1. Scope.
1.1 These General Terms and Conditions (these "Terms") are applicable to all customers or any customer affiliates (the "Customers" and each, individually, a "Customer") of TÜV Rheinland of North America, Inc. ("TRNA") who have entered into an agreement with TRNA or through TRNA with any of TRNA’s affiliated companies (the "TRNA Affiliates") for any of the services (the "Services") indicated in the Service Agreement (the "Service Agreement") or otherwise outlined on a statement of work ("SOW") or quotation ("Quote") submitted by TRNA or TRNA Affiliates to Customer.

2. Offer and Acceptance.
2.1 Entire Agreement. These Terms, together with the Service Agreement, any SOW or Quote issued by TRNA pursuant to the Service Agreement, and any schedules attached thereto by TRNA, shall be the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and shall prevail over any terms and conditions contained in any other documentation. Any additional or different terms proposed by Customer in any document, including but not limited to terms shown on Customer’s sales or purchase order or any other of Customer’s documents, are objected to, null and void, and rejected and will not be binding upon TRNA. These terms and conditions supersede all prior terms and conditions and shall be the sole terms and conditions which apply to any sale, lease, or other furnishing of goods or services.

2.2 Amendment. TRNA may change, revise, amend or modify these Terms from time to time. TRNA shall provide Customer with written notice of any such changes, revisions, amendments or modifications, provided, however, that any such changes, revisions, amendments or modifications shall become effective without any further action by any party and that they shall not apply to any orders placed and accepted prior to the effective date of such changes, revisions, amendments or modifications.

2.3 Acceptance. Customer’s acceptance of the terms set forth in the Service Agreement, SOW or Quote is expressly conditioned upon Customer’s assent to all the terms and conditions set forth therein and in these Terms. Customer shall accept the Service Agreement, SOW or Quote by signing a copy of the Service Agreement, SOW or Quote or TRNA’s performance of any work shall constitute acceptance.

2.4. Notwithstanding any prior acceptance of a Service Agreement by TRNA, TRNA shall have no obligation to provide services if Customer is in breach of any of its obligations hereunder, or any other agreement between Customer and TRNA or any TRNA Affiliates, at the time such services were scheduled to be provided.

3.1 The scope of the Services and the nature of the report, if any, shall be governed by the Service Agreement, SOW or Quote for the specific Services required, as evidenced by a written instrument executed by both parties and, if appropriate any additional parties, such as TRNA Affiliates, and by the relevant testing and/or certification standards, if applicable. No changes or revisions to the SOW will be allowed unless mutually agreed in writing by the Parties. If mandatory legal regulations and standards or official requirements for the agreed SOW change after conclusion of the contract, TRNA shall be entitled to additional payment for any possible additional expenses.

3.2 The agreed Services shall be performed in compliance with the regulations in force at the time the contract is entered into.

3.3 Furthermore, TRNA is entitled to determine (in its sole discretion) the method and nature of the services to be provided unless otherwise agreed in writing or if mandatory provisions require a specific procedure to be followed.

3.4 TRNA is not a designer, manufacturer, marketer, seller, endorser, guarantor, or insurer of the parts, products or systems provided by Customer to TRNA for Services. By providing the Services, TRNA is not assuming, and it disclaims, any obligation related to the design, manufacture, construction, selection of materials, assembly, installation, use, application, marketing, sale, or testing by entities other than TRNA of any parts, products or systems provided to TRNA for Services.

3.5 In the case of inspection work, TRNA shall not be responsible for the accuracy or checking of the safety programs or safety regulations on which the inspections are based, unless otherwise expressly agreed in writing.

4. Delivery Deadlines.
Time of performance and deadlines shall be agreed upon between Customer and TRNA and shall be set forth in the Service Agreement, SOW, Quote or other documentation specifying the Services to be delivered. Agreed upon delivery times and deadlines shall be based on estimates of the extent of the Services required and according to particulars and information supplied by Customer. Delivery times and deadlines shall be binding only on request by Customer and confirmation in writing by TRNA or the TRNA Affiliates. Notwithstanding the foregoing, TRNA and the TRNA Affiliates reserve the right to change the date for completion of Services and, if it does so, it will notify Customer.

