SAMPLE ELECTRIC SUPPLY CONTRACT

DEFINITIONS.  
“Account” means the Customer Account(s) identified in the Business Electricity Authorization.

“Agreement” is defined in the BEA and means the contract documents governing Customer’s purchase of electricity from Supplier, which are comprised of these Electric Sales Terms of Service (“TOS”), the Business Electricity Authorization (“BEA”), and any addenda to this BEA.

“Average Monthly Electricity Charges” means Supplier’ prior total charges to Customer for the supply of electricity (including the Monthly Base Charge) divided by the number of complete and partial Billings Cycles over which such charges occurred; provided, that if Average Monthly Electricity Charges cannot be computed due to limited service by Supplier or other circumstances, “Average Monthly Electricity Charges” shall be reasonably determined by Supplier. “Average Monthly Electricity Charges” do not include EDC Delivery Charges, third-party fees and related Taxes.

“Average Monthly Electricity Used” means Customer’s Energy Usage divided by the number of complete and partial Billing Cycles over which such usage occurred; provided, that if Average Monthly Electricity Used cannot be computed due to limited service by Supplier or other circumstances, “Average Monthly Electricity Used” shall be reasonably determined by Supplier.

“Billing Cycle” means, for each Account, the period between successive monthly meter read dates during the term of this Agreement.

“Business Electricity Authorization” or “BEA” means the Business Electricity Authorization signed by the Parties, including any addenda.

“Change in Law” means a change in law, regulation, rule, ordinance, order or decree by a governmental authority or ERCOT, including, without limitation, EDC tariffs and PJM rules or protocols (including, without limitation, those affecting any fees, costs, or charges imposed by PJM), changes in market rules, changes in load profiles, changes in how the EDC or PJM calculates usage, or changes in nodal and zonal definitions. A “change,” as used above, includes, without limitation, any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness or any change in construction or interpretation.

“Customer” is the person or entity identified as Customer in the BEA.

“Customer Delivery Point” means the point of interconnection between the EDC facilities and Customer’s electric meter.

“Early Termination Fee” or (“ETF”) means as to each terminated Account(s):  
(a) for a fixed price product or a block product: [2 x the Average Monthly Electricity Charges] x  
[the ETF Pro-ration Factor]; and (b) for an LMP product: [the Retail Adder] x [2 x the Average Monthly Electricity Used] x [the ETF Pro-ration Factor]; provided that if the LMP component of the Price is multiplied by 1 + the Transmission Loss %, as set forth in Addendum B, then the Retail Adder, for purposes hereof, shall mean the Retail Adder x [1 + the Transmission Loss Factor].

“EDC Delivery Charges” means those recurring and non-recurring charges payable to the EDC in connection with transmission and distribution of electricity provided pursuant to this Agreement and other charges levied by the EDC.

“Electric Distribution Company” or “EDC” means the public utility providing facilities for the transmission and distribution of electricity to retail customers at facilities to which the Account(s) pertain. Exceptions include building or facility owners or operators that manage their internal distribution system and supply electric power and electric services to occupants of the building or facility.

“Effective Date” means the date that the BEA is signed by both Parties.

“Electric Generation Supplier” or “EGS” means a person or corporation, generator, broker, marketer, aggregator or any other entity licensed by the PUC that sells electricity to customers, using the transmission or distribution facilities of an electric distribution company (EDC).

“Energy Usage” means Customer’s total metered energy usage for the Account(s) subject to this Agreement measured in kilowatt hours (“kWh”) for the applicable period.

“ETF Pro-ration Factor” means a fraction, the numerator of which is the total number of complete and partial months that would have remained in the Initial Term had there not been an early termination, and the denominator of which is twelve. (12).

“Supplier” means Supplier Pennsylvania, LLC.

