

Nightingale Health

General Terms and Conditions for Metabolomics Analyses

These general terms and conditions (“Terms and Conditions”) apply to services provided by Nightingale Health United States, Inc. (“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 SMTA, the following terms shall have the meaning set forth below:

Affiliates	means Nightingale's parent company or any affiliate or subsidiary of Nightingale or its parent company.	Clinical Data	means individual health data or other data related to Samples, as specified in Appendix 11.
Agreement	means the agreement entered between Nightingale and the Customer, which consists of the Service and Material Transfer Agreement, these Terms and Conditions and the Appendices to these Terms and Conditions referenced to in the Service and Material Transfer Agreement.	Cord Blood	means human blood samples collected from the umbilical cord when a baby is born.
Analyzed Sample Material	means sample material that is used for the Service.	CSF	means cerebrospinal fluid.
Anonymized Database	means a database solely containing data that has been de-identified in accordance with applicable laws and regulations and aggregated. Anonymized Database shall not include any Personal Information.	Data Analysis Service	means the Service specified in Appendix 11.
Appendices	<i>Appendix 1</i> Sample Handling and Shipping for Blood Samples; <i>Appendix 2</i> Service Deliverables for Blood Analysis; <i>Appendix 3</i> Use and Disclosure of Personal Information; <i>Appendix 4</i> Sample Handling and Shipping for Urine Samples; <i>Appendix 5</i> Service Deliverables for Urine Analysis; <i>Appendix 6</i> Sample Handling and Shipping for Cord Blood Samples; <i>Appendix 7</i> Service Deliverables for Cord Blood Analysis; <i>Appendix 8</i> Remaining Sample Material; <i>Appendix 9</i> Sample Handling and Shipping for CSF Samples; <i>Appendix 10</i> Service Deliverables for CSF Analysis; and <i>Appendix 11</i> Data Analysis Service.	Intellectual Property or IP	means all (a) technology, formulae, algorithms, ideas, creations, inventions, discoveries, and improvements (whether patentable or non-patentable and whether or not reduced to practice); (b) technical, engineering, manufacturing, product, marketing, servicing, financial, supplier, personnel and other information and materials; (c) specifications, designs, models, devices, prototypes, schematics and development tools; (d) Works of Authorship, including Software; (e) databases and other compilations and collections of data or information; (f) Trademarks; (g) Confidential Information (as set out in Section 9); and (i) tangible embodiments of any of the foregoing and of any Intellectual Property Rights, in any form or media whether or not specifically listed herein.
Blood	means human venous blood samples.	Intellectual Property Rights	means all rights (anywhere in the world, whether statutory, common law or otherwise) relating to, arising from, or associated with Intellectual Property, including (a) patents and patent applications, utility models and applications for utility models, inventor's certificates and applications for inventor's certificates, and invention disclosure statements; (b) copyrights and all other rights with respect to Works of Authorship and all registrations thereof and applications therefor (including moral and economic rights, however denominated);

	(c) other rights with respect to Software, including registrations thereof and applications therefor; (d) industrial design rights and registrations thereof and applications therefor; (e) rights with respect to Trademarks, and all registrations thereof and applications therefor; (f) rights with respect to Confidential Information (as set out in Section 9), including trade secret rights and rights to limit the use or disclosure thereof; (g) rights with respect to databases and other compilations and collections of data or information, including registrations thereof and applications therefor; (h) publicity and privacy rights, including all rights with respect to use of a person's name, signature, likeness, image, photograph, voice, identity, personality, and biographical and personal information and materials; and (i) any rights equivalent or similar to any of the foregoing.		information, including all data and information included in such databases, compilations or collections; (c) screens, user interfaces, command structures, report formats, templates, menus, buttons and icons; (d) descriptions, flow charts, architectures, development tools, and other materials used to design, plan, organize and develop any of the foregoing; and (e) all documentation, including development, diagnostic, support, user and training documentation related to any of the foregoing.
NMR	means nuclear magnetic resonance.	Trademark	means trademarks, service marks, logos and design marks, trade dress, trade names, corporate and company names, domain names, fictitious and other business names, and brand names, together with all goodwill associated with any of the foregoing.
Other Type of Samples	means any other type of sample than human serum, EDTA plasma, citrate plasma or heparin plasma samples separated from Blood, or serum, EDTA plasma, citrate plasma or heparin plasma samples separated from Cord Blood, CSF or human urine as specified in the SMTA.	Works of Authorship	means Software, and all other content, images, graphics, text, photographs, artwork, audiovisual works, sound recordings, graphs, drawings, reports, analyses, writings, and other works of authorship and copyrightable subject matter.
Personal Information	means information relating to a natural person ("Individual") that either identifies that Individual directly or creates a reasonable basis to believe the information can be used to identify the Individual. Personal Information is no longer Personal Information when it has been de-identified in accordance with applicable laws and regulations such that the Individual is no longer identified or identifiable using reasonable efforts, resources, and technology.	SMTA	means the Service and Material Transfer Agreement signed by the Parties, in which these Terms and Conditions are referred to.
Platform	means Nightingale's proprietary biomarker analysis platform for NMR-based metabolomics analyses of Samples.		
Remaining Sample Material	means sample material delivered to Nightingale, which is not used for the Service.		
Samples	means human serum, EDTA plasma, citrate plasma or heparin plasma separated from Blood or serum, EDTA plasma, citrate plasma or heparin plasma samples separated from Cord Blood, CSF or human urine samples specified in the SMTA.		
Sample Analysis Service	means the Service as defined in Section 3 of this Agreement.		
Sample Batch	means the number of Samples delivered to Nightingale at one time.		
Service	means any service provided by Nightingale under the Agreement.		
Service Deliverables	means the results of the Service as defined in Appendix 2 for Blood, Appendix 5 for Urine, Appendix 7 for Cord Blood, Appendix 10 for CSF and Appendix 11 for Data Analysis Service.		
Software	means all (a) computer programs and other software, including software implementations of algorithms, models, and methodologies, whether in source code, object code or other form, including libraries, subroutines and other components thereof; (b) computerized databases and other computerized compilations and collections of data or		

Interpretation:

Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

A reference to writing or written includes email.

1 Background

Nightingale has proprietary Platforms for NMR-based quantitative metabolomics analyses of Samples. Nightingale performs the Service using the Platforms.

Based on the Platforms and Nightingale's other proprietary and confidential information and Intellectual Property Rights, Nightingale provides Sample Analysis Service and Data Analysis Service, as further described in this Agreement.

2 Terms of the Service

This Agreement sets forth the terms for purchasing the Service. A SMTA signed by both Parties is required for each purchase. By signing the SMTA, 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 purchase orders or any other Customer documents related to the order have no effect and shall not apply. The Customer warrants that the representative who signs the SMTA has the authority to bind the Customer to this Agreement.

In the SMTA the Parties agree upon:

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

In case of any conflict between the SMTA and these Terms and Conditions, the SMTA shall prevail.

Nightingale reserves the right to reject any changes to the Services requested by the Customer. Any amendments or variations to the Services provided under this Agreement shall be jointly discussed and subject to mutual agreement in writing by both Parties before implementation.

Any descriptive matter or advertising issued by Nightingale, and any descriptions or illustrations contained in Nightingale's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of this Agreement or have any contractual force.

These Terms and Conditions apply to this Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3 Scope of the Service

The Service will be provided according to Nightingale's working methods and, subject to Clause 6, shall be supplied in accordance with the specifications of the SMTA in all material respects.

The Sample Analysis Service shall consist of

- i. providing instructions to the Customer describing how to prepare and ship the Samples to Nightingale's laboratory;
- ii. measuring and analyzing the Samples using the Platform;
- iii. delivering the Service Deliverables to the Customer; and
- iv. disposing of the Remaining Sample Material.

Subject to an additional fee, return of the Remaining Sample Material and other additional services can be agreed in the SMTA.

The Samples remain the property of the Customer at all times during the Service. Analyzed Sample Material will not be returned to the Customer, and Nightingale is entitled to destroy the Analyzed Sample Material after performing the Service.

The Customer shall inform Nightingale about any health and safety concerns regarding the Samples, including any known or suspected toxic or other contaminant that may be present in the Samples. Unless otherwise agreed, the Customer shall not send Samples which are known to or which the Customer reasonably believes might contain pathogens capable of causing permanent disability or life-threatening or fatal disease in otherwise healthy humans or animals when exposure to it occurs. Samples from countries with a known high burden of HIV (over 5 % HIV prevalence) will be automatically considered as hazardous Samples. Subject to an additional fee, analysis services for such hazardous Samples may be agreed separately.

In case the Customer purchases the Data Analysis Service, the scope of the Service is defined in Appendix 11.

During the term of the Agreement any service, work, action or material other than explicitly agreed in the Agreement shall be agreed in writing and charged separately, in accordance with Nightingale's then current price list. If the circumstances for providing the Service have been changed through no fault of Nightingale, or the information given by the Customer to Nightingale is late, 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 as necessary.

In case the Customer delivers Other Type of Samples to Nightingale, Nightingale shall use reasonable efforts to deliver the Service, without giving of 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

Whatever the number of Samples in a Sample Batch, Nightingale's minimum charge for each Sample Batch received is the price for processing ninety-four (94) Samples, notwithstanding the delivery schedule and pricing in the SMTA.

Prices set forth in the Agreement shall be exclusive of any travel, governmental or other administrative (such as customs) costs. All prices are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments (including without limitation, sales taxes, use taxes and value added taxes), and the Customer agrees to bear and be responsible for the payment of all such charges, excluding taxes based upon Nightingale's net income. All amounts due hereunder shall be grossed-up for any sales or withholding taxes imposed by any government.

Sample shipment costs are excluded from the prices set forth in the SMTA and are to be paid in addition. The Customer is responsible for paying all Sample shipment costs including, if agreed as an additional service, the return of the Remaining Sample Material.

The Customer must make payment of any undisputed parts of the invoice to Nightingale's nominated bank account within thirty (30) days from the date of the invoice. Time for payment shall be of the essence of the Agreement.

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. The Parties will then use good faith efforts to reconcile the disputed amount as soon as possible, but without prejudice to Nightingale's right to resort to dispute resolution pursuant to Clause 18.

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 will or might fail in performance of its contractual obligations, the Customer must notify Nightingale in writing as soon as possible. Upon

receipt of such notice, or if it reasonably considers such financial difficulties to exist, 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 without further obligation to the Customer.

If the Customer delays any payment in respect of any sums due to Nightingale under any contract, Nightingale shall be entitled to suspend the performance of its contractual obligations under all and any contracts still outstanding, free of any liability without obligation to continue until all the invoices and/or related disputes have been solved to the Parties' reasonable satisfaction.

5 Customer's Obligations

The Customer hereby agrees, warrants, represents and undertakes 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 co-operate with Nightingale in all matters relating to the Service; and
- iv. 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 customers 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 for handling all Sample material according to Nightingale's instructions for Sample Handling and Shipping (Appendix 1 for Blood, Appendix 4 for Urine, Appendix 6 for Cord Blood or Appendix 9 for CSF). In case of mishandling, inappropriate shipping or provision of insufficient 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 in Nightingale's or Nightingale's subcontractor's possession, including during delivery.

The Customer agrees that any publication that is based on or refers to the Service Deliverables shall include a reference to Nightingale's proprietary technology as instructed by Nightingale in writing.

6 Service Deliverables

The Service Deliverables (Appendix 2 for Blood analysis, Appendix 5 for urine analysis, Appendix 7 for Cord Blood analysis, Appendix 10 for CSF analysis or Appendix 11 for Data Analysis Service) are the sole deliverables of Nightingale's Service provided to the Customer. The Service Deliverables shall not include any other Nightingale proprietary material and/or information including methods, tools, processes, Intellectual Property Rights, background material or Software.

If Nightingale is not able to deliver the Service Deliverables due to an error not attributable to Nightingale, including the Customer's failure to carry out its responsibilities under this Agreement, the full price for the Service will be charged.

As part of the quality control processes related to the Service, Nightingale reserves the right 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.

