



General Terms and Conditions for NMR-based Quantitative Metabolomics Platform Analyses for Research Use

These general terms and conditions (“Terms and Conditions”) apply to services provided by Nightingale Health Ltd. (“Nightingale”) to a customer (“Customer”).

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

Definitions

When used in these Terms and Conditions, the Appendices of the Terms and Conditions or in the Order Form, the following terms shall have the meaning set forth below:

Agreement	means the agreement entered between Nightingale and the Customer, which consists of the Order Form, these Terms and Conditions and the Appendices to these Terms and Conditions.	Processor	means the contracting party which processes personal data on behalf of the Controller.
Anonymized Database	a database containing data solely on a generic, anonymous and aggregate basis. Anonymized Database shall not include any Personal Data.	Remaining sample material	means sample material delivered to Nightingale, which is not used for the Service.
Appendices	Appendix 1 Sample Handling and Shipping Appendix 2 Service Deliverables Appendix 3 Processing of Personal Data	Samples	human serum, EDTA plasma, citrate plasma or heparin plasma samples specified in the Order Form.
Controller	means the contracting party which determines the purposes and means of the processing of Personal Data.	Sample Batch	means the number of Samples delivered to Nightingale at one time.
Order Form	means Nightingale’s written order form signed by the Parties, in which these Terms and Conditions are referred to.	Service	means service provided by Nightingale under the Agreement. Nightingale performs the Service by applying the Platform.
Other Type of Samples	means any other type of sample than human serum, EDTA plasma, citrate plasma or heparin plasma samples.	Service Deliverables	means quantitative metabolic measures analysed from the Samples according to the Platform. The metabolic measures are listed in Appendix 2.
Personal Data	means information relating to an identified or identifiable natural person.		
Platform	means Nightingale’s proprietary biomarker analysis platform for NMR-based human serum and plasma metabolomics analyses.		

1. Background

Nightingale has a proprietary Platform for NMR-based quantitative human serum and plasma metabolomics analyses.

The Customer is wishing to purchase Service for the Samples from Nightingale, utilizing the Platform based on Nightingale's proprietary and confidential information and intellectual property rights.

2. Terms of the Service

This Agreement sets forth the terms for purchasing the Service. A signed Order Form is required for each purchase. By signing the Order Form, the Customer (a) agrees to be bound by these Terms and Conditions and the Appendices, and (b) acknowledges that any terms presented in any Customer's purchase orders or any other Customer's documents related to the order have no effect and shall not apply. The Customer warrants that the representative who signs the Order Form has the authority to bind the Customer to this Agreement.

In the Order Form the Parties agree

- i. the type and number of the Samples,
- ii. schedule for delivery of the Samples and the Service Deliverables and
- iii. specific pricing and payment terms.

In case of any contradiction between the Order Form and these Terms and Conditions, the Order Form shall prevail.

In case the Customer fails to deliver the Samples to Nightingale in accordance with the agreed schedule, Nightingale may change the delivery of the Service Deliverables to its earliest convenience at its sole discretion. In case the Samples are not delivered to Nightingale within six (6) months of the agreed milestone, the Customer's right for the Service shall lapse in respect of such Samples and the Customer is not entitled to any refund for paid unused Services.

Nightingale shall always charge the minimum of ninety-four (94) Samples per received Sample Batch notwithstanding the delivery schedule and pricing agreed in the Order Form.

3. Scope of the Service

The Service will be provided according to Nightingale's working methods. The Service shall consist of

- a) providing instructions to the Customer how to prepare and ship the Samples to Nightingale's laboratory;
- b) measuring and analysing the Samples using the Platform;
- c) delivering the Service Deliverables to the Customer; and
- d) disposing the Remaining Sample Material. Returning of the Remaining Sample Material can be organised as an additional service.

The Samples remain the property of the Customer at all times during the Service. Analysed Sample material will always be disposed after performing the Service.

Unless otherwise agreed, Customer shall not send Samples which are known to contain pathogens capable of causing permanent disability or life-threatening or fatal disease in otherwise healthy humans or animals when exposure to it occurs. Analysis services for such hazardous samples can be agreed separately.