5. Customer Cooperation.
5.1 Customer agrees that all cooperation required of Customer, Customer’s agents, employees or any third party in connection with the Services, as such may be specified in the Service Agreement, SOW, Quote or other underlying documentation for the Services, shall be provided in a timely manner and at no cost to TRNA or the TRNA Affiliates.

5.2 All documentation and materials, supplies, auxiliary staff, etc., necessary and reasonably required for the performance of the Services shall be made available to TRNA free of charge. In cooperating with TRNA or the TRNA Affiliates, Customer shall comply with all legal requirements and industry safety regulations and standards.

5.3 Customer shall bear any additional cost incurred as a result of Services having to be redone or delays resulting from untimely, incorrect or incomplete information or lack of proper cooperation. Notwithstanding that a fixed or maximum price for the Services has been agreed upon between the parties, TRNA or the TRNA Affiliates shall be entitled to charge additional fees to offset additional expenses incurred as a result of such lack of proper Customer cooperation.

6. Payment Conditions, Fees and Cancellation.
6.1 Unless otherwise agreed to in writing in the Service Agreement, the SOW or the Quote, fees charged by TRNA shall be calculated in accordance with the then current rates in effect. A rate schedule or quotation will be provided to Customer upon request. Customer agrees that its obligations with respect to the payment of fees exists independently from the results of the investigation and are not dependent on whether or not a claim is submitted to Customer. Invoices are only payable in the legal tender of the invoice.

6.2 Unless otherwise agreed to by the parties in writing, invoices will be issued regularly. In case of Services that are rendered under flat-fee arrangements, no detailed statement of services shall be provided. TRNA will issue an electronic invoice to the Customer. An electronic invoice may be sent by email and will be deemed to have been delivered to the Customer upon receipt of such email. If Customer requests a paper invoice from TRNA to be sent by post, such invoice will include a $35.00 administration fee. All invoice amounts shall be due for payment without deduction thirty (30) days after issuance of the invoice. A service charge of 1.5% per month or the highest rate permitted by law will be added to those accounts not paid within thirty (30) days of invoice date. If collection procedures are required, Customer will pay for all reasonable expenses including court and attorneys’ fees. The accrual or receipt by TRNA of interest under this subsection shall not constitute a waiver by TRNA of any right it may have to declare Customer in default under any agreement and/or to terminate its agreement to perform Services.

6.3 Payments shall be made to the bank account of TRNA as indicated on the invoice, stating the invoicing and client numbers. Objections to any invoice shall be submitted in writing within two (2) weeks from receipt of the invoice. The TRNA Cancellation Policy is available on TRNA website and is incorporated by reference. If a project commences and Customer terminates a project without cause as detailed in the Cancellation Policy, Customer is responsible to pay TRNA for any costs and/or expenses plus reasonable margin incurred by TRNA up to the date of cancellation. No extension to payment terms or other settlements of debt shall be allowed without specific authorization by the CEO or CFO of TRNA. If Customer fails to pay any amount due, TRNA may suspend all services, subject to having provided Customer with ten (10) days’ prior notice. Furthermore, TRNA shall be entitled to withdraw the certificate and claim damages for non-performance.

6.4 Fees for services rendered hereunder do not include any relevant sales tax, value added tax ("VAT"), excise or similar taxes, which are payable by Customer, where required.

6.5 Annual certification maintenance and factory registration / inspection fees will be charged to Customer if and/or when Customer holds certifications, based on the number of products and types of certifications. Annual maintenance fees are charged and invoiced separately from other fees.

6.6 Services rendered outside normal working hours at the request of Customer and Services required to be rendered at short notice, (e.g. within a period of time that is considerably shorter than the period initially agreed upon), may be subject to surcharges.