“Supplier Electricity Charge” means the sum of (i) the product of Customer’s total metered Energy  
Usage during a Billing Cycle and the Price or Holdover Price, whichever is applicable; provided that the Price, if based on LMP, shall be multiplied by Customer’s metered Energy Usage for the applicable LMP interval (using actual metered usage for such interval, if available, or, if not available, based upon EDC’s profile data for the applicable rate class), (ii) the Monthly Base Charge, (iii) Pass-Through Charges, and (iv) Taxes.

“Holdover Period” is defined in the “Term” Section of this TOS.

“Holdover Price” means the price for electricity supplied during the Holdover Period, as set forth on Suppliers’ website at www.supplierswebsite.com under “legal notices and terms.”

“Initial Term” means the period commencing on the Service Commencement Date and continuing thereafter for the number of months specified for the Initial Term of service in the BEA; provided, that if the Service Commencement Date is delayed, the Initial Term shall continue for the number of months specified for the Initial Term of service in the BEA had the Service Commencement Date not been delayed.

“Insufficient Notice Fee” means for termination of the Agreement in whole or in part, one-fourth (1/4) of the applicable Early Termination Fee (without application of the ETF Pro-ration Factor).

“Late Fee” means a one-time fee of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is lower, assessed on invoices for the Supplier Electricity Charge that are not paid when due.

”LMP” means the Local Price for the applicable load zone that the customer is located as published by the PJM.

“Monthly Base Charge” means (i) for the Initial Term, a fixed monthly charge per Account, as set forth in the BEA, and (ii) for the Holdover Period, a fixed monthly charge per Account, as set forth on Supplier’  
website at www.\_\_\_\_\_\_ under “legal notices and terms.”

“Party” means either Supplier or Customer, and “Parties” means both Supplier and  
Customer.

“Pass-Through Charges” means all recurring or non-recurring third-party fees and charges with respect to the purchase, sale, acquisition, delivery, transmission and/or distribution of electricity (other than the electric supply costs specified in the “Price” Section of the TOS as being included in the Price), including, without limitation, costs and charges arising from a Change in Law, all of which are excluded from the Price and Holdover Price and passed through directly to Customer by Supplier.

“PJM” means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia, or any successor thereto.

“Price” is defined in the “Price” Section of this TOS.

“PUC” means the Pennsylvania Public Utility Commission. “Retail Adder” means the component of the Price that is set forth in Addendum B to the BEA.

“Seller Delivery Point” means the point of interconnection between a third-party transmission or delivery system and the EDC transmission or delivery system. “Service Commencement Date” means the date on which the EDC switches the Customer’s respective Account(s) to Supplier; provided that, in the case of electric supply already being provided by Supplier to Customer, the Service Commencement Date means Customer’s first meter reading date during the Start Month.

“Start Month” is the calendar month as specified in the BEA; provided, however, that “Start Month” means the month during which the Effective Date occurs under any of the following circumstances: (i) if there is no place in the BEA for specification of the Start Month; or (ii) if there is a place in the BEA for specification of a “Start Month”, the Start Month is not specified as a month subsequent to the month during which the Effective Date occurs

“Taxes” means all federal, state, municipal or other governmental taxes, duties, fees, levies, premiums, assessments, surcharges, withholdings, or any other charges of any kind relating to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed thereon, but excluding taxes on net income. Customer may also access the “Consumer Dictionary for Electric Competition”, maintained by the PUC’s Office of Communications”, on the PUC’s website at http://www.puc.state.pa.us/utilitychoice/glossary\_terms.aspx?ut=ec.

2. SERVICES. During the Initial Term and any Holdover Period, Supplier shall sell to Customer and  
Customer shall purchase from Supplier Customer’s electricity requirements for the Account(s) specified in this Agreement, and Customer shall obtain such electricity requirements for such Account(s) exclusively from [Supplier] Services on the terms and conditions specified in this Agreement. Supplier shall cause all such electricity to be delivered to the Seller Delivery Point(s) and Customer shall receive such electricity at the Customer Delivery Point(s).

