

# Mérieux NutriSciences AQ General Terms and Conditions for Services

These General Terms and Conditions (the “T&Cs”) shall govern the relationship between any Mérieux NutriSciences group entities established in the Philippines (“MNAQ”) and the customer (“Customer”) for the provision of certain Services (as defined below). The T&Cs include and hereby incorporate by reference each of the Service Appendices which are specified in the applicable Service Order or would otherwise reasonably be understood to apply to the Services by reason of the description of the Services set forth therein.

## 1. Definitions

“**Application Dashboard**” means an online user interface used to access a Software Application, organize and display Customer information generated by, uploaded to or stored within any Software System.

“**Application Platform**” means the host system, Internet infrastructure and services platform and any other communication systems, network connections and interfacing capabilities used by MNAQ in order to enable the provision of a Software Application.

“**Area of Origin**” means the country or affiliated group of countries for purposes of applicable Privacy Legislation where Customer is located or from which any personal data processed or handled in connection with the Services originates or is first uploaded or otherwise transferred to MNAQ.

“**Claims**” means any claims, demands, costs, (including but not limited to reasonable attorneys’ fees) or other cause of action, collectively.

“**Contract**” means the contract for Services between MNAQ and Customer consisting as an indivisible whole of (i) these T&Cs (including all applicable Service Appendices) and (ii) the Service Order, and, if applicable, any specifications referenced or incorporated therein.

“**Crisis Situation**” means any incident or series of incidents involving the quality of Customer’s products or services or the integrity of its production facilities and processes that cause or are likely to cause a disruption of or other significant negative impact on Customer’s business through no fault of MNAQ.

“**Customer Content**” means data, reports, test results, certificates, documents, protocols, methods, samples, materials, or other information provided to MNAQ in any form or uploaded to any Software System by or on behalf of Customer, but expressly excluding any Confidential Information of MNAQ.

“**Database**” means a collection of data, information or other independent elements, systematically or methodically arranged and separately accessible.

“**Developments**” means a modification, improvement, or update to a Software System.

“**Intellectual Property**” means patents, patent applications or derivative rights, utility certificates, copyrights, Database rights, trademarks, trademark applications, trade names, trade secrets, methods, designs, know-how, domain names, Software, and other proprietary rights.

“**Laws**” means all international, federal, state, and local laws, rules, and regulations.

“**Litigation Support**” means any of the following actions taken by MNAQ other than in the ordinary course of performing the Services as contemplated under the Contract: make disclosures, provide or submit documents or records or certifications, give testimony, produce other materials or analyses (including Results and Service Reports), or provide support or otherwise become involved in any third-party dispute, litigation, negotiation, governmental or administrative process or proceeding or other transaction.

“**MyMXNS**”: Customer MNAQ platform providing access to the samples & Audit reports.

“**Privacy Legislation**” means all applicable Laws pertaining to the processing and handling of personal data in all pertinent jurisdictions, in particular the General Data Protection Regulation (GDPR) (EU) 2016/679 and Law no. 78-17 of the 6th January 1978 (modified) on Information Technology, Data Files and Civil Liberties, and the Philippine Data Privacy Act of 2012 and its implementing rules and regulations.

“**Results**” means the outcome of any Services performed by MNAQ (except for the provision of Applications).

“**Retention Period**” means the period of time beginning on the date the Services are performed and continuing for five (5) years thereafter, or such period of time as is otherwise required by applicable law for the retention of records pertaining to the Services.

“**Services Appendix**” means each appendix to these T&Cs (collectively, the “**Service Appendices**”) that sets forth additional terms and conditions applicable to the particular Services identified in such Service Appendix and contracted for under a Service Order.

“**Service Order**” is any written proposal, offer, or agreement that sets out in reasonable detail the specific Services to be provided to Customer by MNAQ or its agents.

“**Service Report**” means the agreed upon form in which Results are provided by MNAQ to Customer.

“**Services**” means the services to be provided to Customer by MNAQ or its agents pursuant to the Contract, which may include, the provision by MNAQ of access to and use of the MyMXNS Application and/or any other Software Application regardless of the medium used.

“**Software**” means an organized and structured set of instructions or symbols, directly or indirectly, capable of performing or obtaining a predefined function, task or result by means of an electronic information processing system. The term Software identifies any firmware, source code, protocol, development kit, library, documents, standard, form, architecture, language relating to the said Software.

“**Software Application**” means the Software and its related Database.

“**Software System**” means, collectively, any Software Application, the related Application Dashboard and Application Platform.

“**Third Party Content Providers**” means any and all persons or entities authorized by Customer to provide Customer Content.

## 2. Scope

2.1. Customer agrees that when Customer signs (including by electronic signature) or submits a Service Order or otherwise uses or engages MNAQ to provide Services, as the context requires, a Contract will be formed between Customer and MNAQ for the provision of the Services, and the provision of the Services will be governed exclusively by such Contract.

