions of others, including any improper

construction, maintenance, repair, modification or operation of any equipment or facilities on which Con Edison has rendered services.

ANY GOODS OR MATERIALS THAT MAY BE FURNISHED BY CON EDISON HEREUNDER ARE SOLD AS IS AND WHERE IS. Any description of the goods contained in any document relating to this sale is for reference purposes only and is not intended to be construed as a warranty relating to condition or completeness.

THE FOREGOING APPLICABLE WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), ALL OF WHICH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

The remedy provided above is Buyer's sole and exclusive remedy for any failure of Con Edison to comply with its obligations. Correction of any nonconformity in the manner and for the period of time provided above shall constitute complete fulfillment of all the liabilities of Con Edison, whether based in contract, in tort (including negligence, gross negligence and strict liability), or otherwise with respect to or arising out of a Contract.

**7. Indemnification/Limitation of Liability.** A. To the fullest extent permitted by law and except for Buyer's sole and exclusive remedy under Section 6 above, Buyer shall indemnify, defend, and hold harmless Con Edison, its trustees, officers, employees, and agents (collectively, the "Protected Parties") from and against any and all claims, actions, liabilities, damages, costs, and expenses (including without limitation attorney fees and other legal costs and expenses), whether based in contract, tort (including negligence, gross negligence, and strict liability) or otherwise, which are asserted, suffered, or incurred by any person or entity (including Buyer and the Protected Parties) and which arise from, relate to, or are connected with the services, goods and/or materials furnished by Con Edison hereunder.

B. To the fullest extent permitted by law, the Protected Parties shall not be liable, whether in contract, tort (including negligence, gross negligence, and strict liability), or otherwise, for any special, indirect, incidental, or consequential damages (including but not limited to damage, loss, liability, costs, and expenses resulting from loss of use, loss of business or business opportunities, loss of profits or revenue, costs of capital, loss of goodwill, claims of customers, claims of unrelated companies and other third parties, cost of purchased or replacement power, and like items of special, indirect, incidental, or consequential loss and damage) asserted, suffered, or incurred by any person or entity (including Buyer and the Protected Parties), which arise from, relate to or are connected with the services, goods and/or materials furnished by Con Edison hereunder regardless of whether or not such damages, loss,

liability, costs or expenses are caused in whole or in part by the acts or omissions (including negligence, gross negligence or willful acts) of the Protected Parties or any of them. The damages referred to in this Paragraph B are hereinafter referred to as the "Consequential Losses." To the fullest extent permitted by law, Buyer hereby irrevocably and unconditionally agrees to release and forever discharge the Protected Parties from any and all liability for any Consequential Losses and to waive any and all rights to recover any Consequential Losses from the Protected Parties or any of them in the future. To the fullest extent permitted by law, Buyer shall indemnify, defend, and hold the Protected Parties harmless from and against any and all Consequential Losses (including any attorneys fees and any other legal costs and expenses in connection therewith) asserted, suffered or incurred by any person or entity (including the Parties hereto).

C. If a court of competent jurisdiction determines that any provision or application of any provision of Paragraph A or B of this Section 7 is unenforceable, the cumulative liability of the Protected Parties with respect to a Contract and anything done in connection therewith (whether such liability is based on contract, tort (including negligence, gross negligence, and strict liability) or otherwise, shall not exceed the price of the services, goods and/or materials on which such liability is based. If a court of competent jurisdiction determines that any provision of Paragraphs A or B of this Section 7 or the preceding sentence of this Paragraph C is unenforceable, such court shall limit the operation of such provision so as to give it the effect intended to the fullest extent permitted by law.

D. Con Edison's obligation to furnish any services, goods or materials hereunder shall, at all times (including, without limitation, during any period after which work has commenced to furnish such services, goods or materials), be subject to the availability of Con Edison personnel to furnish such services, goods or materials, taking into account the services, goods or materials to be furnished to Buyer and the need for Con Edison personnel to furnish services, goods or materials relative to Con Edison's electric, gas and/or steam systems, which availability shall be determined in the sole discretion of Con Edison. Without limitation of any provision of a Contract that excuses or limits liability, any failure or delay by Con Edison in furnishing any services, goods or materials due to such unavailability of Con Edison personnel (such unavailability being determined in the sole discretion of Con Edison) shall be excused and shall not give rise to any liability. Con Edison will endeavor to provide Buyer with such advance notice as may be practicable under the circumstances of the unavailability of its personnel as described in this Paragraph.