6.7 Travel fees, expenses and "material and additional costs" are charged separately, unless such fees, expenses and/or costs were included in a Quote. "Material and additional costs" consist of external costs (including, for example, subcontractor costs) associated with the Services, costs incurred for the use of special laboratories or special measuring equipment and miscellaneous costs (e.g. photographic work, disposal of test samples (hazardous waste), packaging, shipping and customs duties). A ten percent (10%) flat rate for

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Certification Regulations.

not be relied on by Customer, and do not replace or
the Services are for informational purposes only, may
communications in the body of an e-mail regarding
“Reports”) only as an email attachment. Any

8.2 TRNA and TRNA Affiliates issue test results, test
results and expert opinions. The copyright on all
Methods of doing business, raw data, calculations,
TRNA retains exclusive ownership of all Reports,

7. No Right of Set-off.

Customer shall have no right of set-off against any
payments due, whether on account of any claims
alleged claims against TRNA or the TRNA Affiliates
under these Terms or otherwise.

8. Acceptance.

8.1 Reports and work product generated by TRNA or
the TRNA Affiliates shall be examined by Customer
within five (5) business days beginning on the date of
delivery to Customer. TRNA’s work product shall be
deemed to be accepted unless a written notice
desccribing the deficiency is received by TRNA within
the applicable time period set forth above. Customer is
not entitled to refuse acceptance due to insignificant
or non-material defects or deficiencies. Any part of the Services ordered by Customer which is complete in itself may be presented by TRNA or the TRNA Affiliates for acceptance as an installment.

8.2 TRNA and TRNA Affiliates issue test results, test
reports, certifications, test marks and other
statements regarding the Services (collectively
“Reports”) only as an email attachment. Any
communications in the body of an e-mail regarding
the Services are for informational purposes only, may
not be relied on by Customer, and do not replace or
anticipate the formal notification regarding Reports
or other decisions in accordance with the Testing and
Certification Regulations.


9.1 For purposes of this Section 9, TRNA and
Customer are each referred to as a “Party” as
appropriate. As used throughout these Terms,
“Confidential Information” means any scientific,
technical, trade or business information which is
given by one Party to the other and which is treated
by the disclosing Party as confidential or proprietary.
Confidential Information does not include information that (a) is in possession of the receiving Party at the time of disclosure, as reasonably demonstrated by written records and without obligation of confidentiality, (b) is or later becomes
part of the public domain through no fault of the
receiving Party, (c) is received by the receiving Party
from a third party without obligation of confidentiality, or (d) is developed independently by
the receiving Party without use of, reference to, or reliance upon Confidential Information of the disclosing Party.
Confidential Information by individuals who did not have access to
Confidential Information. The disclosing Party shall,

to the extent practical, use reasonable efforts to label or
identify as confidential, at the time of disclosure all
such Confidential Information that is disclosed in
writing or other tangible form.

9.2 Each Party agrees (a) to keep confidential the
Confidential Information of the other Party and the
contents of the Service Agreement and these Terms;
(b) not to disclose the other Party’s Confidential Information to any third party without the prior
written consent of such other Party, and (c) to use
such Confidential Information only as necessary to fulfill its obligations or in the reasonable exercise of
duties agreed to it hereunder. Notwithstanding the
foregoing, a Party may disclose (i) Confidential
Information of the other Party to its Affiliates, and to
the Party’s and/or its Affiliates’ directors, employees,
consultants, and agents who, in each case, have
a specific need to know such Confidential Information and who are bound by a like obligation of
confidentiality and restriction on use, (ii) Confidential
Information with accreditation bodies to the extent
this information is necessary for the issuance of
dependent individuals, such as TRNA employees, TRNA
Affiliates, and to
the Services or as otherwise agreed by the Parties.

6.8 Outstanding customer credit balances remaining
with TRNA longer than two (2) years will be
considered an administrative fee and will become the
property of TRNA.

