



Agreement for NMR-based Quantitative human serum and EDTA plasma metabolomics platform analyses as a service

This Contract together with duly signed Order Form between Nightingale Health Ltd. (“Nightingale”) and Customer permits Customer to purchase Nightingale’s Services pursuant to Order Forms referencing this Contract and sets forth the basic terms and conditions. This Contract shall govern Customer’s initial purchase on the Effective Date as well as any future purchases made by Customer, which reference this Contract.

Nightingale and Customer are hereinafter referred to as the “Parties” or individually a “Party”.

By execution of the order form you agree that you have read this contract and intend to be bound, as if you had signed these terms in writing. If you are acting on behalf of an entity, you warrant that you have the authority to accept the terms of this contract for such entity.

1. Background

Nightingale has a proprietary platform for NMR-based quantitative human serum and EDTA plasma metabolomics analyses developed on the basis of the following scientific papers (“Platform”):

- Soininen P et al. *Analyst*. 134:1781, 2009
- Inouye M et al. *Mol Syst Biol*. 6:441, 2010
- Kettunen J et al. *Nat Genet* 44:269, 2012

Customer is wishing to purchase analyses as a service from Nightingale utilizing the Platform based on Nightingale’s proprietary and confidential information and intellectual property rights. For the sake of clarity, to provide the analysis as a service, Nightingale shall only perform the tasks and obligations explicitly agreed upon in this Contract.

2. Purpose and subject of the agreement

Parties wish to enter an agreement (“Contract”) on analyses as a service utilizing the Platform. To utilize the Service, a signed Order Form is required for each set of Samples. In the Order Form Parties agree

- I. the type and number of Samples,
- II. schedule for delivery of Samples and Service Deliverables and
- III. pricing and terms for payment if different to the Contract.

The subject of the agreement is, in accordance to the Platform, to provide analyses as a service (“Service”) for venous human serum and/or EDTA plasma samples (“Sample”), as agreed in the Order Form, owned and provided to Nightingale by the Customer.

Purpose (“Purpose”) of this Contract is to enable Customer to acquire, utilizing the Service, analysis results (Service Deliverables) according to the Platform, for the set of Samples, as set forth in this Contract and the Service Description found at

<https://nightingalehealth.com/legal/description>

(“Service Description”).

Based on this Contract Nightingale will

- provide instructions to Customer how to prepare and ship the Samples to Nightingale’s laboratory in Finland
- analyse the NMR-data collected for the Samples by Nightingale using the Platform
- deliver the quantified metabolites, Service Deliverables, according to the Platform, to Customer and
- ship back or destroy the Samples as agreed between the Parties.

During the Contract Nightingale shall provide the Service described in more detail below and in the Service Description and all reasonable assistance to the Customer in order to serve the Purpose of this Contract in accordance with the terms and conditions set forth in this Contract.

3. Provision of the Service

The Service will be provided pursuant to the Contract and subject to Nightingale’s working methods. Any work, action or material other than explicitly agreed to be performed or delivered by Nightingale shall be subject to a separate agreement or assignment between the Parties.

If the circumstances for the provision of the Service have been changed due no fault of Nightingale, or the information given by the Customer to Nightingale was proved to be erroneous or insufficient, Nightingale shall be entitled to charge the Customer for any additional work or other expense resulting therefrom, and to revise the Service and time schedule when necessary.

During the Contract any consulting services and/or extra work outside the agreed scope and the Service Deliverables, such as providing Nightingale’s expertise in statistical analyses to the Customer regarding the Service Deliverables or any other research consulting shall be charged separately in accordance with Nightingale’s then current price list. If consulting requires traveling, Nightingale shall charge the Customer all travel/accommodation expenses and travel time according to 50% of hourly rate above. All consulting tasks will be agreed separately.

Nightingale's Service is designed to provide Service Deliverables only for human Serum or EDTA plasma Samples. In a case when Customer decides to deliver any other type ("Other Type") of Samples (for example, but not limited to, Samples containing any other additives than EDTA) to Nightingale, Nightingale shall deliver the Service with all reasonable efforts using the agreed service methods without any guarantee or warranty. Notwithstanding anything contrary in the Contract, Customer hereby explicitly accepts that regardless of Nightingale's ability to provide the Service Deliverables, all Other Type of Samples will be fully charged and paid by the Customer.

4. Pricing

Prices set forth in the Contract shall be exclusive of any travel, governmental or other administrative (such as customs) costs incurred by Nightingale in course of performing the Service. Respectively the prices are excluding any taxes relating to the provision of the Service, which shall be added to the invoice to then current extent.

Respectively, value added tax will be added to all prices set in the Contract. Value added tax will be charged according to applicable value added tax between Nightingale and Customer.

Sample shipment costs are excluded from the pricing. Customer is responsible for all possible Sample shipment costs.

The Customer must notify Nightingale of any objections to the invoice without unnecessary delay, and in any case within 14 days after receiving the invoice.

If the Customer or its relevant project/research lacks funding or otherwise runs into financial difficulties to the extent it is reasonable to expect the Customer to fail in performance of its contractual obligations, Nightingale may discontinue the performance of the Service and in addition to terminate the Contract in part or in whole upon written notice thereof to the Customer.

In addition, if the Customer delays payment, Nightingale shall be entitled to suspend the performance of its contractual obligations free of any liability without obligations to continue until all the invoices and/or related disputes have been solved to Parties satisfaction.

5. Customer's Obligations

Customer hereby agrees and warrants as follows:

- I. To provide Nightingale with accurate and sufficient information and material required for the provision of the Service in the agreed extent and as scheduled. The Customer is responsible for the contents of the Customer information, instructions and orders.
- II. To contribute to the performance of the Service with respect to factors that are under the command or control of the Customer.

- III. To refrain from engaging in any illegal, unfair or deceptive trade practices, unethical business practices whatsoever, or making any representations inconsistent with this Contract, the specifications and material provided by Nightingale to its possible end customer's or other stakeholders with respect to the rights and obligations related to the Service under this Contract;

Customer shall conduct its responsibilities in accordance with any instructions given by Nightingale. Customer shall be solely responsible for the results of its performance.

6. Service Deliverables

The sole deliverables of Nightingale's Service are the quantitative metabolic measures for the analysed metabolites for the Customer's samples (please see the list of measures at <https://www.nightingalehealth.com/legal/deliverables>). For the sake of clarity, the Service Deliverables shall include only customer specific values based on the Samples provided by Nightingale to the Customer as a result of the Service and shall not include any other Nightingale proprietary material and/or information including but not limited to methods, tools, processes, background material, spectral data or software.

If Nightingale is not able to deliver the Service Deliverables due to an error not attributable to Nightingale, including but not limited to Customer's failure in contributing the Service or fulfilling its agreed duties as agreed in accordance with this Contract, the Samples will be fully charged.

If Nightingale is not able to deliver the Service Deliverables due to inability of Nightingale's Service to analyse the data with more than 20% of metabolic measures missing (marked as NA) for a Sample there will be no charge for the respective Sample.

The Service Deliverables are send to Customer in an Excel file using unsecured e-mail and/or utilizing a web based tool, if not agreed differently. A web based tool will be available when separately notified by Nightingale.

7. Acceptance of the Service and Service deliverables

The Customer shall without unnecessary delay notify Nightingale of its acceptance or complaints to the Service delivered by Nightingale to the Customer. If the Customer fails to make the written complaint within fourteen (14) days from the receipt of the Service Deliverables, the Service shall be deemed accepted by the Customer.

The Customer shall not, without Nightingale's written consent, use the Service Deliverables before the acceptance of the Service and full payment by the Customer.

8. Intellectual Property Rights

Subject to all applicable fees agreed upon in the Contract Nightingale hereby assigns to the Customer all intellectual property rights and title to Service Deliverables described in the clause 6 above.

However, Customer grants Nightingale an unlimited, perpetual, irrevocable, transferable, royalty free right to use, copy and modify the Service Deliverables measured from the Samples to its internal research and development activities.

Except for the rights explicitly granted in this Contract, no other intellectual property right is assigned or granted by the conveying of the Contract or any related information and/or material to Party. Nightingale shall retain the exclusive copyright and all other intellectual property rights in any material related to the Service, including but not limited to software, configuration files, service methods, spectral data and in any changes made therein and in any other results of the Service.

If the Customer fails to comply with the terms and conditions hereunder or those separately agreed upon, Nightingale may at its option cancel the Contract and any rights granted therein with immediate effect.

9. Confidentiality

Each Party agrees to keep in confidence all material and information received from the other Party and marked as confidential or which should be understood to be confidential and not to use such material and information for any other purposes than those set forth in the Contract.

However, this confidentiality obligation will not be applied to such material and information that is generally available or otherwise public, or that the party rightfully received from a third party without any obligation or confidentiality, or that was in the possession of the receiving party prior to the receipt of the same from the other party without any obligation of confidentiality related thereto as proven by the Customer's written records, or that a party has independently developed without using material or information received from the other party as proven by the Customer's written records.

Upon the expiry or termination of the Contract or if the Party no longer needs such material or information for the Purposes of the Contract, the Party shall promptly cease using the confidential information and material the Party received from the other Party and, unless the Parties separately agree on destroying such material, return such material with all copies thereof.

10. Force Majeure

Neither Party shall be liable for any delay to comply with its obligations under this Contract that is caused by circumstances beyond its reasonable control. Non-exhaustive illustrations of such circumstances are war, riot, explosion, abnormal weather conditions, fire, flood, earthquake or similar natural calamity, nation-wide or regional strike and lockout, currency restrictions, legal provisions Government action or regulation and nation-wide or regional power failure (hereinafter referred to as Event of Force Majeure).

Should either Party be prevented, or become aware that it is likely to be prevented, from carrying out its obligations hereunder due to an Event of Force Majeure, it shall forthwith give to the other Party a notice setting out details of such Event of Force Majeure. Upon cessation of such Event of Force Majeure, the Parties hereto shall discuss with good faith to restore the condition to its original status contemplated by the Parties.

In the Event of Force Majeure continuing over two (2) months, Nightingale shall have a right to terminate the Contract with immediate effect.

11. Liability

Nightingale's maximum liability in indemnify, damage or any other responsibility under this Contract related to a specific Order Form is limited to value equivalent to 25% of the Total Fee agreed in the respective Order Form. Only direct damages to Customer caused by Nightingale shall be compensated and in no event shall Nightingale be liable for any indirect or consequential damage, cover purchase, loss of, damage to, or alteration of data, or the cost of recreating such data.

12. Indemnity

Customer shall indemnify Nightingale against all liabilities related to any person, loss, damage, expense, cost, claim or proceeding suffered by Nightingale resulting from any negligence or omission by Customer, its servants, agents or subcontractors.

In addition, the Customer shall indemnify Nightingale against all claims and liabilities concerning unauthorized use of data provided by the Customer to Nightingale, including personal data.

Customer shall also indemnify Nightingale for any claims arising out of its operations based on the Service and/or Service Deliverables or any use thereof.

13. Data Protection and Privacy

Customer shall be responsible for any use of medical and/or personal data included in the material within the scope of the Service. Customer shall not provide Nightingale with any information or data in a form that could be construed as personal data under the relevant privacy and data protection legislations.

14. Export Control and Resale

The Customer shall adhere to any relevant export control laws and regulations with respect to providing the information to Nightingale or use of the Service Deliverables.

Without prejudice to the generality of this clause 14, the Service Deliverables may not be exported or resold for export if there is any grounds for suspecting that such material is intended to be used for any purpose related to nuclear, chemical or biological weapons or any other actions possible threatening the security or integrity of a nation or a person.

15. Subcontracting

Nightingale is entitled to use subcontractors to fulfil any of its obligations without separate permission from the Customer.

When using subcontractors, in no case shall Nightingale be relieved of overall responsibility of delivering the Service.

16. Warranty and Guarantee

It is guaranteed that the Service Deliverables of the Service contain results as set forth in the Service Description for Samples delivered to Nightingale to be analysed substantially in accordance with the Service Description. No other guarantee or warranty exists including but not limited to any warranty against accuracy, operability, sufficiency or completeness of information or merchantability, marketability, or fitness for any particular purpose of the Service Deliverables.

In case Customer notifies Nightingale of any defect in the Service Deliverables within fourteen (14) days of the delivery, Nightingale shall either the remedy of the defect or re-performance of the Service at its expense. Such warranty shall be Nightingale's sole liability for defects in the Service.

17. Miscellaneous

Unless explicitly agreed upon, any failure of either of the Parties to enforce, at any time or for any period of time, any of the provisions of this Contract shall not be construed as a waiver of such provisions or of the right of the Party thereafter to enforce each and every such provisions.

This Contract or any right hereunder shall not be assigned by Customer through merger or any other method, to any third party without prior written consent of Nightingale. Any assignment without such consent shall be null and void.

The terms and conditions of the Contract constitute the entire agreement and understanding of the Parties, and supersede all previous communications, whether oral or written, between the Parties relating the subject to this Contract.

If any provision of this Contract is found, by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Contract, and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

Clauses 8 (Intellectual property rights), 9 (Confidentiality), 11 (Liability) and 18 (Applicable Law and Dispute Resolution) as well as any other provision of this Contract that is meant by its nature to survive, shall survive the termination or expiration of this Contract. Any amendment, addition or notice required to be given hereunder shall be given in writing.

Any Nightingale's responsibilities, contracts and agreements related to the project and Service may be transferred to a third party in case of acquisition or merger.

18. Applicable Law and Dispute Resolution

The Contract shall be governed by the laws of Finland, excluding its regulations regarding the choice of law.

Any dispute, controversy or claim arising out of or relating to this Contract shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finnish Central Chamber of Commerce. The arbitration shall be held in Helsinki, Finland in English.

19. Termination

The Term for the Services shall be agreed in the relevant Order Form. In the event of failure or neglect of either of the Party to fulfil any of the provisions hereof to be performed by it, and if the other Party gives written notice of such default with reasonable time to correct such default, the Party giving such notice shall have the right to terminate this Contract at any time thereafter, provided the default is still in existence, by giving a written notice of such termination to the defaulting Party.

Either Party shall be entitled to terminate this Contract for cause with immediate effect upon a written notice thereof in the event the other Party commits a material breach of its obligations under this Contract or related orders.

Upon expiration or termination of this Contract as provided hereinabove or elsewhere in this Contract or by operation of law or otherwise, all rights of use / licenses provided in this Contract (excluding Customer's rights to use the Service Deliverables) shall forthwith terminate.