3. CUSTOMER INFORMATION. Customer agrees to provide Supplier with the necessary authority  
to obtain Customer’s current and historical electricity cost and usage data from the EDC, Customer’s payment and credit history and other information reasonably requested by Supplier. Customer agrees, upon request, to provide Supplier with facility descriptions, operating information, Account(s) and locations, and such other information available to Customer reasonably required by Supplier. Customer agrees to notify Supplier in writing whenever it believes that its usage will depart materially from its historical usage and shall provide good faith estimates of such departures.

4. ENROLLMENT. Supplier shall use commercially reasonable efforts to enroll Customer’s Account(s) with the EDC as soon as practicable during or after the Start Month. Customer agrees to cooperate with Supplier’ efforts to perform such enrollment. Supplier shall not be held liable to Customer for delay or failure in enrolling Customer’s Account(s) if such delay or failure was due in whole or in part to any cause beyond Supplier’ control. Supplier is not responsible for any switching fees charged by the EDC to Customer.

5. TERM: This Agreement shall become effective on the Effective Date with electric service commencing for each Account on the Service Commencement Date and continuing thereafter for the Initial Term. If, upon expiration of the Initial Term, Customer’s Account(s) are not switched by the EDC to another EGS or Supplier and Customer do not enter into a new or renewal Agreement, this Agreement shall continue on a month-to-month basis until either Party terminates this Agreement in which event such termination shall be effective after the noticed termination date on the date on which Customer’s Account(s) are switched to the EDC’s standard service offer or another EGS, or Supplier and Customer enter into a new or renewal Agreement (the “Holdover Period”).

6. PRICE: The unit price per kWh for electric service provided to Customer by Supplier during the  
Initial Term (the “Price”) is set forth in the BEA. The unit price per kWh for electric service provided to Customer by Supplier during the Holdover Period is the Holdover Price.

7. BILLING AND FEES. Unless the Parties agree in writing to alternate payment arrangements, Customer consents to be billed monthly for services provided hereunder through one of the following billing options, as permitted by law, at Supplier’ discretion: (i) Customer will receive one invoice from the EDC that includes the Supplier Electricity Charge and the EDC Delivery Charges and applicable Taxes (the “Consolidated Billing Option”); or (ii) Customer will receive two invoices, one from Supplier for the Supplier Electricity Charge and one from the EDC for the EDC Delivery Charges, each with applicable Taxes (the “Dual Billing Option”). Under the Consolidated Billing Option, Customer will make payments directly to the EDC pursuant to the applicable EDC tariff. Under the Dual Billing Option, payments are due to Supplier on or before sixteen (16) days after the billing date on Customer’s invoice or the postmark date on the envelope, whichever is later. Supplier may offer budget billing in its discretion. If, under the Consolidated Billing Option or Dual Billing Option, any payment for the Supplier Electricity Charge made by Customer to Supplier or to the EDC is late under the applicable payment terms, Customer may be assessed the Late Fee and may report delinquent balances to a credit agency. Further, in addition to any other rights of Supplier hereunder, but subject to compliance with any applicable PUC rules, if, during the Dual Billing Option, any payment for the Supplier Electricity Charge is late under the applicable payment terms, then Supplier shall have the right, without prior notice to the customer, to convert all billing hereunder to the Consolidated Billing Option and convert the Price as necessary, on a commercially reasonable basis, to a unit price sufficient to enable such Consolidated Billing. Supplier may assess a twenty five dollar ($25) fee against any transaction not processed due to insufficient funds or credit availability for any method of payment, including checks, bank drafts or credit card. If the EDC fails to timely obtain or transmit a meter reading, Supplier may issue or cause to be issued a bill to Customer based on its estimated Energy Usage and charges during the Billing Period. Supplier may elect to defer sending monthly bills for all periods where actual usage is not available from the EDC. Supplier may include or cause to be included in any subsequent bill from Supplier, adjustments related to previous billings, including estimates, previous billing errors, meter read errors, or other errors or omissions. In the event that Customer disputes a bill for the Supplier Electricity Charge, Customer must pay any undisputed portion of the bill by the due date specified in the applicable payment terms. If the unpaid, disputed portion of the bill is subsequently resolved in favor of Supplier, the Late Fee will be applied to such unpaid amounts. Customer has the right to request from Supplier, twice within a twelve month period, up to twenty-four months of Customer’s payment history without charge.