2.2. All Service Orders entered into between Customer and MNAQ are irrevocable unless MNAQ agrees otherwise in writing.

2.3. If for any reason a Service Order is not signed by Customer, MNAQ is entitled to assume that a valid Contract pertaining to the subject matter of the Service Order has been formed when any conduct by Customer or Customer’s agents recognizes the acceptance of the Service Order and the existence of the Contract, including but not limited to (i) Customer or its suppliers providing samples or access to samples, facilities or other materials to MNAQ for analysis, (ii) acceptance by Customer of the performance of any Service by MNAQ for the benefit of Customer, (iii) performance by Customer of any registration or login operations required to access or use the Applications (as defined below), and/or payment by Customer of the service fees defined in the Service Order.

2.4. Once formed, the Contract represents the entire agreement between Customer and MNAQ and supersedes all negotiations, representations or agreements, written or oral, with the same purpose. In the event of any inconsistency, (i) the Service Order will prevail over the T&Cs (including the Service Appendices), and the Service Appendices will prevail over these general T&Cs and (ii) the Service Order and T&Cs (including the Service Appendices) will prevail over any terms and conditions included in Customer's purchase order or any other document unless otherwise expressly stated by MNAQ in writing. For the avoidance of doubt, under no circumstances will the Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any Service Order, purchase order or other document govern the Contract or be binding on MNAQ in any way whatsoever.

2.5. Nothing in these T&Cs prevents MNAQ from providing services similar to the Services to other clients, including potential competitors of the Customer.

### **3. MNAQ Standard of Care**

3.1. MNAQ shall perform the Services in a professional manner, using a reasonable degree of care and skill and diligence as expected of a professional performing services of a similar nature to the Services and under similar circumstances, consistent with applicable practices, Laws, and specifications approved by both parties.

3.2. MNAQ represents and warrants that it is a duly registered company and has the full right and authority to enter into and be governed by the Contract. If required by Law, upon request by Customer, MNAQ shall provide written certification to Customer that it is up to date with the payment of applicable social and employer contributions.

### **4. Service Reports and Results**

4.1. Upon completion of the Services or otherwise in accordance with the delivery schedule set forth in the applicable Service Order, MNAQ shall deliver Results and Service Reports to Customer in accordance with MNAQ's standard format and delivery method, or as otherwise specified in the Service Order. Communication of Results and Service Reports by email, through MyMXNS or other Application, via Customer's online information portal, or through other digital means agreed upon between the Parties shall constitute valid delivery of such Results and Service Reports as of the date such information is sent, posted or otherwise transmitted by MNAQ.

4.2. Any Service Report or Results furnished by MNAQ is furnished solely for the benefit of Customer; Customer may, however, direct MNAQ to provide Service Reports and Results to third parties specified by Customer. Once a Service Report has been paid for, the contents of any such Service Report shall become the property of Customer. No Service Report may be distributed or reproduced by Customer except in its entirety, and Customer shall not at any time misrepresent the content of any Service Report, Results, or other information received from or relating to MNAQ or its work on behalf of, or its relationship with Customer.

4.3. MNAQ will communicate Results and Service Reports only to persons and/or entities (including third parties) stipulated by Customer, unless disclosure is otherwise required by law or by applicable regulatory and/or certification bodies. MNAQ is entitled to assume that such designated persons and/or entities are authorized to receive Results and Service Reports until MNAQ is notified in writing otherwise.

4.4. Customer understands and agrees that in the event of a discrepancy between, on the one hand, raw data and information set forth in an Application or transmitted to Customer through an electronic data interchange system and, on the other hand, a final, signed copy of a Service Report (regardless of the means through which such Service Report is delivered), such Service Report will control.

4.5. Subject to applicable service charges set forth in Section 10.3 below, upon Customer's request MNAQ shall reissue or amend any Service Report previously delivered to Customer, provided that any such changes

are limited to corrections or updates to Customer-provided background information which do not in any manner alter or otherwise impact the Results.

### **5. Disclaimers**

5.1. The Results and Service Reports are intended for use by persons having professional skill and training in the interpretation of such information. The Service Reports, Results or other outcomes of Services provided by MNAQ may be tools to assist Customer to address regulatory compliance or other legal issues, but Customer acknowledges and agrees that MNAQ is not authorized to act as Customer's legal counsel, and nothing set forth in such Service Reports and Results and other outcomes of the Services is intended as legal advice or the legal opinions of MNAQ. MNAQ disclaims and assumes no responsibility, and Customer hereby waives and releases MNAQ, its employees, agents and representatives from any and all liability resulting from Customer's interpretation and/or use of any Results or Service Reports that were properly rendered by MNAQ in accordance with the Contract or Customer's use or non-use of any Application Platform and any data or information in connection therewith.

5.2. Customer understands and agrees that Results and Service Reports are based only upon the samples, information, materials, facilities and operations Customer or its suppliers provide or make available to MNAQ, and MNAQ shall have no liability (i) for any errors, deficiencies or omissions in any Services provided to Customer that are based on inaccurate or incomplete information provided to MNAQ, or (ii) for application of the Results to other products, materials, facilities or operations which were not made available to MNAQ or which MNAQ did not analyze.