6.9 TRNA may suspend credit extended towards
Customer’s accounts in its sole discretion without
notification.

10. Copyright, Ownership and Use of Reports.

10.1 Except as expressly set forth in this Section,
TRNA retains exclusive ownership of all Reports,
methods of doing business, raw data, calculations,
test results and expert opinions. The copyright on all
Reports issued by TRNA or the TRNA Affiliates belongs
equally to the Particular purposes of and the Parties
contractual purpose; (b) any report prepared by TRNA
or the TRNA Affiliates was subsequently modified
without TRNA’s or, as appropriate, the TRNA
Affiliates’ written consent; (c) if Customer fails to
perform its obligations under these Terms; or (d) Customer did not disclose to TRNA or the TRNA
Affiliates all material facts known to Customer with
respect to the object of the Services.

11.3 The Liability of TRNA and its Affiliates,
their Employees, Agents, Managerial Staff
and Constituent Bodies, for all Damages
in Connection with this Agreement shall in All
Events be limited to the lower of:
(A) a total of one million United States
Dollars ($1,000,000.00); or
(B) five (5) times the value of the Services
the claim is related to.

11.4 In no event shall either Party be liable to
any person for any indirect, special,
exemplary, punitive, incidental or
consequential damages including but not
limited to lost profits, business interruption,
downtime, loss or inability to use property
or equipment, and damages or expenses due
to pollution, regardless of fault whether
purporting to a claim in sole, joint or
concurrent fault or negligence or is based
upon contract, warranty, indemnity,
tort/extra-contractual liability (including
genligence), strict liability, or otherwise
even of such damages could have been
foreseeable at the time of contracting.

12. Indemnification.

12.1 Customer shall indemnify and hold harmless
TRNA and TRNA’s officers, directors, employees,
affiliates, suppliers and agents (each a “TRNA
Indemnified Person”) against any losses, claims,
damages, liabilities, penalties, actions, proceedings or
judgments of any kind whatsoever (including all
reasonable legal and attorney’s fees and expenses) to
which a TRNA Indemnified Person may become
subject out of claims by Customer or any third party
(including without limitation customers of Customer)
related to or arising out of (a) any breach by Customer of any provision of the Service Agreement,
these Terms or the Testing and Certification

OR EQUIPMENT, AND DAMAGES OR EXPENSES DUE
TO POLLUTION, REGARDLESS OF FAULT WHETHER
FORESEEABLE AT THE TIME OF CONTRACTING.

LIMITATION, WARRANTIES OF MERCHANTABILITY OR
FITNESS FOR A PARTICULAR PURPOSE, ARE
LIMITATION, WARRANTIES OF MERCHANTABILITY OR
FITNESS FOR A PARTICULAR PURPOSE, ARE
TRANSFERABLE, NON-SUBLICENSABLE, Royalty free,
right to use and can be freely used by Customer for their
intended purpose; (c) confidential reports
in the Parties’ contractual SOW (e.g. use of test reports, audit
reports as proof of audits carried out or in the case of
a contractually agreed review of a management system for conformity with certification conditions as
proof of the corresponding decision). Customer shall
not modify or change Reports in any way or create
derivative works therefrom.

10.3 Any publication or reproduction of the service
results for advertising purposes or any further use of
the service results beyond the scope regulated in this
Section requires the prior written consent of TRNA
in each individual case.


11.1 TRNA warrants that the Services shall be
performed by TRNA in accordance with the applicable
test and certification standards and in a
workmanlike manner by qualified personnel. TRNA
and the TRNA Affiliates shall not be liable under any
circumstances to Customer or any other person if (a)
the Services or work products prepared in connection
with the Services are not used for the intended
contractual purpose; (b) any report prepared by TRNA
or the TRNA Affiliates was subsequently modified
without TRNA’s or, as appropriate, the TRNA
Affiliates’ written consent; (c) if Customer fails to
perform its obligations under these Terms; or (d) Customer did not disclose to TRNA or the TRNA
Affiliates all material facts known to Customer with
respect to the object of the Services.

11.2 EXCEPT FOR THE WARRANTIES SET FORTH
HEREIN, TRNA MAKES NO OTHER WARRANTIES,
EXPRESS OR IMPLIED, WITH RESPECT TO THE
SERVICES BY TRNA OR ANY OF ITS AGENTS,
SUBSIDIARIES, AFFILIATES OR SUBCONTRACTORS.
ANY AND ALL WARRANTIES, INCLUDING WITHOUT
LIMITATION, WARRANTIES OF MERCHANTABILITY OR
FITNESS FOR A PARTICULAR PURPOSE, ARE
EXPRESSLY EXCLUDED AND DECLINED.