8. CREDIT AND DEPOSIT REQUIREMENTS. Supplier reserves the right to request a credit  
history on an applicant for service prior to offering service and to refuse service to anyone who does not meet Supplier’ credit standards. However, Supplier will not require an applicant to pay the balance due another EGS as a condition of establishing credit or providing competitive retail electric service. If Supplier determines in its reasonable discretion that Customer cannot demonstrate satisfactory creditworthiness, Supplier may require Customer to pay an initial cash deposit or provide other credit support. If at any time Supplier determines in its reasonable discretion that there has been a material adverse change in Customer’s credit status or that Customer cannot demonstrate satisfactory creditworthiness, or if Customer fails to timely pay all amounts due or there otherwise exists a default with respect to Customer under this Agreement, Supplier may require Customer to pay a cash deposit or provide other credit support. The total amount of all deposits or other credit support shall not exceed three (3) times Customer’s actual or anticipated monthly Supplier Electricity Charge as reasonably determined by Supplier. Supplier will provide Customer a receipt for any deposit within fourteen days of the date that the deposit is collected. The posting or amount of any security deposit hereunder shall be subject to any limitations imposed by applicable law. Cash deposits will be allocated to Supplier Electricity Charges. Cash deposits held more than six (6) months will accrue interest from the date of receipt at one-percent (1%) per annum and such accrued interest will be applied annually to Customer’s account. After termination of this Agreement, Supplier will apply any cash deposit plus any unpaid accrued interest toward any outstanding balance on Customer’s final bill and will promptly refund any remaining deposit. Supplier’ credit and deposit procedures EGS will comply with applicable PUC rules.

9. TERMINATION OF AGREEMENT BY CUSTOMER. If Customer terminates this Agreement, in whole or as relating to any single Account(s), before the end of the Initial Term, Customer shall pay Supplier the Early Termination Fee. In addition, if Customer terminates this Agreement with less than thirty (30) days advance written notice, Customer shall pay Supplier the Insufficient Notice Fee. In the event that Customer terminates this Agreement as provided for in this Section, Customer shall be obligated to pay for the electricity and related services provided to Customer pursuant to this Agreement prior to the date that such termination becomes effective, including Late Fees, if applicable. Should Supplier incur damages greater than the Early Termination Fee as a result of such termination of this Agreement by Customer before the end of the Initial Term, Customer shall pay to Supplier such damages; provided, that Customer shall not be obligated to pay such damages as to an LMP product. Such damages shall equal the product of: (1) the excess, if any, of the Price over the market price that is commercially available to Supplier for the same electricity usage which would have been supplied hereunder for the remainder of the Initial Term, all as reasonably determined by Supplier, and (2) the estimated electricity usage which would have been supplied hereunder for the remainder of the Initial Term. To determine the “market price that is commercially available to Supplier,” as used above, Supplier may consider, among other things, settlement prices of applicable NYMEX power futures contracts, quotations from leading dealers in energy swap contracts and other bona fide offers from parties participating in the wholesale and/or retail power markets, which may include Supplier and/or its affiliates, all as commercially available to Supplier and all as adjusted for the length of the remaining Initial Term and otherwise as is appropriate. Supplier will not be required to enter into any replacement transaction in order to determine such market price or actual damages. The Parties agree that the Early Termination Fee or other amounts recoverable hereunder are a reasonable estimate of loss and not a penalty.