5.3. The Results of the Services performed according to the Service Order are not pre-determined or certain. The Results are derived from scientific experiments, processes, observations, calculations and other analyses, each with an unknown outcome. MNAQ does not guarantee, either express or implied, that the Results will reflect the particular outcome desired by Customer or demonstrate required acceptance thresholds or other quality criteria set out by Customer for its products and/or business, and Mérieux NutriSciences does not accept responsibility for failure of the Results to meet such Customer expectations.

### **6. Customer's acknowledgements and obligations**

6.1. Customer represents and warrants that:

- (i) it has the full right and authority to enter into and be governed by the Contract;
- (ii) it has sufficient and reasonable commercial knowledge and experience with respect to all Laws related to its products and business, and Customer is in material compliance with all applicable Laws;
- (iii) all Customer Content to be provided to MNAQ in connection with the Contract is free of any risk and does not and will not infringe or otherwise violate any third party intellectual property rights or applicable law; and
- (iv) Customer has all necessary authorizations, permissions, approvals and legal rights to provide the Customer Content for use by MNAQ and storage in any applicable Software System.

6.2. While MNAQ may provide advice and recommendations, Customer must ultimately decide whether a specific Service and the related Results and/or Service Reports are appropriate for Customer's circumstances. Customer assumes all risk and responsibility for and any legal liability arising out of or relating to (i) the compliance of Customer and its products and business and the compliance by any and all Third Party Content Providers under any and all applicable Laws, (ii) all decisions regarding which Services are required related to Customer's products or business, (iii) Customer's use of the Results, Service Reports or Software Applications, (iv) Customer's implementation of any action,

including a withdrawal or recall of products based on the Results, including interim or preliminary Results, and (v) all Customer Content.

6.3. Customer shall allow MNAQ' employees, agents, and representatives access to its facilities as necessary to perform the Services and shall be responsible for providing a safe workplace and working conditions. Any hazardous or toxic materials to which MNAQ' employees, agents, or representatives may be exposed during the performance of the Contract shall be properly stored and labeled by Customer in accordance with applicable laws and regulations.

6.4. Customer acknowledges having been fully informed of the elements necessary for its understanding and acceptance of the terms of the Contract.

## **7. Management of Customer Content and Materials**

7.1. MNAQ shall retain copies of all Service Reports and Results and other Customer Content stored within a Software System throughout the Retention Period. Within a reasonable period of time following submission of a written request by Customer at any time during the Retention Period, MNAQ shall deliver to Customer in raw data format any Customer Content uploaded and stored by Customer within a Software System, subject to the payment of the related fees. Upon the expiration of the Retention Period, MNAQ will have the right to destroy or otherwise dispose of any and all Service Reports and Results and other Customer Content and records relating to the Services in its possession.

7.2. Customer acknowledges that, due to the nature of the Services to be conducted, MNAQ shall be under no obligation at any time to return or dispose of samples or other tangible materials provided to MNAQ for analysis, unless return of such samples or materials is specifically requested by Customer in writing and is reasonably practicable following the performance of Services with respect thereto. Samples and materials provided by and not returned to Customer may be considered as waste that may be destroyed by MNAQ upon completion of the Services or after a retention period determined by MNAQ.

7.3. MNAQ shall have the unlimited right, free of charge or further consideration, to use and make available for third parties to use for scientific, research or development purposes, on a de-identified or aggregated basis, any Customer Content and anything contained in or created from Customer Content, or otherwise derived in connection with the Services; provided, however, that no such use shall identify Customer. MNAQ shall have the right to access, use, reproduce, store, process and distribute as desired and may make available to third parties the analytical and statistical information derived from such data.

## **8. Delivery, Performance Schedules and Turnaround Times**

8.1. Delivery dates, performance schedules and milestones, and other turnaround times for Services shall be as specified in the Service Order.

8.2. Any delay for which Customer is responsible, including but not limited to delays in the delivery to MNAQ of samples or other materials or information required for the performance of Services, failure to timely communicate requirements for MNAQ personnel performing on-site Services, late payment of fees hereunder, or other lack of adequate cooperation, shall exempt MNAQ from any possible commitment or liability regarding turnaround, schedules, milestones, or delivery times.

8.3. At least fourteen (14) days prior to any scheduled on-site visit by MNAQ personnel to a Customer facility, Customer shall notify MNAQ of any applicable health screening, vaccination, or other personal wellness requirements, limitations or restrictions for on-site visitors; provided, however, that if Customer is subject to a government mandate to implement any such requirements within a period of time that is less than fourteen (14) days, Customer shall notify MNAQ of such requirements as soon as reasonably possible. If Customer fails to disclose such information to MNAQ in a timely manner, and as a result, MNAQ is unable to dispatch qualified personnel meeting Customer's requirements to Customer's site on the scheduled date, MNAQ shall not

be liable in any way for missed deadlines or turnaround times arising as a result of such delayed site visit.