**8 Changes.** Con Edison reserves the right at any time to make changes in the repair or service methodology, if such changes are not inconsistent with the Contract. Such changes may include the number of personnel assigned, tool usage, repair or fabrication methods, supervision assigned and/or work hours and other similar changes.

**9. Confidentiality.** All specifications, drawings, technical information and reports furnished by Con Edison in connection with a Contract are intended for the sole use of Buyer in determining the completeness of the work performed and for use in the continued operation and/or maintenance of the facility concerning which service has been provided. Disclosure by Buyer of such documents to third parties is prohibited without the prior written consent of Con Edison. All specifications, drawings, technical information and reports furnished by Buyer in connection with a Contract are intended for the sole use of Con Edison in connection with such Contract. Disclosure by Con Edison of such documents to third parties is prohibited without the prior written consent of Buyer.

**10. Access/Safety.** Except as may result from any acts or omissions of Con Edison in carrying out the work covered by a Contract, Buyer agrees to make available to Con Edison and maintain an acceptable work area free of all safety and environmental hazards. Buyer shall maintain a safe work area by, among other things, an approved Tag-out or Lock out procedure meeting appropriate federal, state and local standards. Buyer agrees to verify the tag-out or lock out through protection walk down and or document review and verification. Buyer agrees to conduct appropriate testing reasonably requested by Con Edison as necessary for such verification. Con Edison requires its personnel to maintain documentation specifying the particular work protection measures that are required. Changes to such protection shall not be made by Buyer without Con Edison's prior written consent. Buyer agrees to make the job site accessible from a security standpoint without additional expense to Con Edison.

**11. Safeguarding Tools, Equipment & Consumables.** Con Edison will make reasonable efforts to safeguard tools, equipment and consumables. Buyer is responsible for theft or loss of such tools, equipment and consumables occurring at its site. If security must be provided by Con Edison, the cost thereof will be payable by Buyer.

**12. No Third Party Beneficiaries.** Nothing in a Contract, express or implied, is intended to confer upon any person, other than the Parties and their permitted assigns, any rights or remedies under or by reason of such Contract.

**13. Entire Agreement.** Each Contract contains the entire agreement between the Parties relating to the subject matter thereof, and any prior or contemporaneous oral or written understandings relating to the subject matter of the Contract are merged herein.

**14. Amendments/Waiver.** A Contract may be modified only by a writing signed by an authorized representative of each Party. No waiver of any right under a Contract shall be effective unless in writing and signed by an authorized representative of the Party granting such waiver and such waiver shall be effective

only with respect to the particular event expressly referred to in such signed writing.

**15. Applicable Law; Submission to Jurisdiction; Choice of Forum; Service of Process.** Each Contract shall be interpreted and the rights and liabilities of the Parties hereunder shall be determined in accordance with the laws of the State of New York, without regard to such State's choice of law rules.

Buyer hereby irrevocably submits to the jurisdiction of the courts located within the State of New York with regard to any controversy arising from, relating to, or connected with a Contract or its implementation. Buyer agrees that service of process on it in relation to such jurisdiction may be made, at the option of Con Edison, by certified or registered mail, return receipt requested, addressed as set forth below or by actual personal delivery to Buyer at the address set forth below:

Astoria Energy LLC  
85 Main Street  
Concord, MA 01742  
Attn: Manager

Service of process pursuant to this section shall be deemed to be sufficient even under circumstances where, apart from a Contract, there would be no jurisdictional basis for such service. Service of process on Buyer also may be effected in any manner permitted by law.

Buyer irrevocably consents to the selection of the New York State and United States courts situated within the City of New York as the exclusive forums for any legal proceeding arising from, relating to, or connected with a Contract or its implementation.

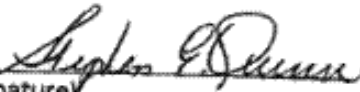
**16. Termination.** Either Party, for any reason whatsoever, including its own convenience, may terminate this Master Services Agreement in whole or in part, upon thirty (30) days advance written notice to the other party without liability to such other Party except that no such termination shall have any effect on, and neither party shall be relieved of any obligation or liability relating to or arising from, a Contract entered into prior to the effective date of such termination.



IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Master Services Agreement as of the date first above written.

CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC. ("Con Edison")

ASTORIA ENERGY LLC  
("Buyer")

By:   
(signature)

Name: STEPHEN E. QUINN

Title: VP

By:   
(signature)

Name: JAMES L. CROYLE

Title: Manager