10. TERMINATION OF AGREEMENT BY Supplier. Supplier reserves the right to terminate this Agreement if Customer (i) fails to make timely payment of all amounts due Supplier; or (ii) fails to post a security deposit under the provisions of the “Credit and Deposit Requirements” Section herein within ten (10) days of a written request for deposit; or (iii) breaches any warranty or representation to Supplier; or (iv) defaults on any material obligation under this Agreement (other than as provided in subparts (i), (ii) and (iii) above); or (v)(A) makes an assignment for the benefit of creditors, (B) files a petition or otherwise authorizes the commencement of a proceeding under the Bankruptcy Code or similar law for protection of creditors, or has such petition filed against it, (C) otherwise becomes bankrupt or insolvent, or (D) is unable to pay its debts as they fall due; or (vi) enters into a merger with, or sells substantially all of its assets to, another entity that fails to assume Customer’s obligations under this Agreement (subject to the “Assignment” Section of this Agreement). In the event that this Agreement is terminated in accordance with this Section, Customer shall pay the Early Termination Fee or, if greater than the Early Termination Fee, damages incurred by Supplier as provided in this Agreement. Supplier will notify Customer of its intent to terminate this Agreement at least ten (10) days prior to the effective date of termination and Customer’s service will be switched to the EDC’s standard service offer upon the effective date of termination.

11. TITLE, RISK OF LOSS AND INDEMNIFICATION. Title and risk of loss to the electricity sold hereunder shall pass from Supplier when it is delivered to the Seller Delivery Point. Customer shall indemnify and defend Supplier and its affiliates from all claims for any loss, damage, or injury to persons or property arising from  
or relating to the distribution or consumption of electricity at the Customer Delivery Point of or downstream of the Customer Delivery Point.

12. FORCE MAJEURE. Supplier shall be excused from performance of its obligations under this  
Agreement, in whole or in part, to the extent caused by and during an event of Force Majeure (as defined herein); provided that the Supplier shall provide notice of such event to Customer and shall use commercially reasonable efforts to avoid the affects of such event and resume performance as soon as is commercially practicable. As used herein, “Force Majeure” means any act, condition, event or occurrence that is beyond Supplier’ reasonable control, ncluding, without limitation, an act of God or public enemy, storm, earthquake, or other natural forces, war, riot, public disturbance, labor action, or the acts or omissions of anyone not a Party to this Agreement including the EDC.

13. CHANGE IN LAW. In the event that there is a Change in Law and such Change in Law results in Supplier incurring additional costs and expenses in providing the services contemplated herein, such additional costs and expenses shall be the Customer’s responsibility and will be assessed to Customer in Supplier’ charges as an additional Pass-Through Charge.

14. NONDISCRIMINATION. Supplier does not deny service, require a prepayment or deposit for  
service or otherwise discriminate based on a customer’s race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services.

15. WAIVER OF CUSTOMER RIGHTS AND PROTECTIONS. Customer waives its rights under the PUC rules applicable to electricity supply by EGSs to the extent allowable under PUC rules and applicable law, except as otherwise provided in this Agreement.

16. REPRESENTATIONS AND WARRANTIES. Each Party warrants and represents to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it is authorized and qualified to do business in the jurisdictions necessary to perform this Agreement; (iii) the execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate or other actions and do not violate any agreement to which it is a party or any laws or regulations applicable to it; and (iv) the Agreement, when delivered, will be valid and legally binding upon it and enforceable in accordance with its respective terms (subject to equitable defenses). Customer further warrants and represents to Supplier that it has full power and authority over the provision of electricity to the facilities to which the Account(s) pertain.

17. DISCLAIMER OF WARRANTY. Supplier EXPRESSLY DISCLAIMS ALL WARRANTIES  
REGARDING THE QUALITY OF ELECTRICITY DELIVERED TO CUSTOMER PURSUANT TO THIS AGREEMENT, WHETHER WRITTEN, ORALLY EXPRESSED, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

18. LIMITATION OF LIABILITY. UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES AND DAMAGES AT LAW OR IN EQUITY ARE WAIVED AND NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISIONS OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT. THE LIMITATIONS IMPOSED ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE, PROVIDED NO SUCH LIMITATION SHALL APPLY TO DAMAGES RESULTING FROM WILLFUL MISCONDUCT OF ANY PARTY.