11.3 The Liability of TRNA and its Affiliates,
their Employees, Agents, Managerial Staff
and Constituent Bodies, for all Damages
in Connection with this Agreement shall in All
Events be limited to the lower of:
(A) a total of one million United States
Dollars ($1,000,000.00); or
(B) five (5) times the value of the Services
the claim is related to.

11.4 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO
ANY PERSON FOR ANY INDIRECT, SPECIAL,
EXEMPLARY, PUNITIVE, INCIDENTAL OR
CONSEQUENTIAL DAMAGES INCLUDING BUT NOT
LIMITED TO LOST PROFITS, BUSINESS INTERRUPTION,
DOWNTIME, LOSS OR INABILITY TO USE PROPERTY
OR EQUIPMENT, AND DAMAGES OR EXPENSES DUE
TO POLLUTION, REGARDLESS OF FAULT WHETHER
PURSUANT TO A CLAIM IN SOLE, JOINT OR
CONCURRENT FAULT OR NEGLIGENCE OR IS BASED
UPON CONTRACT, WARRANTY, INDENTMY,
TORT/EXTRA-CONTRACTUAL LIABILITY (INCLUDING
NEGILIGENCE), STRICT LIABILITY, OR OTHERWISE
EVEN OF SUCH DAMAGES COULD HAVE BEEN
FORESEEABLE AT THE TIME OF CONTRACTING.

12. Indemnification.

12.1 Customer shall indemnify and hold harmless
TRNA and TRNA’s officers, directors, employees,
affiliates, suppliers and agents (each a "TRNA
Indemnified Person") against any losses, claims,
damages, liabilities, penalties, actions, proceedings or
judgments of any kind whatsoever (including all
reasonable legal and attorney’s fees and expenses) to
which a TRNA Indemnified Person may become
subject out of claims by Customer or any third party
(including without limitation customers of Customer)
related to or arising out of (a) any breach by Customer of any provision of the Service Agreement,
these Terms or the Testing and Certification

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Regulations; (b) any misrepresentation made by Customer in connection with obtaining any Services; or (c) any negligence, gross negligence or willful misconduct of Customer related to the Service Agreement, other than as expressly authorized in such Service Agreement.

12.2 TRNA shall indemnify and hold harmless Customer and, as applicable, Customer’s officers, directors, employees, affiliates, suppliers and agents (each a “Customer Indemnified Person”) against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments of any kind whatsoever (including all reasonable legal and attorney’s fees and expenses) to which a Customer Indemnified Person may become subject out of claims by TRNA (including without limitation any TRNA Affiliate) related to or arising out of any negligence, gross negligence or willful misconduct of TRNA related to the Service Agreement, other than as expressly authorized in such Service Agreement.

13. Provision of Product or Product Samples

13.1 Customer shall provide TRNA or a TRNA Affiliate with appropriate product or product samples ("Product") required for the testing and/or certification process. Such Product shall be provided at such locations as may be indicated to Customer from time to time, at the sole cost of Customer, including shipping and handling. TRNA or the TRNA Affiliates shall not be responsible for damage to or loss of Product while in transit or during the performance of the Services. Customer represents and warrants that it has obtained all necessary permissions from the owner of the Product to subject the Product to the testing, certification, and/or other Services performed on it in accordance with these Terms and agrees that these Terms shall apply to the Product on the same basis as if Customer was the owner of the Product.

13.2 It is the Customer’s responsibility to comply with applicable import or export control regulations. The Customer shall be responsible for and shall save, indemnify, defend and hold harmless TRNA from and against all Claims in connection with any failure by the Customer to comply with applicable export control regulations arising from, relating to or in connection with this agreement. The Customer represents that it is knowledgeable and has expertise regarding all export control laws, regulations, procedures, international sanctions, embargoes and restrictions, prohibited parties lists and international shipping practices applicable to the Customer, including but not limited to the laws of the United States of America ("Export Controls"). The Customer shall promptly alert TRNA to any violations or suspected violations of Export Controls and shall obtain all necessary licenses, permits, forms and applications required pursuant to Export Controls.

14. Disposal of Product Samples

Customer acknowledges that Product submitted for testing and/or certification may be destroyed or damaged during the performance of the Services, testing and/or certification process. Unless otherwise instructed by Customer or if otherwise required by the applicable certification standards or in TRNA’s Testing and Certification Regulations, TRNA shall retain all Product, damaged or not, for a period of thirty (30) days after the conclusion of the testing and/or certification process. Unless, before the end of said thirty (30) day period, TRNA receives instructions from Customer that Customer wishes to reclaim the Product, TRNA shall be free to dispose of such Product in any manner it deems appropriate, subject to any regulatory or other statutory guideline governing such disposal. All costs associated with the safe and proper disposal of hazardous materials shall be borne solely by Customer. All shipping and handling costs associated with the return of Product to Customer, shall be borne solely by Customer.

15. Use of Certification Marks

15.1 Provided that TRNA or the appropriate TRNA Affiliate determines that the relevant certification standards have been met, TRNA or the TRNA Affiliate will authorize the use of the appropriate certification mark and, if applicable, the certification will be entered in the appropriate list or register.

15.2 Certification marks shall only be used by Customer in strict compliance with the relevant standards issued by TRNA, the TRNA Affiliates or any other certification body, unless and until expressly authorized in writing by TRNA or the TRNA Affiliates and then only in the form and manner specified by such written authorization.

15.3 Customer’s failure to use the certification marks in strict compliance with the relevant standards issued by TRNA, the TRNA Affiliates or any other certification body, or Customer’s failure to pay fees due to TRNA, may result in the cancellation without notice of the certification(s) issued by TRNA or the TRNA Affiliates or any other certification body. In addition, in the event of an infringement of the certification marks by Customer, Customer agrees that TRNA and the TRNA Affiliates are entitled to seek injunctive relief, without the necessity of posting a bond, to protect their rights in the certification marks.

15.4 The Accreditation and Marks Policy is incorporated by reference and available on TRNA website or upon request.

16. Inspections and Production Controls

Customer shall ensure that products receiving certifications are manufactured in conformity with the applicable standards and requirements pertaining thereto. Customer’s compliance with this requirement may, in appropriate cases, be established by TRNA, the TRNA Affiliates or their representatives or the relevant Certification Bodies, by means of inspections of Customer’s manufacturing facilities, in accordance with established procedures or as otherwise determined by TRNA or the TRNA Affiliates, or the relevant Certification Bodies. TRNA, the TRNA Affiliates, or their representatives, or the relevant Certification Bodies shall be granted free access to such Customer facilities that engage in the manufacturing, distribution or servicing of the products receiving certification, as well as to all relevant production processes, and Customer expressly agrees such free access is required to establish Customer is in compliance with the applicable standards. All costs of such inspections shall be borne by Customer.

17. Governing Law and Jurisdiction

17.1 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPALS AND WAIVER OF SAME, EACH PARTY HERETO SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS IN HARRIS COUNTY, TEXAS AND THE FEDERAL COURTS IN AND FOR THE SOUTHERN DISTRICT OF TEXAS SITTING IN HOUSTON, TEXAS IN CONNECTION WITH ANY DISPUTE ARISING UNDER THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT ENTERED INTO IN CONNECTION HEREWITH.

17.2 TRNA AND CUSTOMER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

17.3 In the event of any legal action, the prevailing party shall be entitled to recover from the other party all costs, expenses and reasonable attorney’s fees, expert witness fees, and any other costs incurred to bring or defend such action.

18. Waiver and Severability

18.1 The failure or delay by a Party to enforce its rights hereunder shall not be deemed a subsequent waiver of that right or to waive enforcement of any other term or right.

18.2 If any provision of these Terms is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties’ respective rights and obligations hereunder.