During the validity of the Agreement any work, action or material other than explicitly agreed in the Agreement, such as providing Nightingale's expertise in statistical analyses to the Customer regarding the Service Deliverables or any other research consulting shall be agreed and charged separately, in accordance with Nightingale's then current price list. If consulting requires traveling, travel/accommodation expenses and travel time shall be agreed and charged separately.

If the circumstances for providing 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 expenses resulting therefrom, and to revise the Service and time schedule when necessary.

In case the Customer delivers Other Type of Samples to Nightingale, Nightingale shall use reasonable efforts to deliver the Service without any guarantee or warranty of being able to provide the Service. The 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 and Payment Terms

Prices set forth in the Agreement shall be exclusive of any travel, governmental or other administrative (such as customs) costs. Prices are excluding any taxes relating to providing 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 Agreement when applicable.

Sample shipment costs are excluded from the pricing. The Customer is responsible for all possible Sample shipment costs including the optional shipment of the Remaining Sample Material.

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. In such case, Nightingale shall also have the right to terminate the Agreement in part or in whole upon written notice thereof to the Customer.

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

5. Customer's Obligations

The Customer hereby agrees and warrants as follows:

- i. To provide Nightingale with accurate and sufficient information and material required for providing the Service in the agreed extent and as scheduled. The Customer is responsible for the contents of the Customer information and for the instructions and orders provided by the Customer.
- 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, providing false information regarding the Service in publications related to the use of the Service or to the Service Deliverables or providing false information to its possible end customer's or other stakeholders.

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

The Customer is fully responsible to handle all Sample material according to Nightingale's instructions for Sample Handling and Shipping (Appendix 1). In case of mishandling or inappropriate shipping or too low volume of the Samples, Nightingale will invoice and the Customer shall pay for the agreed Services for the respective Samples to the full extent, even if the Service Deliverables cannot be delivered.

The Customer is responsible for the Samples at all times when the Samples are not at Nightingale's or its subcontractor's possession, including but not limited to delivery.

6. Service Deliverables

The Service Deliverables (Appendix 2) are the sole deliverables of Nightingale's Service provided to the Customer. The Service Deliverables shall include only quantified metabolites based on the Samples 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 the Customer's failure in contributing the Service or fulfilling its agreed duties as agreed in accordance with this Agreement, the Samples will be fully charged.

As part of the quality control processes related to the Service, Nightingale reserves rights to remove Samples and/or individual metabolite concentrations from the data set at its sole discretion. Such removal of the Samples and/or metabolites shall not affect the Customer's payment obligations under the Order Form.

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 delivery time for the Service Deliverables is agreed in the Order Form. Nightingale shall use all commercially reasonable measures to deliver the Service Deliverables according to the schedule agreed in the Order Form. In case Nightingale is not able to deliver the Service

Deliverables within the agreed schedule, Nightingale uses every effort to deliver the Service Deliverables within six (6) months from the agreed Service Deliverables milestone in the Order Form. The agreed schedule is indicative for both Parties and is not a basis for sanctions or Agreement breach. However, as agreed in the Clause 2, the Customer's right for Service shall lapse and the Customer is not entitled to any refund for paid unused Services in case the Samples are not delivered to Nightingale within six (6) months of the agreed milestone.

Unless otherwise agreed, The Service Deliverables are provided to the Customer via password protected webpage with an encrypted connection. Nightingale sends the Customer instructions to access the webpage.

The Service Deliverables shall be deemed to be delivered to the Customer once Nightingale has made the Service Deliverables available and notified the Customer thereof.

7. Acceptance of the Service and Handling of Remaining Sample Material

After receiving the Service Deliverables, the Customer shall without unnecessary delay notify Nightingale of acceptance or complaints to the Service. If the Customer fails to make a 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.

If Customer wishes to receive the Remaining Sample Material, Customer shall notify Nightingale thereof within thirty (30) days from the delivery of the Service Deliverables in writing.

Nightingale may dispose the Samples if (i) Customer has not provided a written request to return the Remaining Sample Material within thirty (30) days from the delivery of Service Deliverables or if (ii) the Customer has requested to return the Remaining Sample Material but has failed to comply with the Sample return procedure.

Shipping of the Remaining Sample Material can be organized either by Nightingale or by the Customer as instructed in Appendix 1. Nightingale shall not be liable for any damage to or loss of the Remaining Sample Material during the shipping or shipping preparations by the courier. Nightingale shall have no responsibility over the courier's performance and the shipment shall occur entirely on the Customer's own risk.