19. FORWARD CONTRACT. The Parties agree that this Agreement is a “forward contract” and that [Supplier] Services is a “forward contract merchant” for purposes of the United States Bankruptcy Code, as amended, any payment related hereto will constitute a “settlement payment” as defined in Section 101 (51A) thereof.

20. ATTORNEY’S FEES. If Customer fails to timely pay amounts due under this Agreement and [Supplier] Services refers Customer’s outstanding balance to an attorney or collection agent for collection, or if [Supplier] Services files a lawsuit in connection with this Agreement, or collects Customer’s outstanding balance through bankruptcy or  
judicial proceedings, Customer agrees to pay Supplier its reasonable fees and expenses (including  
reasonable attorney’s fees) incurred by Supplier in connection therewith.

21. AMENDMENT. Except as otherwise provided in the TOS, this Agreement may not be amended except by a written amendment signed by both Customer and Supplier.

22. SEVERABILITY. If any provision of this Agreement is held to be void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect to the extent that the intended essential purposes of this Agreement are not materially altered.

23. HEADINGS. Headings are for the convenience of the parties and shall be ignored for purposes of interpreting this Agreement.

24. ASSIGNMENT. Supplier may assign its rights and obligations under this Agreement to a third party. Customer may not assign its rights and obligations under this Agreement to a third party without the prior written consent of Supplier, which consent shall not be unreasonably withheld. Supplier may deny such assignment based on the creditworthiness of the assignee, as determined by Supplier in its reasonable discretion.

25. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument.

26. WAIVER. No waiver by any Party hereto of any one or more defaults, by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

27. GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed, enforced and performed in accordance with the laws of the state of Pennsylvania, including any rules promulgated by or orders issued by the PUC and/or PJM, and exclusive venue for any suit, claim, action or other proceedings, whether at law or in equity, relating to this Agreement, shall be in the state or federal courts of competent jurisdiction sitting in Philadelphia, Pennsylvania. The provisions of Article 2 of the Uniform Commerce Code shall apply to this Agreement and electricity shall be a “good” for such purposes.

28. CONFIDENTIALITY. The Parties agree to keep all terms and provisions of this Agreement confidential and not disclose such terms to any third parties without the prior written consent of the other Party; provided, however, each Party shall have the right to make such disclosures as are reasonably necessary to governmental agencies and to its own agents, attorneys, auditors, accountants and shareholders or members. If disclosure is sought through process of a court, or a state or federal regulatory agency, the Party from whom the disclosure is sought shall provide reasonable notice thereof to the other Party.

29. LIMITED AUTHORIZATION AND WAIVER. An action authorized to be taken by Supplier for or on behalf of Customer under this Agreement is limited to such action and does not result in imposition on Supplier, and Customer hereby waives, any other duties of any kind or nature, including fiduciary duties which may otherwise arise by operation of law.  
  
30. NOTICES. Any notice or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered to the receiving Party by prepaid registered mail, courier service or facsimile. Supplier’ mailing address and facsimile number to be used for any notices that shall be given to or served on Supplier by Customer are set forth at the top of this TOS. Customer’s mailing address and facsimile number to be used for any notices that shall be given to or served on Customer by Supplier are set forth on the BEA. Notice delivered by prepaid registered mail shall be deemed to have been received at the end of the third business day after the date of mailing, or such earlier time as is confirmed by the receiving Party, except that when there is a strike affecting delivery of mail, all notices shall be delivered by courier or by facsimile. Notice delivered by courier shall be deemed to have been received on the business day after it was sent or such earlier time as is confirmed by the receiving Party. Notice sent by facsimile shall be deemed to have been received at the close of the business day on which it was transmitted (or, if transmitted after the close of business, then on the next business day) or such earlier time as is confirmed by the receiving Party.

31. ENTIRE AGREEMENT. This Agreement embodies the entire Agreement and understanding between the Parties, and supersedes all prior agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof.