

**Conceptual Stage Agreement RE:  
Middletown to Norwalk 345-kV Transmission Line**

This Agreement (“Agreement”) is made as of the 12<sup>th</sup> day of February, 2003, by and between THE UNITED ILLUMINATING COMPANY (“UI”), a specially chartered Connecticut corporation, with its principal office located at 157 Church Street, New Haven, Connecticut, and NORTHEAST UTILITIES SERVICE COMPANY (“NUSCO”), a Connecticut corporation, with its principal office located at 107 Selden Street, Berlin, Connecticut, acting as agent for THE CONNECTICUT LIGHT AND POWER COMPANY (“CL&P”), a specially chartered Connecticut corporation, with its principal office at 107 Selden Street, Berlin, Connecticut (together, the “Parties” and individually, a “Party”).

W I T N E S S E T H:

**WHEREAS**, the Parties desire to cooperate in the planning, conceptual engineering, permitting and siting of a 345-kiloVolt (“kV”) transmission line running from Middletown, Connecticut to Norwalk, Connecticut, including overhead and/or underground conductors, substations and related facilities (the “Line”); and

**WHEREAS**, the Parties desire to set forth in writing their respective rights and obligations in connection with such cooperation, as well as their understanding concerning their respective ownership of the Line; and

**WHEREAS**, capitalized terms, where not expressly defined in this Agreement, have the meaning given to such terms in Appendix A attached hereto and made a part hereof.

**NOW THEREFORE**, in consideration of the promises and mutual agreements contained in this Agreement and other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **GENERAL.**

1.1. **Good Utility Practice.** In carrying out their responsibilities pursuant to this Agreement, NUSCO and UI shall act in accordance with Good Utility Practice.

1.2. **Ownership of the Line.**

(a) The length of the Line is anticipated to be approximately seventy-two (72) miles. UI and/or one or more of UI's Affiliates shall own a contiguous portion of the Line, radiating from Singer Substation (the "UI Line"), the estimated cost of which shall be approximately twenty percent (20%) of Estimated Construction Stage Project Costs. CL&P and/or one or more of CL&P's Affiliates shall own the remainder of the Line (the "CL&P Line"). The preferred route and each alternative route for the Line, including an initial division of the Line into the UI Line and CL&P Line, shall be preliminarily established prior to the Municipal Consultations. The route and specifications for the Line, including the division of the Line into the UI Line and CL&P Line, are subject to change and shall be finally established after CSC Approval, as described in subsection 1.2(d). The separation of the UI Line from the CL&P Line shall be at a logical electrical junction point such as a splicing chamber, transmission tower or termination point.

(b) Within thirty (30) days after CSC Approval, pursuant to a written agreement among the Parties and the conceptual engineer for the Project (the "Conceptual Engineer"), currently Burns & McDonnell, the Conceptual Engineer shall provide the Parties with a detailed written estimate of the cost of detailed design engineering, procurement and construction for the Line, as the Line is finally determined by CSC Approval (the "Engineer Estimate").

(c) At the time the Engineer Estimate is being prepared, an estimate of Real Property Acquisition Costs shall be prepared by NUSCO. The estimate of Real Property Acquisition Costs shall be based on real property acquisition costs in the application for CSC Approval. If the final route of the Line as determined by CSC Approval requires change to the real property acquisition contemplated in the application for CSC Approval, a valuation of real property rights no longer needed, as well as a valuation of additional required real property rights shall be conducted as soon as reasonably possible. Such valuation shall be prepared in the same method and manner as was used in connection with the application for CSC Approval. If necessary, the estimate of Real Property Acquisition Costs shall be adjusted by deducting the valuation of any real property rights no longer needed and adding the valuation of additional real property rights required for the Line. The estimate of Real Property Acquisition Costs as finally determined thereby is hereinafter referred to as the “Estimated Real Property Acquisition Costs.”

(d) The “Estimated Construction Stage Project Costs” shall be determined by aggregating the total dollar amount of the Engineer Estimate and the Estimated Real Property Acquisition Costs. Within ten (10) days after the Parties’ receipt of the Engineer Estimate and Estimated Real Property Acquisition Costs, the Parties shall agree upon a final division of the Line, as necessary to have the Estimated Construction Stage Project Costs associated with the UI Line be as close as reasonably possible to twenty percent (20%) of the total Estimated Construction Stage Project Costs. If such good faith negotiation does not result in agreement on a final division of the Line within thirty (30) days after receipt of the Engineer Estimate and Estimated Real Property Acquisition Costs, the Parties shall submit the dispute to the President of UI and the Vice President – Transmission Business of NUSCO to resolve within fifteen (15) days of submission. If the President of UI and the Vice President – Transmission Business of

NUSCO fail to resolve the dispute within such fifteen (15) day period, the dispute shall be referred to chief executive officers of the Parties to resolve within thirty (30) days of submission. If the chief executive officers of the Parties fail to resolve the dispute within such thirty (30) day period, the dispute shall be referred to arbitration in accordance with Section 11.2. The Parties shall execute and deliver, or cause to be executed and delivered, such agreements, instruments or documents necessary to evidence and carry out their understanding concerning the division of the Line into the UI Line and CL&P Line, respectively, as determined in accordance with this Agreement.

1.3. **Fiber Optic Cables.** The Line is expected to include fiber optic cable for, inter alia, protective relaying communications, operational data and real-time thermal rating (the “Related Fiber Optic Cable”). The Related Fiber Optic Cable and any other fiber optic cable (“Other Fiber Optic Cable”) located with the CL&P Line shall be owned and operated by CL&P and the Related Fiber Optic Cable and Other Fiber Optic Cable located with the UI Line shall be owned and operated by UI. Decisions and contractual arrangements concerning fiber optic cable shall be made by, and inure to the benefit of, the owner of the portion of the Line in which such fiber optic cable is placed.

1.4. **Representations/Warranties of the Parties.**

- (a) NUSCO. NUSCO represents and warrants to UI that:
  - (i) NUSCO has full power and authority (including full corporate power and authority) on behalf of itself and CL&P, to execute and deliver this Agreement and to perform its obligations hereunder. NUSCO has actual authority from CL&P to act as CL&P's agent for all matters relating to this Agreement, including, without limitation, the negotiation, execution and delivery of this Agreement;
  - (ii) This Agreement constitutes the valid and legally binding obligation of NUSCO and CL&P, enforceable in accordance with its terms and conditions; and
  - (iii) The execution, delivery and performance of this Agreement have been duly authorized by required corporate action of NUSCO and CL&P.
- (b) UI. UI represents and warrants to NUSCO and CL&P that:
  - (i) UI has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder;
  - (ii) This Agreement constitutes the valid and legally binding obligation of UI, enforceable in accordance with its terms and conditions; and
  - (iii) The execution, delivery and performance of this Agreement has been duly authorized by the Board of Directors of UI.

2. **GENERAL PROJECT MANAGEMENT/RESPONSIBILITIES.**

2.1. **Overall Project Management.** Subject to UI's rights and obligations set forth in this Agreement, NUSCO shall be responsible for all Project management through CSC Approval, including establishing a budget and schedule, and using good faith, reasonable efforts to obtain CSC Approval.

2.2. **Fundamental Project Decisions.** Before NUSCO acts on any of the matters described in this Section 2.2 ("Fundamental Project Decisions"), it shall have first received UI's consent with respect to such Fundamental Project Decisions, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to the provisions of the next sentence of this Section 2.2, UI shall be afforded at least ten (10) Business Days to make a decision concerning a Fundamental Project Decision, such time period to commence on the date NUSCO provides UI written information reasonably sufficient for UI to make an informed decision. In the event NUSCO does not receive notice with respect to a Fundamental Project Decision more than ten (10) Business Days before action with respect to such Fundamental Project Decision must be taken, NUSCO shall provide UI with notice with respect to such Fundamental Project Decision as soon as reasonably possible after receipt by NUSCO of such notice. In such event, NUSCO shall provide UI with a minimum of the time period provided to NUSCO for such Fundamental Project Decision less one (1) Business Day. Unless NUSCO receives written objection from UI providing reasonable detail and support for such objection within the applicable time period, UI shall be deemed to have consented to the Fundamental Project Decision. If NUSCO receives a timely written objection from UI providing reasonable detail and support for such objection, the dispute shall be resolved in accordance with the dispute resolution process provided for in Section 11, except that each group responsible for negotiating

a resolution under subsection 11.1(b) shall have only five (5) days in which to act, in order to expedite the applicable Fundamental Project Decision. Fundamental Project Decisions are:

(a) Approval of all Project Contracts, and contractors performing thereunder, reasonably necessary to obtain the Project Approvals relating to the UI Line or the Line as a whole, which Project Contracts are reasonably expected to involve payments by UI of One Hundred Thousand Dollars (\$100,000.00) or more;

(b) Approval of all conceptual engineering drawings related to the UI Line;

(c) If detailed design drawings are prepared during the Conceptual Stage, approval of all detailed design drawings for the UI Line; provided further, that UI shall be a party to any Project Contracts for detailed design drawings for the UI Line;

(d) Approval of all applications for Project Approvals relating to the UI Line or the Line as a whole;

(e) Approval of changes in Project scope involving the capacity of the UI Line, the length of the UI Line, the route of the UI Line, or additional Terminal Facilities for the UI Line;

(f) Decisions regarding litigation/arbitration concerning an amount in dispute involving potential impact to UI of One Hundred Thousand Dollars (\$100,000.00) or more, or where irreparable harm is claimed; and

(g) Approval of insurance requirements for third parties performing work for the UI Line involving soil borings, test pits or other testing.

### 3. **OBLIGATIONS OF THE PARTIES.**

3.1. **Filings and Approvals.** Subject to UI's rights set forth in this Agreement, NUSCO shall have the primary responsibility for drafting all applications for Project Approvals, obtaining any and all Project Approvals, and any drafting of related information and data for public disclosure; provided, however, that:

(a) NUSCO and UI shall jointly apply for CSC Approval;

(b) When mutually deemed appropriate, NUSCO and UI shall jointly apply for other Project Approvals;

(c) UI shall have lead responsibility for Municipal Consultations in municipalities located within the UI Territory;

(d) NUSCO shall have lead responsibility for Municipal Consultations in municipalities located within the CL&P Territory; and

(e) Both Parties shall have the option of participating in all scheduled public proceedings and scheduled non-public meetings with Governmental Authorities, ISO-NE, NEPOOL, and private Persons exclusively related to the subject matter of this Agreement, unless such proceedings or meetings are reasonably expected to involve proprietary information or business strategies of an individual Party. Each Party agrees to provide the other Party with reasonable advance notice of all such proceedings and meetings for which participation rights are provided.



3.2. **Conceptual Engineering Review.**

(a) **NUSCO's Responsibilities.**

- (i) NUSCO shall be responsible for the review of all conceptual engineering for the Project in order to ensure that the Line will comply with the design and operating criteria of CL&P (as to the CL&P Line) and with the design and operating criteria presented by UI to NUSCO (as to the UI Line). NUSCO (or the Conceptual Engineer, as applicable) will gather all information from NUSCO's in-house personnel, UI's in-house personnel, and third parties reasonably required to draft the filings for Project Approvals.
- (ii) UI shall have access to the Conceptual Engineer's website for copies of all conceptual engineering drawings and documents that have been prepared to date. UI shall review all draft applications and conceptual engineering material that will be part of the filings for Project Approvals for which UI has approval rights under Section 2.2 in the relevant time frames specified in Section 2.2.

(b) **UI's Responsibilities.** UI shall furnish to NUSCO (or the Conceptual Engineer, as applicable) upon request and within a reasonable timeframe, all data, drawings and other documents necessary for conceptual engineering reviews in the planning and Project Approval processes.

3.3. **Communications Protocol.**

(a) The Project Managers shall meet at least monthly or at such other intervals as shall be mutually agreed upon between the Parties to discuss, inter alia, the following:

- (i) Status of the schedule and progress of the Project;
- (ii) Status of each required Project Approval;
- (iii) Current and/or anticipated problem areas; and
- (iv) Other relevant Project information.

(b) UI shall provide input, comments and other information reasonably requested by NUSCO related to the UI Line, and NUSCO shall provide input, comments and other information reasonably requested by UI concerning the Line as a whole. A communications protocol reasonably satisfactory to both Parties shall be developed and shall be posted in the Project Notebook and shall cover those items reasonably necessary to facilitate UI's consent, input and information rights and obligations as set forth in this Agreement.

3.4. **Conceptual Stage Project Costs.**

(a) UI and NUSCO shall each bear the costs for their respective in-house labor and materials costs as well as any legal costs. No billing or sharing of these costs shall occur, and these costs shall not constitute Conceptual Stage Project Costs.

(b) Except as set forth in subsection 3.4(a), all costs incurred related to work in support of obtaining CSC Approval or other Project Approvals ("Conceptual Stage Project Costs") shall be allocated on an 80%/20% basis between NUSCO and UI, respectively. Such Conceptual Stage Project Costs shall be billed pursuant to the provisions of this Agreement and shall be limited to: (i) the actual invoice cost of third party fees and costs as applicable; (ii) any

applicable sales, use, excise or other similar taxes incurred by NUSCO; and (iii) any interest payable under Section 4.2.

3.5. **Insurance.** During the term of this Agreement, NUSCO shall use commercially reasonable efforts to require third parties working on the Project to maintain insurances in such amounts, on such terms and covering such risks in accordance with the industry standard for the type of services to be performed.

#### 4. **PAYMENT AND BILLING PROCEDURES.**

##### 4.1. **Invoicing.**

(a) NUSCO shall review all invoices for payment submitted to it by third parties for Conceptual Stage Project Costs and shall bill UI for its applicable share of the Conceptual Stage Project Costs. NUSCO shall forward an invoice to UI on a monthly basis for approval by UI's Project Manager. Said invoice shall contain such detail reasonably acceptable to UI to describe the expenses being invoiced and shall be accompanied by all third party invoices in excess of the sum of Ten Thousand Dollars (\$10,000.00). NUSCO shall provide back-up to UI as reasonably requested concerning other third party invoices.

(b) UI shall have the right to request additional information concerning any invoice submitted by NUSCO to UI. Within thirty (30) days of the date of receipt of any invoice rendered in accordance with this Agreement, UI shall promptly pay all amounts in such invoice not reasonably disputed by UI.

4.2. **Interest.** Interest shall accrue at the rate of one percent (1%) per month on overdue amounts and, together with such overdue amounts, shall be immediately due and payable.

4.3. **Billing Disputes**. In the event UI, in good faith, disputes any amount charged to UI, UI shall state in writing the reason for such dispute, whereupon NUSCO shall provide UI with a written explanation concerning the amount in dispute. Upon receiving NUSCO's explanation concerning a disputed amount, UI shall promptly undertake a review of said amount and the Parties shall make good faith, reasonable efforts to resolve the matter prior to the issuance of the next invoice. If the Parties agree that the amount billed is incorrect, the correction shall be reflected in the next invoice as a debit or credit, as applicable. If the Parties are unable to agree on an amount in dispute, the Parties shall utilize the dispute resolution procedure set forth in Section 11. If any disputed amounts are later determined to have been due at the time of invoice, such amounts shall be considered overdue from thirty (30) days after invoice for the purpose of calculating interest pursuant to Section 4.2.

## 5. **BOOKS AND RECORDS; AUDITS.**

5.1. **Books and Records**. During the term of this Agreement and for three (3) years thereafter, NUSCO shall keep proper records and books of account and all other records reasonably required to verify and support the Conceptual Stage Project Costs charged to UI.

5.2. **Audits**. During the term of this Agreement and for three (3) years thereafter, upon ten (10) Business Days prior written notice and such other reasonable conditions that NUSCO may require, UI shall have the right to perform an audit of the Conceptual Stage Project Costs paid by UI. Such audit shall be performed by an independent auditor of UI's choice ("Auditor"). NUSCO agrees that it shall make available at its offices for review all books and records reasonably requested by the Auditor.

5.3. **Costs of Audits; Adjustments.** The cost of such audits shall be paid by UI; provided, however, that if the Auditor determines that UI has overpaid by five percent (5%) or more of the Conceptual Stage Project Costs being audited, NUSCO shall pay the costs of the Auditor. If the Auditor determines that UI has been overcharged, a credit in the amount equal to the amount of the overcharge together with interest as described in Section 4.2 from the original due date of the overcharge shall be made and reflected on the next invoice or paid directly to UI. If the Auditor determines that UI has been undercharged, UI shall pay NUSCO an amount equal to the undercharge together with interest as described in Section 4.2 from the original due date of the undercharge, which amount shall be charged and reflected on the next invoice.

6. **FINAL ACCOUNTING.** Within six (6) months after the end of the term of this Agreement, a final accounting of Conceptual Stage Project Costs shall be completed by NUSCO and delivered to UI. If one Party has borne less than its applicable share of Conceptual Stage Project Costs as set forth in Section 3.4, an appropriate “true up” payment, without interest (except as interest is otherwise due and owing under the other provisions of this Agreement), shall be made within thirty (30) days after such determination.

7. **PROJECT MANAGERS; COMMITTEES.**

7.1. **Project Managers.** During the term of the Agreement, the NUSCO Project Manager shall be Anne Bartosewicz, who shall be responsible for the overall management of the Project. The NUSCO Project Manager shall work closely with the UI Project Manager, John Prete. The Project Managers shall seek input as necessary from the Advisory Committee and the Steering Committees, comprised of representatives from each of the Parties, concerning the matters for which the Advisory Committee and Steering Committees are responsible.

7.2. **Advisory Committee.** The Management Advisory Committee (“Advisory Committee”), made up of Roger Zaklukiewicz and Richard Reed, shall provide oversight, guidance and issue resolution (in accordance with Section 11.1) to the Project Managers and the Steering Committees.

7.3. **Governmental/Regulatory Affairs Steering Committee.** The Governmental/Regulatory Affairs Steering Committee, made up of two (2) representatives of each Party, shall provide assistance, guidance and issue resolution in the following areas: state and federal governmental and regulatory relations and ISO-NE commercial and governance issues.

7.4. **Communications/Municipal Relations Steering Committee.** The Communications/Municipal Relations Steering Committee, made up of two (2) representatives of each Party, shall provide assistance, guidance and issue resolution in the following areas: public relations, local government initial contacts, Municipal Consultations, local interest groups, press releases, media calls, bill inserts, the Project toll-free telephone information line and the Project Website.

7.5. **Engineering Steering Committee.** The Engineering Steering Committee, made up of one (1) representative of each Party, shall provide assistance, guidance and issue resolution

in the following areas: ISO-NE energy issues, CSC, engineering, environmental issues, system reliability and stability, and the DPUC.

7.6. **Communication/Replacement.** The Project Managers shall communicate to the applicable committee the status of activities in the applicable areas on a regular basis, or as circumstances and need dictate. Upon written notice, each Party, in its sole reasonable discretion, may replace its Project Manager or any of its committee members.

## 8. **GENERAL COMMUNICATIONS.**

8.1. **General.** Unless the Project Managers approve otherwise, both Project Managers shall be copied on all written and electronic correspondence originating from the employees, consultants or third party contractors of one Party and sent to the employees, consultants or third party contractors of the other Party. All interaction with the Steering Committees or Advisory Committee shall be through the Project Managers. The status of committee interaction shall be posted to the Project Notebook.

8.2. **Internal Communications/Public Communications.** UI shall have access to NUSCO's TRACS Database as soon as reasonably practicable and UI shall continue to have access thereto throughout the term of this Agreement. The Parties shall use reasonable efforts to collaborate on all substantive written communications exclusively concerning the Project to external entities by either the Project Manager or his/her respective designee. Each Party shall use reasonable efforts to notify the other Party as soon as possible in advance regarding scheduled communications regarding the Project involving:

- (a) Written publications of all types;
- (b) Internet, television and radio;

(c) Formal presentations to civic organizations such as Chambers of Commerce, Rotary, etc.;

(d) Non-mandated presentations to special interest groups;

(e) Presentations and updates to municipalities or other governmental entities;

and

(f) ISO-NE and NEPOOL (when exclusively related to the subject matter hereof and not reasonably expected to involve proprietary information or business strategies of an individual Party).

8.3. **Participation.** Each Party shall have the opportunity to participate in such communications for which it has received advance notice. NUSCO shall lead the presentations within CL&P Territory and UI shall lead the presentations within UI Territory. If advanced written notice was not possible, each Party shall notify the other Party of any other communications to third parties, whether written or oral, as soon thereafter as is practicable, if such communication is of the type specified in subsections 8.2(a) through 8.2(f).

8.4. **Confidentiality.** All communications between the Parties and with third parties shall be subject to the confidentiality requirements of this Agreement.

9. **CONSTRUCTION STAGE.** Immediately after the process provided for in Section 1.2 concerning final division of the Line is completed, the Parties shall execute and deliver a written agreement concerning the Construction Stage of the Line substantially in the form attached hereto and made a part hereof as Schedule A.



10. **TERM AND TERMINATION.**

10.1. **Term.** This Agreement shall be effective as of the date first written above and shall remain in effect until the beginning of the Construction Stage, unless sooner terminated:

- (a) in accordance with this Section 10; or
- (b) by mutual agreement of the Parties.

10.2. **Termination.**

(a) This Agreement may be terminated as follows:

(i) By either Party upon thirty (30) days prior written notice to the other Party:

(A) Upon failure to pay any sum due to the other Party, within thirty (30) days after notice of any such failure;

(B) Upon failure of either Party to perform or comply with any of the provisions, terms, or obligations under, this Agreement (other than failure to pay sums due), which failure is not cured within sixty (60) days after notice thereof from the non-defaulting Party; provided that such cure period shall be extended for an additional period of not less than ninety (90) days if such failure could not reasonably be cured within such initial sixty (60) day cure period, the defaulting Party is diligently pursuing such cure, and such failure is not materially and adversely affecting the other Party;

(C) If the long-term senior unsecured bond rating of UI (as to UI) or CL&P (as to NUSCO) falls below “investment grade” as determined by any major bond rating agency (currently – Moody’s

Investor Service: Baa3; Standard & Poors Corporation: BBB<sup>-</sup>; and Fitch Investors Service, L.P.: BBB<sup>-</sup>) without providing other assurance reasonably satisfactory to the other Party within ninety (90) days thereafter concerning its financial ability to develop and construct its respective portion of the Line; or

(D) Upon the commencement of any proceeding under any Federal or State insolvency or bankruptcy law by or against either Party; provided that if such proceedings are commenced against a Party, such Party shall have a period of one hundred twenty (120) days to have the same dismissed (each of subsections 10.2(i)(A), (B), (C) and (D), an “Event of Default”).

(ii) By UI upon thirty (30) days written notice if:

(A) Conceptual Stage Project Costs incurred and paid by UI exceed or are reasonably likely to exceed the sum of Five Million Dollars (\$5,000,000.00),

(B) If an application for CSC Approval has not been submitted to the CSC on or before June 30, 2004.

(b) If either Party exercises the termination rights set forth in Section 10.2 then each Party’s liability to the other shall be to reimburse the other in accordance with this Agreement for Conceptual Stage Project Costs incurred but not paid and any interest due thereon, as of the termination date.

10.3. **Liability/Damages**. Whenever any liabilities, losses or damages are incurred by either of the Parties, responsibility for such liabilities, losses and damages as between the Parties shall be as follows:

(a) Except as otherwise provide in this Section, all claims and actions between the Parties that arise during the term of this Agreement, whether at law or in equity, are waived, except that each Party shall be liable to the other for all liabilities, losses or damages:

(i) caused by an Event of Default resulting from breach by such Party of its obligations under Section 1.2, Section 1.3, Section 1.4, Section 2.2, subsections (a) through (d) inclusive of Section 3.1, Section 3.4, Article 4, Article 5, Article 6, Section 8.4, Article 9, subsection 10.2(b), Section 10.3, Article 11, Article 12, Section 13.1 (provided the Force Majeure relates to any of the other provisions of this Agreement referenced in this subsection 10(a)(i)), Section 13.2, Section 13.6, Section 13.7 or Section 13.12, or caused by an Event of Default set forth in subsection 10.2(a)(i)(C); or

(ii) caused by its “Actionable Conduct,” which for purposes of this Agreement shall mean a conscious, voluntary act or omission in reckless disregard of a legal duty by a Party and of the consequences to another party;

(b) Each Party shall be solely liable for all damages for injuries to its own employees or its own property caused by the negligence of both of the Parties hereto;

(c) Each Party (the “Indemnifying Party”) agrees to defend, indemnify and hold the other Party (the “Indemnified Party”) harmless from any losses, liabilities or claims made by a third party arising from the Indemnifying Party’s Actionable Conduct;

(d) The Parties further agree that the damages, if any, that can be assessed in favor of one Party and against the other Party under subsections (a), (b) and (c) of this Section shall not, under any circumstances, be in excess of the aggregate Conceptual Stage Project Costs incurred to date by such Party, plus Conceptual Stage Projects Costs for which such Party is contractually obligated to others with respect to the Project, plus a premium on Conceptual Stage Project Costs incurred and paid to date by such Party calculated at the then effective return on equity authorized by the DPUC for, in the case of UI, for UI, and in the case of NUSCO, for CL&P, stated on a revenue requirements basis; and

(e) Except as to claims provided for in subsection 10.3(c), in no event shall any consequential, indirect, special, exemplary or punitive damages be awarded in favor of one Party and against the other Party for any claimed breach of this Agreement or for any other claim whether brought at law or in equity.

## 11. DISPUTE RESOLUTION.

### 11.1. General.

(a) If either Party fails to perform any obligation under the terms of this Agreement which failure continues for thirty (30) days after receipt of a written default notice from the other Party, the non-breaching Party shall refer the obligation and the default to the appropriate Steering Committee for resolution as set forth in subsection 11.1(b) below.

(b) Except as otherwise provided in this Agreement, when the Project Managers cannot agree on a course of action concerning a matter for which mutual consent of the Parties is required by this Agreement, they shall reduce the issue to writing and present it to the applicable Steering Committee for resolution. If such Steering Committee is unable to resolve the dispute, the dispute shall be referred in writing to the Advisory Committee. The applicable Steering Committee and the Advisory Committee respectively, shall meet and make all commercially reasonable efforts to resolve the dispute within fifteen (15) days of the date of referral. If such Steering Committee and the Advisory Committee are unable to resolve the dispute, the dispute shall be referred to the President of UI and the Vice President – Transmission Business of NUSCO for resolution. The President of UI and the Vice President – Transmission Business of NUSCO shall meet and make all commercially reasonable efforts to resolve the dispute within fifteen (15) days of the date of referral. If the dispute is not resolved thereby, it shall be referred to the chief executive officer of each Party for resolution and such chief executive officers shall make all reasonable efforts to resolve the dispute within thirty (30) days of the date of referral. Pending resolution, the Parties shall continue to fulfill their obligations under this Agreement in good faith. If the Parties fail to resolve the dispute, the

dispute shall be referred for resolution to independent binding arbitration pursuant to Section 11.2.

11.2. **Arbitration.**

(a) Except where a Party hereto is seeking an injunction or other equitable relief, any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, or the scope of this Section, which is not resolved pursuant to the terms of this Agreement, shall be referred to and finally resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) then in effect. The arbitration shall be before a single, neutral arbitrator chosen by both Parties. In the event the Parties cannot agree on an arbitrator, such arbitrator will be selected pursuant to the Commercial Arbitration Rules of the AAA.

(b) The place of arbitration shall be Hartford, Connecticut.

(c) Notwithstanding the foregoing provisions of this Section 11.2, the Parties shall remain free to apply to any competent United States judicial authority for interim or conservatory measures before or after transmittal of the file to the arbitrators and even if there are no exceptional circumstances.

(d) The arbitration proceedings shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard each Party's Confidential Information. Except as required by law, no Party shall make (or instruct any tribunal to make) any public announcement with respect to the proceedings or decision of the arbitrator without the prior written consent of the other Party. The existence of any dispute submitted to arbitration and the award of the

arbitrator shall be kept in confidence by the Parties and the arbitrator, except as required in connection with the enforcement of such award or as otherwise required by applicable law.

(e) The award of the arbitrator shall be accompanied by a reasoned opinion, and shall include findings of fact and conclusions of law.

(f) The award of the arbitrator shall: (i) be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues or accountings presented or pleaded to the arbitrator; (ii) include the attorneys' fees incurred by the prevailing Party as equitably determined by the arbitrator; (iii) be payable free of any tax, deduction or set-off; (iv) include an equitable allocation of the costs, expenses and fees of the arbitration to be paid by each Party; and (v) include interest from the date of any damages incurred for breach or other violation of the Agreement, and from the date of the award until paid in full, at a rate fixed by the arbitrator. Any costs, fees or taxes incident to enforcing the award shall, to the maximum extent permitted by law, be charged against the Party resisting such enforcement.

(g) The decision reached by such arbitrator in any such proceeding shall be final and binding upon the Parties thereto. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. In no event shall a demand for arbitration be made after the date when the institution of a legal or equitable proceeding based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

## 12. **CONFIDENTIALITY.**

12.1. **Definition.** “Confidential Information” shall mean without limitation, financial information, business plans, budgets, intellectual property, customer contracts and lists, drawings, information, know-how, specifications, drawings, sketches, models, samples, tools, computer programming including but not limited to object code and source code, models, algorithms, customized terminal applications, technical or business information, materials and documents, in any media, written or oral, in whole or in part, either non-public or proprietary in nature, concerning either Party or their respective businesses marked or identified as confidential. Confidential Information shall not include any information that: (i) is in or becomes part of the public domain by any means other than the receiving Party breaching its obligations hereunder, or (ii) can be demonstrated as known to the receiving Party at the time of disclosure by the disclosing Party, or (iii) is, at any time, disclosed to the receiving Party by any third party having the right to disclose the same, or (iv) is independently developed by the receiving Party without use of or reference to any Confidential Information disclosed by the disclosing Party.

12.2. **No License.** Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed to the receiving Party. All Confidential Information shall remain the property of the disclosing Party. Except as specifically required by this Agreement, neither Party is required to disclose any information to the other Party pursuant to this Agreement.

12.3. **Confidentiality Obligation.** The receiving Party shall, during the term of this Agreement and for a period of three (3) years thereafter: (a) maintain all Confidential Information in confidence and not disclose same to any third party unless required to do so by a



lawful order from a Governmental Authority, in which case the receiving Party shall notify the disclosing Party in writing prior to making such disclosure so that the disclosing Party may seek a protective or similar order, and (b) not use any Confidential Information except in connection with the Project, the Line or its own facilities that may be impacted by the Project or the Line.

12.4. **Return of Materials**. All materials furnished by the disclosing Party containing Confidential Information shall be promptly returned upon the written request of the disclosing Party. In the event of such a request, all other documents constituting Confidential Information shall be destroyed or, if that is not possible, held by the receiving Party subject to this Agreement. Notwithstanding the return or destruction of any Confidential Information, the receiving Party shall continue to be bound by the obligations of confidentiality and other obligations hereunder for the period stated herein.

### 13. **MISCELLANEOUS.**

13.1. **Force Majeure**. Neither Party shall be considered in default under this Agreement or responsible in tort, strict liability, contract or other legal theory to the other Party for damages of any description with respect to the failure to perform its obligations under this Agreement if and for such time as such failure is caused by factors beyond the Party's reasonable control, including, without limitation, storm, flood, lightning, earthquake, explosion, civil disturbance, labor dispute, sabotage, terrorist act, war, insurrection, act of God or the public enemy, action of a court, public or regulatory authority, or any other cause beyond the reasonable control of the Party, which by the exercise of due diligence it is unable to be overcome (each, a "Force Majeure"). Any Party claiming a Force Majeure shall be required to take all reasonable action to remedy the Force Majeure. In the event of a Force Majeure, both

Parties shall take all reasonable steps to comply with this Agreement, except to the extent prevented by the Force Majeure.

13.2. **Governing Law.** This Agreement and all rights, obligations, and performances of the Parties hereunder are subject to all applicable federal and state laws and to all duly promulgated orders and other duly authorized action of Governmental Authorities having jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut without giving effect to the conflict of law principles thereof, when not in conflict with or pre-empted by federal law. Subject to the provisions of Section 11, each Party consents to the jurisdiction of the courts of the State of Connecticut, or any Federal Court in the State of Connecticut, for any legal proceeding related hereto.

13.3. **Enforceability.** In the event that any portion or part of this Agreement is deemed invalid, against public policy, void or otherwise unenforceable by a court of law, the validity and enforceability of the remaining portions hereof shall not be affected.

13.4. **Notices.** Any notice or other communication with respect to this Agreement shall be made in writing and shall be considered as having been given if delivered in person, by nationally recognized overnight courier, by facsimile or by U.S. mail (certified, return receipt requested) to:

If to NUSCO:

Northeast Utilities Service Company  
107 Selden Street  
Berlin, CT 06037  
Phone: (860) 665-6115  
Fax: (860) 665-6717  
Attention: Roger Zaklukiewicz

cc: Elizabeth A. Maldonado, Esq.  
Northeast Utilities Service Company

107 Selden Street  
Berlin, CT 06037  
Phone: (860) 665-5664  
Fax: (860) 665-5504

If to UI:

The United Illuminating Company  
157 Church Street  
New Haven, CT 06510  
Phone: 203-926-4500  
Fax: 203-926-4457  
Attention: Richard Reed

cc: Linda Randell, Esq.  
Wiggin & Dana LLP  
265 Church Street  
New Haven, CT 06510  
Phone: (203) 498-4322  
Fax: (203) 782-2889

Notice shall be effective upon receipt if provided by hand-delivery or facsimile; two days after notice is sent if by nationally recognized courier; and five (5) days after notice is sent by U.S. mail. Each Party may change its address for notice and/or contact person by notice given in accordance with the provisions of this Section.

13.5. **Entire Agreement.** This Agreement, including Appendix A and Schedule A, represents the full and complete understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements (whether written or oral) between the Parties with respect to the subject matter hereof.

13.6. **Assignment.** Either Party may assign its rights and delegate its duties under this Agreement to any Affiliate of such Party. Otherwise, neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed.

13.7. **No Partnership or Joint Venture.** For purposes of this Agreement and any activity hereunder, the Parties shall at all times be independent contractors and not agents, employees, partners or joint ventures of each other. No Party shall be deemed to be an agent of the other, nor shall it have any authority, whether express or implied, to bind the other Party to third parties, except as explicitly authorized under the terms of this Agreement or upon prior written consent of the Party to be bound.

13.8. **Failure or Indulgence Not Waiver.** No failure or delay on the part of any Party in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right.

13.9. **Survival.** The provisions of the following Articles and Sections shall survive the termination of this Agreement for so long as is necessary to fulfill their intent: 1.2, 1.3, 1.4, 3.4, 4, 5, 6, 10.3, 11, 12 and 13.

13.10. **Captions/References.** Article and Section captions are for convenience only and shall not be construed to be part of this Agreement. References to Articles, Sections and subsections are references to Articles, Sections and subsections of this Agreement, unless otherwise indicated.

13.11. **Execution of Agreement.** This Agreement may be executed in counterparts, each of which shall constitute an original. Facsimile signatures shall be considered original signatures.

13.12. **Expenses.** Notwithstanding anything to the contrary in this Agreement, all costs and expenses incurred by either Party in the negotiation, preparation and execution of this

Agreement shall be borne by the Party incurring such cost or expenses. Such costs and expenses shall not be considered Conceptual Stage Project Costs.

13.13. **Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each Party hereto, as well as their successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the Parties have caused their corporate names to be hereunto subscribed and their corporate seals to be hereunto affixed by their officers thereunto duly authorized, as of the day and year first above written.

Attest: THE UNITED ILLUMINATING COMPANY

\_\_\_\_\_  
Secretary By \_\_\_\_\_  
Anthony J. Vallillo  
Its President

Attest: NORTHEAST UTILITIES SERVICE COMPANY,  
as agent

\_\_\_\_\_  
Secretary By \_\_\_\_\_  
David H. Boguslawski  
Its Vice President – Transmission Business

## Appendix A

### Definitions

**“AAA”** – See 11.2.

**“Actionable Conduct”** – See subsection 10.3(a)(ii).

**“Advisory Committee”** – See Section 7.2.

**“Affiliate”** – With respect to any specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where “*control*” means the direct or indirect ownership of 50% or more of the equity or voting rights in such Person from time to time.

**“Agreement”** – See Preamble to this Agreement.

**“Auditor”** – See Section 5.2.

**“Business Day”** – A weekday that banks are generally open for business in the State of Connecticut.

**“CL&P”** – See Preamble to this Agreement.

**“CL&P Line”** – See Section 1.2.

**“CL&P Territory”** – The following municipalities crossed by the Project: Bethany, Cheshire, Durham, Haddam, Meriden, Middlefield, Middletown, Norwalk, Wallingford, Weston, Westport and Wilton.

**“CSC”** – The Connecticut Siting Council or any successor agency.

**“CSC Approval”** – Final, non-appealable approval of the Line by the CSC.

**“Communications/Municipal Relations Steering Committee”** – See Section 7.4.

**“Conceptual Engineer”** – See subsection 1.2(b).

**“Conceptual Stage”** – The stage of the Project that began on September 17, 2001 and terminates at the end of the term of this Agreement.

**“Conceptual Stage Project Costs”** – See subsection 3.4(b).

**“Confidential Information”** - See Article 12.

**“Construction Stage”** – The stage of the Project beginning with the final division of the Line as provided for in Section 1.2 and execution and delivery of the agreement between the Parties as provided for in Article 9, including, without limitation, detailed design engineering, procurement and construction of the Line.

**“DPUC”** – The State of Connecticut Department of Public Utility Control or any successor agency.

**“Engineer Estimate”** – See subsection 1.2(b).

**“Engineering Steering Committee”** – See Section 7.5.

**“Estimated Construction Stage Project Costs”** – See subsection 1.2(d).

**“Estimated Real Property Acquisition Costs”** – See subsection 1.2(c).

**“Event of Default”** – See Section 10.2.

**“Force Majeure”** – See Section 13.1.

**“Fundamental Project Decisions”** – See Section 2.2.

**“Good Utility Practice”** – Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the geographic region covered by the North American Electric Reliability Council, or any successor entity, during the relevant time period, or any of the practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices,



reliability, safety and expedition. Good Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices or methods generally accepted in the region.

**“Governmental Authority”** – Any nation, state, sovereign or government, any federal, regional, state, local or political subdivision, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**“Governmental/Regulatory Affairs Steering Committee”** – See Section 7.3.

**“Indemnified Party”** – See subsection 10.3(c).

**“Indemnifying Party”** – See subsection 10.3(c).

**“ISO-NE”** – The Independent System Operator – New England or any successor in interest thereto.

**“Line”** – See the Recitals to this Agreement.

**“Municipal Consultations”** – The municipal consultations related to CSC Approval.

**“NEPOOL”** – The New England Power Pool or any successor in interest thereto.

**“NUSCO”** – See Preamble to this Agreement.

**“NUSCO Project Manager”** – See Section 7.1.

**“Other Fiber Optic Cable”** – See Section 1.3.

**“Party” or “Parties”** – See Preamble to this Agreement.

**“Person”** – Any natural person, corporation, partnership, limited liability company, limited liability partnership or any other legally recognized entity.

**“Project”** – The planning, permitting, engineering, design, development and construction of the Line.

**“Project Approval”** – CSC Approval or authorization, consent, approval, license or permit by or with any or other Government Authority for the Line, which is necessary or advisable to be pursued during the term of this Agreement.

**“Project Contracts”** – All written or oral agreements or contracts with third parties relating to the Project.

**“Project Notebook”** – The portion of the Project Website containing, inter alia, the applicable NUSCO and UI personnel assigned to various Project activities.

**“Project Website”** – The website maintained by the Burns & McDonnell and hosting the conceptual engineering drawings and documents prepared for the Project, or, if Burns & McDonnell is not the Conceptual Engineer, another website established by the Parties or the Conceptual Engineer.

**“Real Property Acquisition Costs”** – Costs of acquiring rights of way and other real property rights necessary for construction of the Line.

**“Related Fiber Optic Cables”** – See Section 1.3.

**“Singer Substation”** – 345-kV bulk substation to be located in Bridgeport, Connecticut.

**“Steering Committees”** – The Governmental/Regulatory Affairs Steering Committee, the Communications/Municipal Relations Steering Committee and the Engineering Steering Committee.

**“Terminal Facilities”** – Transformers, reactors, associated breakers and related equipment installed at points of interconnection.

**“TRACS Database”** – Tracking Regulatory Activities and Calendar System database maintained and hosted by NUSCO, tracking the status of and filings for CSC Approval for the Project.

**“UI”** – See Preamble of this Agreement.

**“UI Territory”** – The following municipalities crossed by the Project: Bridgeport, Easton, Fairfield, Hamden, Milford, New Haven, North Haven, Orange, Stratford, Trumbull, West Haven, and Woodbridge.

**“UI Line”** – See Section 1.2.

**“UI Project Manager”** – See Section 7.1.

## **SCHEDULE A**

### **Construction Stage Agreement RE: Middletown to Norwalk 345-kV Transmission Line**

This Agreement (“Agreement”) is made as of the \_\_ day of \_\_\_\_\_, 200\_\_, by and between THE UNITED ILLUMINATING COMPANY (“UI”), a specially chartered Connecticut corporation, with its principal office located at 157 Church Street, New Haven, Connecticut, and NORTHEAST UTILITIES SERVICE COMPANY (“NUSCO”), a Connecticut corporation, with its principal office located at 107 Selden Street, Berlin, Connecticut, acting as agent for THE CONNECTICUT LIGHT AND POWER COMPANY (“CL&P”), a specially chartered Connecticut corporation, with its principal office at 107 Selden Street, Berlin, Connecticut (together, the “Parties” and individually, a “Party”).

#### W I T N E S S E T H:

**WHEREAS**, the Parties are each developing and constructing a portion of a 345-kiloVolt (“kV”) transmission line running from Middletown, Connecticut to Norwalk, Connecticut, including overhead and/or underground conductors, substations and related facilities (the “Line”); and

**WHEREAS**, the Parties desire to cooperate with each other and set forth in writing their respective rights and obligations in connection with such cooperation; and

**WHEREAS**, capitalized terms, where not expressly defined in this Agreement, have the meaning given to such terms in Appendix A attached hereto and made a part hereof.

**NOW THEREFORE**, in consideration of the promises and mutual agreements contained in this Agreement and other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## 1. **ROUTE AND DIVISION OF THE LINE**

1.1. **General.** In carrying out their responsibilities pursuant to this Agreement, NUSCO and UI shall act in accordance with Good Utility Practice.

1.2. **The Line.** Schedule A attached hereto and made a part hereof contains a description of the Line. Schedule A further depicts the division of the Line into those portions of the Line owned and being developed by NUSCO and UI respectively. The portions of the Line owned and being developed by NUSCO are hereinafter referred to as the “CL&P Line.” The portions of the Line owned and being developed by UI are hereinafter referred to as the “UI Line.”

## 2. **CONSTRUCTION STAGE OBLIGATIONS**

2.1. **Oversight and Administration.** Each Party shall have responsibility for oversight and administration of detailed design, procurement and construction of its respective portion of the Line. The Parties shall have no obligations to each other concerning the Line except as specifically provided in this Agreement and except for those obligations between the Parties under the Conceptual Stage Agreement that survive termination thereof.

### 2.2. **Cooperation.**

(a) The Parties shall cooperate with each other in the development of their respective portions of the Line to promote an efficient Project.

(b) Upon reasonable request, and within a reasonable time frame, each Party shall provide the other Party with non-proprietary information concerning any events, filings or other matters that could reasonably be expected to materially impact the other Party.

(c) To facilitate cooperation and communication between the Parties, each Party shall designate a Project Manager. The NUSCO Project Manager shall be Anne Bartosewicz, and the UI Project Manager shall be John Prete. Upon written notice to the other Party, each Party, in its sole discretion, may replace its Project Manager.

(d) Unless the Project Managers approve otherwise, both Project Managers shall be copied on all written and electronic correspondence originating from the employees, consultants or third party contractors of one Party and sent to the employees, consultants or third party contractors of the other Party.

(e) All communications between the Parties and with third parties shall be subject to the confidentiality requirements of this Agreement.

2.3. **Insurance**. Each Party shall use commercially reasonable efforts to require third parties working on the Party's respective portion of the Line to maintain insurances in such amounts, on such terms and covering such risks in accordance with the industry standard for the type of services to be performed.

2.4. **Performance Bonds**. Before execution and delivery of Project Contracts concerning detailed design, procurement and construction of its respective portion of the Line, each Party shall undertake commercially reasonable efforts to evaluate the availability, cost and other terms and conditions of performance bonds from third party contractors for the detailed design, procurement and construction of its respective portion of the Line. Each Party shall make its own determination as to whether, to what extent and on what terms and conditions it will require performance bonding from such third party contractors. To the extent one Party does not impose on its third party contractors arrangements for performance bonding that are

available to be procured, the other Party, at its option, may cause such Party to have its third party contractors provide additional performance bonding at the sole expense of the other Party.

2.5. **Construction Sequencing**. The respective schedules for construction of the UI Line and the CL&P Line shall be coordinated to facilitate substantially simultaneous completion. UI shall not be obligated to commence construction of the UI Line until UI reasonably determines that the portion of the CL&P Line described on Schedule B [to be attached at execution – and, subject to final determination, shall make specific reference to either (i) the CL&P Line from the Besek Substation south to the UI Line, or (ii) the CL&P Line from the Norwalk Substation east to the UI Line] attached hereto and made a part hereof has achieved sufficient completion to justify UI’s commencement of construction of the UI Line.

2.6. **Construction Stage Project Costs**. During the Construction Stage, each Party shall bear all Project Costs related to its respective portion of the Line.

2.7. **Ownership and Operation**. Each Party shall have exclusive ownership of, and shall be exclusively responsible for the operation, maintenance and repair of its respective portion of the Line.

### 3. TERM AND TERMINATION

3.1. **Term**. This Agreement shall be effective as of the date first written above and shall remain in effect until the Commissioning of the Line, unless sooner terminated:

- (a) in accordance with this Article 3; or
- (b) by mutual agreement of the Parties.

3.2. **Termination**. This Agreement may be terminated by either Party upon thirty (30) days prior written notice to the other Party:

(a) Upon failure of either Party to perform or comply with any of the provisions, terms, or obligations under this Agreement, which failure is not cured within sixty (60) days after notice thereof from the non-defaulting Party; provided that such cure period shall be extended for an additional period of not less than ninety (90) days if such failure could not reasonably be cured within such initial sixty (60) day cure period, the defaulting Party is diligently pursuing such cure, and such failure is not materially and adversely affecting the other Party;

(b) If the long-term senior unsecured bond rating of UI (as to UI) or CL&P (as to NUSCO) falls below “investment grade” as determined by any major bond rating agency (currently – Moody’s Investor Service: Baa3; Standard & Poors Corporation: BBB<sup>-</sup>; and Fitch Investors Service, L.P.: BBB<sup>-</sup>) without providing other assurance reasonably satisfactory to the other Party within ninety (90) days thereafter concerning its financial ability to develop and construct its respective portion of the Line;

(c) Upon the commencement of any proceeding under any Federal or State insolvency or bankruptcy law by or against either Party; provided that if such proceedings are commenced against a Party, such Party shall have a period of one hundred twenty (120) days to have the same dismissed (each of subsections (a), (b) and (c) of this Section 3.2, an “Event of Default”); or

(d) If Commissioning of the Line does not occur on or before January 1, 2010.

3.3. **Liability/Damages.** Whenever any liabilities, losses or damages are incurred by either of the Parties, responsibility for such liabilities, losses and damages as between the Parties shall be as follows:



(a) All claims and actions of one Party against the other, which arise during the term of this Agreement, whether at law or in equity, are waived, except:

(i) each Party shall be liable to the other Party for all liabilities, losses or damages caused by an Event of Default; and

(ii) each Party shall be liable to the other for all liabilities, losses or damages caused by its “Actionable Conduct,” which for purposes of this Agreement shall mean a conscious, voluntary act or omission by a Party in reckless disregard of a legal duty and of the consequences to another party;

(b) The Parties further agree that the damages, if any, that can be assessed in favor of one Party and against the other Party for claims under subsections (a)(i) and (ii) of this Section 3.3 shall not, under any circumstances, be in excess of Project Costs incurred to date by such Party, plus Project Costs for which such Party is contractually obligated with respect to the Project, plus a premium on Project Costs incurred and paid to date by such Party calculated at the then effective return on equity authorized by the DPUC for, in the case of UI, for UI, and in the case of NUSCO, for CL&P, stated on a revenue requirements basis;

(c) Except as to claims provided for in subsection 3.3(d) below, in no event shall any indirect, special, consequential, exemplary or punitive damages be awarded in favor of one Party and against the other Party for any claimed breach of this Agreement, or for any other claim whether brought at law or in equity; and

(d) With respect to claims of third parties against either Party arising during the term of this Agreement, the Parties intend that this Agreement shall not affect the rights and remedies otherwise available to the Parties at law or in equity.

4. **REPRESENTATIONS/WARRANTIES OF THE PARTIES.**

4.1. NUSCO. NUSCO represents and warrants to UI that:

(a) NUSCO has full power and authority (including full corporate power and authority) on behalf of itself and CL&P, to execute and deliver this Agreement and to perform its obligations hereunder. NUSCO has actual authority from CL&P to act as CL&P's agent for all matters relating to this Agreement, including, without limitation, the negotiation, execution and delivery of this Agreement;

(b) This Agreement constitutes the valid and legally binding obligation of NUSCO and CL&P, enforceable in accordance with its terms and conditions; and

(c) The execution, delivery and performance of this Agreement have been duly authorized by required corporate action of NUSCO and CL&P.

4.2. UI. UI represents and warrants to NUSCO and CL&P that:

(a) UI has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder;

(b) This Agreement constitutes the valid and legally binding obligation of UI, enforceable in accordance with its terms and conditions; and

(c) The execution, delivery and performance of this Agreement has been duly authorized by the Board of Directors of UI.

5. **DISPUTE RESOLUTION**

5.1. **General**

(a) If either Party fails to perform any obligation under the terms of this Agreement which failure continues for thirty (30) days after receipt of a written default notice

from the other Party, the non-breaching Party shall refer the obligation and the default to the Project Managers for resolution within fifteen (15) days of such referral.

(b) If the Project Managers are unable to resolve any dispute pursuant to the terms of subsection 5.1(a), they shall reduce the issue to writing and present it to the President of UI and the Vice President - Transmission Business of NUSCO for resolution. The President of UI and the Vice President – Transmission Business of NUSCO shall meet and make all commercially reasonable efforts to resolve the dispute within fifteen (15) days of the date of referral. If the dispute is not resolved thereby, it shall be referred to the chief executive officer of each Party for resolution and such chief executive officers shall make all reasonable efforts to resolve the dispute within thirty (30) days of the date of referral. Pending resolution, the Parties shall continue to fulfill their obligations under this Agreement in good faith. If the presidents and chief executive officers of the Parties fail to resolve the dispute within such thirty (30) day period, the dispute shall be referred for resolution to independent binding arbitration pursuant to Section 5.2.

5.2. **Arbitration**

(a) Except where a Party hereto is seeking an injunction or other equitable relief, any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, or the scope of this Section, which is not resolved pursuant to the terms of this Agreement, shall be referred to and finally resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) then in effect. The arbitration shall be before a single, neutral arbitrator chosen by both Parties. In the event the Parties cannot agree on an

arbitrator, such arbitrator shall be selected pursuant to the Commercial Arbitration Rules of the AAA.

(b) The place of arbitration shall be Hartford, Connecticut.

(c) Notwithstanding the foregoing provisions of this Section 5.2, the Parties shall remain free to apply to any competent United States judicial authority for interim or conservatory measures before or after transmittal of the file to the arbitrators and even if there are no exceptional circumstances.

(d) The arbitration proceedings shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard each Party's Confidential Information. Except as required by law, no Party shall make (or instruct any tribunal to make) any public announcement with respect to the proceedings or decision of the arbitrator without the prior written consent of the other Party. The existence of any dispute submitted to arbitration and the award of the arbitrator shall be kept in confidence by the Parties and the arbitrator, except as required in connection with the enforcement of such award or as otherwise required by applicable law.

(e) The award of the arbitrator shall be accompanied by a reasoned opinion, and shall include findings of fact and conclusions of law.

(f) The award of the arbitrator shall: (i) be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues or accountings presented or pleaded to the arbitrator; (ii) include the attorneys' fees incurred by the prevailing Party as equitably determined by the arbitrator; (iii) be payable free of any tax, deduction or set-off; (iv) include an equitable allocation of the costs, expenses and fees of the arbitration to be paid by each Party; and (v) include interest from the date of any damages incurred for breach or other violation of the Agreement, and from the date of the award until paid in full, at a rate fixed by

the arbitrator. Any costs, fees or taxes incident to enforcing the award shall, to the maximum extent permitted by law, be charged against the Party resisting such enforcement.

(g) The decision reached by such arbitrator in any such proceeding shall be final and binding upon the Parties thereto. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. In no event shall a demand for arbitration be made after the date when the institution of a legal or equitable proceeding based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

## 6. CONFIDENTIALITY

6.1. **Definition.** “Confidential Information” shall mean without limitation, financial information, business plans, budgets, intellectual property, customer contracts and lists, drawings, information, know-how, specifications, drawings, sketches, models, samples, tools, computer programming including but not limited to object code and source code, models, algorithms, customized terminal applications, technical or business information, materials and documents, in any media, written or oral, in whole or in part, either non-public or proprietary in nature, concerning either Party or their respective businesses marked or identified as confidential. Confidential Information shall not include any information that: (i) is in or becomes part of the public domain by any means other than the receiving Party breaching its obligations hereunder, or (ii) can be demonstrated as known to the receiving Party at the time of disclosure by the disclosing Party, or (iii) is, at any time, disclosed to the receiving Party by any third party having the right to disclose the same, or (iv) is independently developed by the receiving Party without use of or reference to any Confidential Information disclosed by the disclosing Party.

6.2. **No License.** Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed to the receiving Party. All Confidential Information shall remain the property of the disclosing Party. Except as specifically required by this Agreement, neither Party is required to disclose any information to the other Party pursuant to this Agreement.

6.3. **Confidentiality Obligation.** The receiving Party shall, during the term of this Agreement and for a period of three (3) years thereafter: (i) maintain all Confidential Information in confidence and not disclose same to any third party unless required to do so by a

lawful order from a Governmental Authority, in which case the receiving Party shall notify the disclosing Party in writing prior to making such disclosure so that the disclosing Party may seek a protective or similar order, and (ii) not use any Confidential Information except in connection with the Project, the Line or its own facilities that may be impacted by the Project or the Line.

6.4. **Return of Materials**. All materials furnished by the disclosing Party containing Confidential Information shall be promptly returned upon the written request of the disclosing Party. In the event of such a request, all other documents constituting Confidential Information shall be destroyed or, if that is not possible, held by the receiving Party subject to this Agreement. Notwithstanding the return or destruction of any Confidential Information, the receiving Party shall continue to be bound by the obligations of confidentiality and other obligations hereunder for the period stated herein.

## 7. MISCELLANEOUS.

7.1. **Force Majeure**. Neither Party shall be considered in default under this Agreement or responsible in tort, strict liability, contract or other legal theory to the other Party for damages of any description with respect to the failure to perform its obligations under this Agreement if and for such time as such failure is caused by factors beyond the Party's reasonable control, including, without limitation, storm, flood, lightning, earthquake, explosion, civil disturbance, labor dispute, sabotage, terrorist act, war, insurrection, act of God or the public enemy, action of a court, public or regulatory authority, or any other cause beyond the reasonable control of the Party, which by the exercise of due diligence it is unable to be overcome (each, a "Force Majeure"). Any Party claiming a Force Majeure shall be required to take all reasonable action to remedy the Force Majeure. In the event of a Force Majeure, both

Parties shall take all reasonable steps to comply with this Agreement, except to the extent prevented by the Force Majeure.

7.2. **Governing Law.** This Agreement and all rights, obligations, and performances of the Parties hereunder are subject to all applicable federal and state laws and to all duly promulgated orders and other duly authorized action of Governmental Authorities having jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut without giving effect to the conflict of law principles thereof, when not in conflict with or pre-empted by federal law. Subject to the provisions of Section 5.2, each Party consents to the jurisdiction of the courts of the State of Connecticut, or any Federal Court in the State of Connecticut, for any legal proceeding related hereto.

7.3. **Enforceability.** In the event that any portion or part of this Agreement is deemed invalid, against public policy, void or otherwise unenforceable by a court of law, the validity and enforceability of the remaining portions hereof shall not be affected.

7.4. **Notices.** Any notice or other communication with respect to this Agreement shall be made in writing and shall be considered as having been given if delivered in person, by nationally recognized overnight courier, by facsimile or by U.S. mail (certified, return receipt requested) to:

If to NUSCO:

Northeast Utilities Service Company  
107 Selden Street  
Berlin, CT 06037  
Phone: (860) 665-6115  
Fax: (860) 665-6717  
Attention: Roger Zaklukiewicz

cc: Elizabeth A. Maldonado, Esq.  
Northeast Utilities Service Company



107 Selden Street  
Berlin, CT 06037  
Phone: (860) 665-5664  
Fax: (860) 665-5504

If to UI:

The United Illuminating Company  
157 Church Street  
New Haven, CT 06510  
Phone: 203-926-4500  
Fax: 203-926-4457  
Attention: Richard Reed

cc: Linda Randell, Esq.  
Wiggin & Dana LLP  
265 Church Street  
New Haven, CT 06510  
Phone: (203) 498-4322  
Fax: (203) 782-2889

Notice shall be effective upon receipt if provided by hand-delivery or facsimile; two days after notice is sent if by nationally recognized courier; and five (5) days after notice is sent by U.S. mail. Each Party may change its address for notice and/or contact person by notice given in accordance with the provisions of this Section.

7.5. **Entire Agreement.** This Agreement, including Appendix A, Schedule A and Schedule B, as well as the provisions of the Conceptual Stage Agreement that survive termination thereof, represents the full and complete understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements (whether written or oral) between the Parties with respect to the subject matter hereof.

7.6. **Assignment.** Either Party may assign its rights and delegate its duties under this Agreement to any Affiliate of such Party. Otherwise, neither Party may assign its rights or

delegate its duties under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed.

7.7. **No Partnership or Joint Venture.** For purposes of this Agreement and any activity hereunder, the Parties shall at all times be independent contractors and not agents, employees, partners or joint ventures of each other. No Party shall be deemed to be an agent of the other, nor shall it have any authority, whether express or implied, to bind the other Party to third parties, except as explicitly authorized under the terms of this Agreement or upon prior written consent of the Party to be bound.

7.8. **Failure or Indulgence Not Waiver.** No failure or delay on the part of any Party in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right.

7.9. **Survival.** The provisions of the following Articles and Sections shall survive the termination of this Agreement for so long as is necessary to fulfill their intent: 1.2, 2.7, 3.3, 4, 5, 6 and 7.

7.10. **Captions/References.** Article and Section captions are for convenience only and shall not be construed to be part of this Agreement. References to Articles, Sections and subsections are references to Articles, Sections and subsections of this Agreement, unless otherwise indicated.

7.11. **Execution of Agreement.** This Agreement may be executed in counterparts, each of which shall constitute an original. Facsimile signatures shall be considered original signatures.

7.12. **Expenses.** Notwithstanding anything to the contrary in this Agreement, all costs and expenses incurred by either Party in the negotiation, preparation and execution of this Agreement shall be borne by the Party incurring such cost or expenses. Such costs and expenses shall not be considered Project Costs.

7.13. **Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and its respective successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the Parties have caused their corporate names to be hereunto subscribed and their corporate seals to be hereunto affixed by their officers thereunto duly authorized, as of the day and year first above written.

Attest: THE UNITED ILLUMINATING COMPANY

\_\_\_\_\_ By \_\_\_\_\_  
Secretary Its President

Attest: NORTHEAST UTILITIES SERVICE COMPANY,  
as agent

\_\_\_\_\_ By \_\_\_\_\_  
Secretary Its

## Appendix A

### Definitions

**“AAA”** – See Section 5.2.

**“Actionable Conduct”** – See subsection 3.3(a)(ii).

**“Affiliate”** – With respect to any specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where “*control*” means the direct or indirect ownership of 50% or more of the equity or voting rights in such Person from time to time.

**“Agreement”** – See Preamble to this Agreement.

**“CL&P”** – See Preamble to this Agreement.

**“CL&P Line”** – See Section 1.2.

**“Commissioning”** – The actions by which the Line, or any segment thereof, becomes used and useful and can be included in rate base.

**“Conceptual Stage Agreement”** – Agreement between the Parties made as of the 10<sup>th</sup> day of February, 2003 concerning conceptual engineering, permitting and other matters related to the Line.

**“Confidential Information”** – See Article 6.

**“Construction Stage”** – The stage of the Project beginning with the effective date of the execution and delivery of this Agreement, and ending upon the end of the term of this Agreement.

**“DPUC”** – The State of Connecticut Department of Public Utility Control or any successor agency.

**“Event of Default”** – See Section 3.2.

**“Force Majeure”** – See Section 7.1.

**“Good Utility Practice”** – Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the geographic region covered by the North American Electric Reliability Council, or any successor entity, during the relevant time period, or any of the practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices or methods generally accepted in the region.

**“Line”** – See the Recitals to this Agreement.

**“NUSCO”** – See Preamble to this Agreement.

**“NUSCO Project Manager”** – See Section 2.2.

**“Party” or “Parties”** – See Preamble to this Agreement.

**“Person”** – Any natural person, corporation, partnership, limited liability company, limited liability partnership or any other legally recognized entity.

**“Project”** – The planning, permitting, design, development, construction and Commissioning of the Line.

**“Project Contracts”** – All written or oral agreements or contracts with third parties relating to the Project.

**“Project Costs”** – The costs of the Project incurred by each Party during the Construction Stage, not including internal costs of a Party and not including costs excluded from Project Costs under Section 7.12 of this Agreement.

**“Project Manager”** – The individual designated by each Party under subsection 2.2(c) to perform the duties described therein and the other Project Manager duties set forth in the other provisions of this Agreement.

**“UI”** – See Preamble of this Agreement.

**“UI Line”** – See Section 1.2.

**“UI Project Manager”** – See Section 2.2.

**Schedule A**

**To Be Supplied**



**Schedule B**

**To Be Supplied**