Customer is fully responsible for all costs related to shipping, handling and packaging of the Remaining Sample Material. In case Nightingale organizes the shipping of the Remaining Sample Material, Nightingale invoices the actual shipping costs added with a service fee.

8. Intellectual Property Rights

Subject to all applicable fees agreed upon in the Agreement Nightingale hereby assigns to the Customer title and all intellectual property rights to the Service Deliverables.

Notwithstanding the foregoing, Nightingale is entitled to create Anonymized Databases by using the Service Deliverables and Customer grants Nightingale an unlimited, perpetual, irrevocable, transferable and royalty free right to use, copy and modify any anonymous information derived from the Samples in connection to performing the Service to its internal research and development including but not limited to improving, developing and analyzing the performance of its Platform and other products and creating new functionalities along with similar data.

Except for the rights explicitly granted in this Agreement, no other intellectual property right is assigned or granted based on the Agreement. 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 Agreement 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 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 Agreement.

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 receiving Party's written records, or that a Party has independently developed without using material or information received from the other party as proven by the receiving Party'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 Agreement, 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.

The existence of this Agreement shall not be regarded as Confidential Information.

10. Force Majeure

Neither Party shall be liable for any delay to comply with its obligations under this Agreement 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 a 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 Agreement with immediate effect.

11. Liability

Nightingale's maximum liability in indemnity, damage or any other responsibility under this Agreement related to a specific Order Form is limited to value equivalent to 25% of the Total Fee agreed in the respective Order Form. Nightingale is not 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, loss, damage, expense, cost, claim or proceeding suffered by Nightingale resulting from any negligence or omission by Customer, its servants, agents or subcontractors.

Customer shall indemnify Nightingale against all liabilities, damage, expense, cost, claim or proceeding concerning unauthorized use of Samples or data provided by the Customer to Nightingale, including Personal Data.

Customer shall also indemnify Nightingale for any liabilities, damage, expense, cost, claim or proceeding arising out of its operations based on the Service and/or the Service Deliverables or any use thereof.

13. Data Protection and Privacy

As the Controller, the Customer shall be responsible for any use of medical and/or Personal Data included in the material within the scope of the Agreement. The Customer shall comply with applicable privacy and data protection legislation.

Customer warrants that it has the right to process any and all Personal Data included in the material within the scope of the Agreement and that it provides Nightingale only such Personal Data, which can lawfully be transferred or disclosed to Nightingale.

Any Personal Data provided to Nightingale shall be pseudonymised by Customer, i.e. the Personal Data cannot be attributed to a specific data subject without the use of additional information. Such additional information shall not be provided to Nightingale.

Data processing obligations are agreed in more detail in Appendix 3.

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 are 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

Nightingale warrants to Customer that Nightingale will provide the Service in a professional manner following its established working methods. 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. The Service Deliverables are to be used for research purposes only. Customer shall use the Service Deliverables in its operations at its own discretion and responsibility.

In case Customer notifies Nightingale of any defect in the Service Deliverables within fourteen (14) days of the delivery, Nightingale shall either remedy the defect or re-perform 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 Agreement 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 Agreement or any right hereunder shall not be assigned by the 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 of this Agreement 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 Agreement.

If any provision of this Agreement 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 Agreement, and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

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 the Service may be transferred to a third party in case of acquisition or merger.

18. Applicable Law and Dispute Resolution

The Agreement 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 Agreement shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Central Chamber of Commerce. The arbitration shall be held in Helsinki, Finland, in English.

19. Termination

The Agreement becomes effective on the Effective Date agreed in the Order Form and shall remain in force until the Service is completed. The schedule for the Service shall be agreed in the relevant Order Form.

Each Party may terminate this Agreement with immediate effect by giving written notice to the other Party if the other Party commits a material breach of any terms of the Agreement and (if such breach is remediable) fails to remedy the breach within 30 days of that Party being notified in writing to do so.

Clauses 8 (Intellectual property rights), 9 (Confidentiality), 11 (Liability), 12 (Indemnity) and 18 (Applicable Law and Dispute Resolution) as well as any other provision of the Agreement that is meant by its nature to survive, shall survive the termination or expiration of the Agreement.