## **9. Crisis Management Services and Other Support**

9.1. If Customer experiences a Crisis Situation and requests MNAQ' assistance to manage or otherwise address such Crisis Situation, MNAQ will designate certain of its personnel having expertise in the relevant area to (i) facilitate priority access for Customer to the applicable Services offered by MNAQ (ii) to provide results of such Services and other updates and reports to Customer as needed throughout the Crisis Situation, and/or (iii) to provide such other expert guidance, advice and analysis as MNAQ may be qualified to provide to assist Customer in the resolution of the Crisis Situation. Such services shall be considered to be outside of the Services set forth in the Service Order and will be subject to additional fees as specified in Article 10 below.

9.2. If, for any reason other than improper performance by MNAQ of the Services, Customer requests or otherwise causes (including by way of legal requirement) MNAQ to provide any type of Litigation Support, then MNAQ reserves the right to seek compensation from Customer as set forth in Article 10 below.

## **10. Fees and Expenses**

10.1. All fees for the Services shall be set forth in the Service Order, except as may be otherwise mutually agreed upon by the parties in writing.

10.2. If the Term of the applicable Service Order exceeds one calendar year and unless specified in the Service Order, MNAQ reserves the right to increase fees, additional activities, and/or travel and accommodation on an annual basis, effective as of the first day of the second calendar year of the Term based on the applicable consumer price Index or similar.

10.3. Unless otherwise stated in the Service Order, all prices for the Services are expressed in Philippine Peso, and all amounts payable are exclusive of tax and are increased by VAT at the rate applicable on the invoice issue date.

10.4. After prior notice to Customer, prices may be increased during the performance of the Services in the event of a change in applicable regulations, industry standards, material increase in the cost of raw materials, or other factors beyond MNAQ' control which result in an increase in the cost of providing the Services.

10.5. Customer shall be responsible for all of the following costs and expenses, as applicable, regardless of whether such are specified in the Service Order:

- (i) Any costs, bank fees, or other services fees associated with the transfer of funds internationally;
- (ii) If Customer requires MNAQ to submit invoices through a third party billing system, any and all fees associated with MNAQ's use of such system;
- (iii) All reasonable expenses incurred by MNAQ for destruction, return, and/or transfer of samples and other Customer Content, confidential information, and other records provided in connection with the Services, and MNAQ shall invoice such costs to Customer;
- (iv) Any storage costs in the event that Customer requires storage of Customer Content or any other records provided in connection with the Services beyond MNAQ's standard retention term.

10.6. Any reissue or amendment of a Service Report at Customer's request in accordance with Section 4.5 above may be invoiced by MNAQ at a reasonable rate to be determined by MNAQ in its discretion.

10.7. Customer shall pay all reasonable attorneys' fees, expenses and other costs related to any Services or other assistance provided by MNAQ to Customer in connection with Article 9 in addition to such reasonable service fees as MNAQ may apply.

## **11. Payment terms**

11.1. Unless otherwise stated in the applicable Service Order, Customer shall pay MNAQ for performance of the Services and all related expenses in accordance with MNAQ' invoices, which shall be paid within 30 days of the date of invoice. Customer's failure to contest any invoice within fifteen (15) days prior to the due date shall be deemed as Customer's acceptance of the total amount of such invoice. No discounts shall be granted for early payment, and Customer shall not be entitled to reduce payment of invoiced amounts by any amounts due to Customer by MNAQ.

11.2. Any balance remaining unpaid after the due date may be automatically subject, without reminder or prior notice, to a service charge of an amount equal to the interest rate applied by the local Central Bank to its more recent financing operation plus ten percent (10%), which will run from the day following the due date until payment. In no event shall such charge exceed the rate permitted by applicable law

11.3. Customer's failure to make payments within 30 days of the date of invoice shall be deemed an event of default under these T&Cs, and all amounts owed by Customer will become immediately due and payable without prior notice, and MNAQ may, in its sole discretion, postpone, suspend or terminate the Contract and any outstanding Service Orders. If legal action or collection proceedings are necessary to enforce Customer's payment obligations, Customer shall be liable for MNAQ' costs of collection, including any collection agency retention costs, court costs and attorney's fees.

11.4. MNAQ reserves the right, at any time during the Contract, to require Customer to provide information on its solvency and/or satisfactory security for performance of Customer's obligations under the Contract. If Customer fails to furnish satisfactory information or security upon such request, MNAQ may, at its option, postpone or suspend further performance of Services or terminate the Contract and/or any outstanding Service Orders.

## **12. Confidentiality**

12.1. All information of any type, discussed or disclosed, in writing, orally or visually, by MNAQ and/or Customer, as part of the negotiation or performance of the Contract or the Contract itself, including these T&Cs, are subject to the confidentiality obligations set forth herein for the duration of the Contract and the five (5) years following its termination for any reason. The confidential information of MNAQ expressly includes, without limitation, the Software Systems and the Intellectual Property Rights related thereto. The contents of any Service Report or Results furnished by MNAQ shall be the confidential information of Customer.

12.2. Without prejudice to the right granted to MNAQ to use the Customer Content under these T&Cs, neither party may disclose, without prior written consent of the other party, the other party's confidential information to any third party, other than its duly authorized representatives, advisors, subcontractors, affiliates, employees or agents or accreditation body (COFRAC) and its affiliated companies who have a need to know for the purpose of the Contract and who are bound by obligations substantially similar to those stated herein.

12.3. Customer and MNAQ are responsible for themselves and their employees and shall implement all means required to ensure their compliance with the confidentiality obligations.

12.4. The confidentiality and non-use obligations hereunder shall not apply to information which (a) was in possession of the recipient prior to transmission by the discloser; (b) was or became accessible to the public through no fault of the recipient; (c) the recipient receives in good faith from a third party entitled to disclose it; or (d) is independently developed by the recipient, without reference to information received hereunder. In the event that either party is required by mandatory reporting obligations, applicable law or regulation or by legal process to disclose any confidential information, such party shall provide the other party with prompt notice of such request, unless otherwise prohibited.

12.5. Notwithstanding any contrary provision, Customer authorizes MNAQ to retain in its confidential files (a) one hard copy of confidential information provided by Customer and/or one copy of any notes, reports or summaries written by MNAQ that includes Customer's confidential information, exclusively for recordkeeping purposes or as required by internal compliance policies, and (b) confidential information in electronic form for which extraction and deletion from MNAQ' system is difficult or technically impossible.

## **13. Intellectual property**

13.1. Unless prior written consent is obtained, the parties acknowledge that they do not acquire any ownership rights over any Intellectual Property used by a party in connection with the Services. Except to the extent specifically set forth in these T&Cs or in a Service Order, no right to license whatsoever, either express or implied, is granted with respect to any Intellectual Property now or hereafter owned or controlled by Customer or MNAQ, and under no circumstances will Customer have any rights in or to any Software System except for (as applicable) a limited license for use. The parties expressly reserve all rights not otherwise specifically granted hereunder or in a Service Order.

13.2. Customer shall not, without MNAQ' prior written consent, (i) use MNAQ' name, trademarks, or logo; (ii) use any Application, Results or Service Report in any manner which may cause harm to MNAQ' reputation and/or its business; or (iii) use for commercial purposes any training materials that may be given to Customer and for which MNAQ retains the Intellectual Property rights.

13.3. Customer will retain intact and will not modify or remove any of MNAQ' or its accreditation bodies', licensors', or providers' trademarks, service marks, logos, copyright and/or trademarks designators or makings, or other ownership indicators from any Service Reports or other report forms, splash or display screens, printout pages, or other forms of retrieved data or displays of any Software System. In particular, no Service Report shall be altered such that any accreditation body trademark, appearing thereon is separated from the MNAQ name.

13.4. MNAQ and/or its third party providers and licensors, shall at all times retain ownership of all rights, title and interest in and to all Intellectual Property relating to the Applications, Application Platforms, Application Dashboards, and all enhancements, revisions, updates, modifications, supplements, interim works and derivative works thereto. From time to time, Customer may provide information to MNAQ on which MNAQ may partly rely to design, structure or develop a Development, and Customer hereby consents to MNAQ' use of such information to design, to structure or to determine the scope of such Developments. Customer acknowledges and agrees that it may not claim any right of ownership or Intellectual Property rights over any such Developments, and any such Developments shall be, and shall remain, the sole and exclusive property of MNAQ.

13.5. Customer expressly authorizes MNAQ to use it as a commercial reference for MNAQ' marketing purposes and, solely in connection such marketing activities, to use and reproduce, without charge, Customer's name and logo in accordance with Customer's specifications; provided, however, that Customer shall be entitled to withdraw such consent at any time for any or no reason. Following termination of the Contract for any reason or earlier withdrawal of Customer's consent, MNAQ shall be permitted to continue using any printed format media that has been already printed before such termination or withdrawal and which include a reproduction of the Customer's name and/or logo. For any such use of Customer's name and/or logo made on its website, MNAQ undertakes to withdraw them within thirty (30) days following Customer's request.

## **14. Limitation of liability**

14.1. **EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY HEREIN AND TO THE FULLEST EXTENT PERMITTED BY LAW, ALL TERMS, CONDITIONS, AND WARRANTIES (INCLUDING, WITHOUT LIMITATION, ANY**

**WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONDITION OF SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE) RELATED TO THE SERVICES, A SERVICE ORDER, THESE T&Cs OR OTHERWISE ARE DISCLAIMED AND EXCLUDED UNLESS THE EXCLUSION OF ANY SUCH WARRANTIES WOULD CONTRAVENE APPLICABLE LAW OR CAUSE ANY PART OF THESE T&Cs TO BE VOID. THE WARRANTIES, OBLIGATIONS, AND LIABILITIES OF MNAQ HEREUNDER ARE EXCLUSIVE.**

**14.2. THE SOFTWARE SYSTEMS DESCRIBED HEREIN, AS WELL AS ANY UPDATES, MODIFICATIONS AND OTHER MATERIALS, AND SERVICES WILL CONFORM TO THE SPECIFICATIONS FOR A TERM EQUAL TO THE WARRANTY PERIOD STATED IN THE SOFTWARE SYSTEMS' USER DOCUMENTATION. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS STATED IN THE FOREGOING SENTENCE, THE SOFTWARE SYSTEMS DESCRIBED HEREIN, AS WELL AS ANY UPDATES, MODIFICATIONS AND OTHER MATERIALS, AND SERVICES ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND. IN ADDITION, CUSTOMER EXPRESSLY AGREES THAT ACCESS TO THE SOFTWARE SYSTEMS MAY BE LIMITED OR UNAVAILABLE DURING PERIODS OF PEAK DEMAND, SOFTWARE SYSTEM UPGRADES, MALFUNCTIONS, OR SCHEDULED OR UNSCHEDULED MAINTENANCE OR FOR OTHER REASONS.**

**14.3. MNAQ MAKES NO WARRANTIES REGARDING, AND DISCLAIMS ALL LIABILITY FOR, THE ACTS OR OMISSIONS OF THIRD PARTIES, ANY MATERIALS PROVIDED BY THIRD PARTY LICENSORS, HOSTS OR PARTNERS, ARRANGEMENTS WITH THIRD PARTIES, OR USE OF THIRD PARTY SITES, SYSTEMS OR SERVICES.**

14.4. Within the limits of what is allowed by law, MNAQ' liability to Customer for breach of this Contract, any implied warranties, or for any negligence or other wrongdoing in the performance of the Services or otherwise related hereto is limited, at the Customer's option, to either re-performing the Service challenged or refunding the total fee paid in respect of that part of the Service.

14.5. MNAQ will under no circumstances be liable, in any manner whatsoever, for any indirect, special, incidental, punitive or consequential loss or damage, including but not limited to costs of recovery or loss of business, data, revenue, profits, interest, opportunity, image or customers, suffered by the Customer or any third party however caused and based on any theory of liability including but not limited to, breach of contract, tort (including negligence) or violation of statute, whether or not MNAQ has been advised of the possibility of such damages.

## **15. Indemnity**

15.1. MNAQ agrees to defend, indemnify and hold harmless Customer, its directors, officers, representatives, agents, employees and contractors from and against any and all Claims if MNAQ has received written notice thereof not later than six (6) months after the date of the Customer's knowledge of the relevant Claim which (i) is the proven direct result of MNAQ' willful misconduct or fraud in connection with the performance of the Services or (ii) results from a third party claim that any Application in unmodified form infringes or misappropriates such third party's proprietary intellectual property rights; provided, however, that the indemnity in this subparagraph (ii) shall not apply if the alleged infringement arises from: (A) use of Application other than within the applicable Software System; (B) use of any Application that has been

modified or merged by Customer with other programs; (C) MNAQ following the designs, specifications or written instructions of Customer; (D) the use of any Application in combination with other software or hardware not provided or approved by MNAQ; or (E) the Customer Content processed by or stored within the Application.

15.2. Customer agrees to defend, indemnify and hold harmless MNAQ, its affiliates and their respective officers, agents, employees, representatives and contractors from and against any and all Claims arising out of or relating to (except to the extent of any required indemnity of Customer by MNAQ pursuant to Section 10.1 above) (i) the performance of the Services in accordance with these T&Cs or any Service Order; (ii) Customer's use of any products reviewed or analyzed by MNAQ; (iii) the use of the Results or Service Reports or any other data or analysis provided by MNAQ hereunder; (iv) any Customer Content; or (v) any unauthorized use of or access to the Software Systems.

## **16. Personal data**

16.1. The parties undertake to always process personal data in accordance with all applicable Privacy Legislation and these T&Cs. If one Party considers that an instruction by the other Party constitutes a breach of the Privacy Legislation, it should immediately notify the other Party.

16.2. MNAQ may provide on Customer request the list of the technical and security measures taken to ensure the protection of the personal data processed.

16.3. For processing relating to the preservation of the commercial relationship, each party shall act as Controller. For processing as part of the performance of the Services, the Customer shall always act as Controller and MNAQ as Processor in compliance with the Privacy Legislation.

16.4. Customer acknowledges having been fully informed of the privacy policy with regard to the processing of personal data by MNAQ within the framework of the Contract.

16.5. Description of the processing:

- (i) ***Purpose of the processing:*** MNAQ will process personal data solely for the purpose of performing the Services. MNAQ will act solely on behalf of and under the instructions of the Customer, on the basis of this Contract's content
- (ii) ***Description of personal data processed:*** surname, name, postal address, email address, phone number, occupation, company, IP address.
- (iii) ***Duration of the processing:*** Processing is undertaken during the term of the Contract. In addition, personal data collected and processed will be stored and archived by MNAQ for a period equivalent to the legal storage obligations to which MNAQ is subject.
- (iv) ***Transfer of personal data:*** MNAQ shall not transfer any personal data to a country outside the Area of Origin, unless the Customer has expressly authorized such transfer in writing. Notwithstanding the above, MNAQ is expressly authorized to transfer personal data processed under the Contract to one or more of its affiliates, located or not within the Area of Origin, involved in the processing and more broadly in the performance of the Services. Data transfers outside the Area of Origin may only occur in accordance with the Privacy Legislation. Customer acknowledges and agrees that MNAQ uses external service providers located in the United States for (A) storing and hosting some of its data; and (B) the operation of its CRM.
- (v) ***Rights of the data subjects:*** Data subjects have a right to access their personal data, a right to be informed of how personal data is being processed, a right to request rectification, a right to erasure or deletion upon valid grounds, a right to object to processing and a right to be forgotten, a right to restriction of processing, to data portability, to file a complaint with the Philippine national privacy

commission, and the right to be informed on automated processing (including profiling) where data will or likely be made as the sole basis for decision-making. Any request by the data subjects for the exercise of their rights must be sent to [dpo@MNAQ.com](mailto:dpo@MNAQ.com) and will be processed within a reasonable time.

#### **17. Ethics & Compliance**

17.1. Customer represents and warrants that (i) Customer is in material compliance with all applicable (x) export and data privacy laws and regulations of any relevant jurisdiction with respect to Customer's use of any Software Application and the related Software System, and (y) controlled substances laws and regulations of any relevant jurisdiction, such as the U.S. Controlled Substances Act (21 U.S.C. Ch. 13, § 801 et seq) and the Philippine Comprehensive Dangerous Drugs Act of 2002; and (ii) neither the Customer nor, to the knowledge of the Customer, any owner, director, officer, agent, employee, affiliate, or supplier of the Customer is named on any U.S. or EU government denied party list. Further, Customer shall not permit its users or suppliers to receive Services or access or use any Results, Service Report, or Software System in a U.S. or EU embargoed country or in violation of any U.S. or EU export law or regulation.

17.2. Each party will comply with all applicable anti-corruption Laws, including, but not limited to, the United States Foreign Corrupt Practices Act, the Philippine Anti-Graft and Corrupt Practices Act, the Philippine Revised Penal Code, as each may be amended from time to time, and shall adhere to the principles governing relationships among business partners as set forth in MNAQ's [Code of Conduct](https://www.flipsnack.com/merieuxnutrisciences/code-of-conduct-merieux-nutrisciences/full-view.html) posted at <https://www.flipsnack.com/merieuxnutrisciences/code-of-conduct-merieux-nutrisciences/full-view.html> or successor MNAQ website. Each party agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift or item of value from the other party in connection with the Contract, excluding reasonable gifts and entertainment provided in the ordinary course of business.

17.3. In no event will either party be obligated under the Contract to take any action that it believes, in good faith, would cause it to be in violation of any Laws, rules, ordinances or regulations applicable to it.

17.4. Customer agrees that promptly upon becoming aware of any violation or potential violation of applicable Laws or ethics standards pertaining to the Services or the relationship between the Parties, Customer shall report such violation to MNAQ at <https://integrity-line.mxns.com/>.

17.5. If necessary and in accordance with applicable law, MNAQ will cooperate with local, state, federal and international government authorities with respect to the Services.

17.6. Notwithstanding any other provision in these T&Cs, MNAQ may immediately terminate the Agreement and/or deny Services for noncompliance with applicable Laws or in the event any circumstance arises which MNAQ determines, in its sole discretion, could cause it to violate applicable Laws or otherwise presents a material risk to MNAQ's business or reputation.

#### **18. General conditions**

18.1. The Contract and any open Service Orders may be terminated by MNAQ with thirty (30) days written notice. Either party may terminate the Contract and any open Service Orders with immediate effect in the event of insolvency of the other party. If the Contract or any outstanding Service Orders are terminated, MNAQ shall be paid in full for all Services performed through the termination date, and the Customer shall be provided with a report of Services conducted prior to termination.

18.2. Customer may not delegate, assign or transfer all or part of the Contract without MNAQ's prior written consent. MNAQ may assign or transfer this Contract at any time, to any of its affiliates, provided such affiliate assumes MNAQ's obligations hereunder, thereby releasing MNAQ from any future obligations.

18.3. MNAQ may subcontract some parts of the Services to other qualified third parties, provided that such third parties comply with MNAQ's obligations as set forth herein.

18.4. MNAQ shall not be liable for delays or other problems caused by unforeseen circumstances, compliance with governmental requests, laws, regulations, or breakage or failure of equipment or apparatus, or any other event beyond the reasonable control of MNAQ.

18.5. It is not intended that any of the provisions of this Contract shall benefit, and it shall not be construed that these provisions benefit or are enforceable by, any other third parties.

18.6. The relationship between the parties hereunder is of independent contractor and principal and neither party can make a commitment on behalf of the other. No employment, partnership, joint venture, agency, or mandate is created through the provision of the Services.

18.7. Each party, at its own expense, shall maintain adequate insurance coverage with respect to its responsibilities under the Contract.

18.8. Any modification to the Contract shall be done by a written agreement signed by the parties. The obligations set forth in Sections 6.1, 6.2, and Articles 2, 4, 5, 7, 12, 13, 14, 15, and 18 shall survive the termination of the commercial relationship between the parties.

18.9. In the event that any of the provisions of the Contract are or become null or void, such provisions shall be deemed to have been deleted from the Contract and the remaining provisions hereof shall remain valid and enforceable. If, at any time, MNAQ does not avail itself of any of these provisions, this shall not be construed as a waiver of the subsequent implementation of such provisions.

18.10. These T&Cs and the Services covered shall be governed by the laws of the Philippines. Any dispute shall be subject to the courts in whose jurisdiction MNAQ's registered office is located.

## Supplemental terms and conditions for Analytical Testing Services

These supplemental terms and conditions for Analytical Testing Services (the “**Testing Services Terms**”) are appended to the MNAQ general Terms and Conditions for Services (the “**General T&Cs**”) and apply to all contracts for the performance of analytical testing services by MNAQ (the “**Testing Services**”). These Testing Services Terms and the General T&Cs are incorporated in their entirety into and form a part of any proposal or agreement for Testing Services entered into between Customer and MNAQ. Capitalized terms not otherwise defined herein shall have the same meaning as ascribed to them in the General T&Cs.

### **1. Service Reports**

- 1.1. Upon completion of testing, Results will be delivered in the form of a Certificate of Analysis (“COA”).
- 1.2. The data contained in the COA pertains solely to the analytical and sampling procedure(s) used and the homogeneity of the sample(s) received.
- 1.3. The Results may not be representative of the lot or batch or other samples, and consequently may not necessarily justify the acceptance or rejection of a lot or batch, a product recall, or support legal proceedings.
- 1.4. The COA does not imply that MNAQ has been engaged to consult upon the consequences of the analysis or for any action that should be taken as a result of the analysis.
- 1.5. Should Customer request a statement of conformity to its specification or standard, Customer acknowledges and agrees that any such statements contained in the Results are provided by MNAQ without taking measurement of uncertainty into account.

### **2. Fees and Price Adjustments**

- 2.1. Unless specifically quoted in the Service Order, compositing or sample preparation fees have not been applied to Customer’s samples. Should Customer’s test needs change such that extensive sample preparation is required, or large compositing schemes are implemented, pricing may be adjusted to reflect the time required to complete these processes.
- 2.2. The pricing stated in the Service Order is based on sample volume estimates provided by the Customer. If, at any time following ninety (90) days from the Effective Date of the Service Order, actual sample volumes are lower than the estimated sample volumes, then MNAQ reserves the right, to increase the pricing based on the sample volumes actually tested by MNAQ.
- 2.3. The pricing of any tests to be performed by subcontracted laboratories outside the MNAQ network, as specifically identified in the Service Order, is subject to change at any time without prior notification to Customer or MNAQ.

### **3. Timing & Surcharges**

- 3.1. Standard turnaround times for all tests are set forth in the Service Order and are indicated in business days.
- 3.2. Turnaround Times (TATs) listed in the Service Order are based on when the samples arrive at the MNAQ laboratory. TATs outlined in the Service Order are based on negative

results. Further confirmation may be required for some testing.

- 3.3. Customer must call to discuss any rush requests with MNAQ prior to submitting samples to ensure that the requested turnaround time is possible. Turnaround times are subject to capacity, staffing, and sample volumes within the applicable laboratory, and rush surcharges of at least 50%, as determined by MNAQ and communicated to Customer at the time the rush request is made, will be added to the cost of any such tests performed on an accelerated basis, with higher surcharges applicable to shorter turnaround times.

### **4. Sampling and Picking**

- 4.1. Customer shall be responsible for submitting its own samples, unless otherwise indicated in the Service Order.
- 4.2. MNAQ shall not be liable for any reason due to defects inherent in the sample(s).

### **5. Shipping**

- 5.1. Customer shall ensure that all samples shipped or otherwise delivered to MNAQ are (i) fully described on all shipping/delivery documents, (ii) properly packaged, and (iii) accurately marked and labeled. If a shipment contains hazardous materials or other dangerous items or governmentally regulated substances, the packaging and contents of the shipment shall be conspicuously labeled with content information and all necessary and advisable warnings and proper handling instructions and restrictions.
- 5.2. Customer shall be responsible for damages incurred by MNAQ, its employees and its independent contractors that are the result of (i) Customer withholding safety information about handling any materials delivered to MNAQ, or (ii) the nature and content of any materials delivered to MNAQ.
- 5.3. MNAQ shall not be responsible for any loss, damages or delays resulting from (i) untimely, incorrect, incomplete or missing shipping or handling information, (ii) the nature or content of any shipment, including any defect, characteristic or inherent vice of the shipment, or (iii) damage to or loss of articles or alteration in any manner of the contents of a shipment (including, but not limited to spoilage, contamination or chemical changes affecting samples) as a result of improper packaging, shipping conditions or damage to packaging during shipment.
- 5.4. If MNAQ ships samples internationally on Customer’s behalf, Customer agrees to pay for all fees associated with shipment of Customer’s samples including but not limited to customs clearance fees, permit fees and other government agency fees, which are variable and are applied on a case-by-case method. MNAQ will work with Customer to mitigate any known clearance formalities before shipment.