The delivery time for the Service Deliverables is agreed in the SMTA. Nightingale shall use all commercially reasonable measures to deliver the Service Deliverables according to the schedule agreed in the SMTA. In case Nightingale is not able to deliver the Service Deliverables within the agreed schedule, Nightingale shall use all commercially reasonable efforts to deliver the Service Deliverables within six (6) months from the agreed scheduled delivery date in the SMTA. The agreed schedule is to be used by both Parties as a guideline only and failure to comply with the delivery schedule is not a basis for sanctions and does not constitute a breach of this Agreement. If the Customer fails to deliver the Samples or Clinical Data to Nightingale in accordance with the agreed schedule, Nightingale may change the delivery of the Service Deliverables to its earliest convenience. If the Samples or Clinical Data are not delivered to Nightingale within six (6) months of the scheduled delivery date, the Customer's right to receive the Services shall lapse and the Customer shall pay for the agreed Services to the full extent, if not otherwise agreed between the Parties.

Unless otherwise agreed in writing, the Service Deliverables are provided to the Customer via a secure web-based tool.

The Service Deliverables shall 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 (and in any event within fourteen (14) days) notify Nightingale of acceptance or any complaints about the Service Deliverables. If the Customer fails to provide written acceptance or to make a written complaint within fourteen (14) days from the receipt of the Service Deliverables, the Service shall be deemed to have been accepted by the Customer.

In case the 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 option and expense.

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.

Subject to an additional service fee, the return of the Remaining Sample Material may be agreed upon in the SMTA as an add-on service, as further detailed in Appendix 8. However, Nightingale may dispose of the Remaining Sample Material if the Customer fails to comply with the return procedure outlined in Appendix 8 within one (1) month of Nightingale's written notification regarding the volume of Remaining Sample Material after analysis. Should there be no Remaining Sample Material left after analysis, or should the Customer fail to comply with the return procedure, this shall not affect the Customer's obligation to pay the additional service fee.

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 at the Customer's own risk.

The Customer is fully responsible for all costs related to shipping, handling and packaging of the Remaining Sample Material.

8 Intellectual Property Rights

Subject to payment of 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. The Customer grants Nightingale an unlimited, perpetual, irrevocable, worldwide, transferable and royalty free right to use, copy and modify any de-identified information derived from the Samples in connection with the performance of the Service for Nightingale's internal research and development purposes 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. Except for the Samples and the Service Deliverables, Nightingale shall retain the exclusive copyright and all other Intellectual Property Rights in any other material related to the Service, including Software, configuration files, service methods and in any changes made therein.

The Customer agrees not to reverse assemble, decompile or reverse engineer Nightingale's products, services or methodology.

If the Customer fails to comply with the terms and conditions hereunder or those separately agreed upon in writing between the Parties, Nightingale may at its option terminate the Agreement and revoke 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 would reasonably be understood to be confidential ("Confidential Information") and not to use Confidential Information for any other purposes than those set forth in the Agreement.

However, this confidentiality obligation does not apply to such material and information that is or becomes generally available or otherwise public through no fault by the receiving Party, 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 disclosing 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 Confidential Information received from the disclosing Party as proven by the receiving Party's written records, or that the receiving Party shall disclose pursuant to a law, decree, or other order issued by the authorities or judicial order, provided that prompt notice is given to the disclosing Party and the receiving Party will take reasonable and lawful actions to avoid or minimize the extent of such disclosure.

Upon the expiry or termination of the Agreement or if the receiving Party no longer needs Confidential Information for the purposes of the Agreement, the receiving Party shall promptly cease using the Confidential Information received from the disclosing Party and, unless the Parties separately agree on returning Confidential Information, destroy such Confidential Information with all copies thereof. Notwithstanding the foregoing, each Party may retain one archival or back-up copy of the Confidential Information.

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

10 Force Majeure

Neither Party shall be liable for any delay or inability to perform its obligations under this Agreement if 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 performance of the Agreement.

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

11 Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WHATSOEVER SHALL NIGHTINGALE OR ITS AFFILIATES, OR THEIR RESPECTIVE EMPLOYEES, OFFICERS, SHAREHOLDERS, AGENTS, LICENSORS OR REPRESENTATIVES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY LOSS OF PROFITS OR REVENUE, INCLUDING BUT NOT LIMITED TO LOSS OF SALES, DATA, PROFIT, REVENUE, GOODWILL, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR UNAUTHORIZED ACCESS TO INFORMATION AND THE LIKE, EVEN IF NIGHTINGALE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL NIGHTINGALE BE LIABLE TO CUSTOMER IN EXCESS OF 25% OF THE TOTAL FEE AGREED IN THE RESPECTIVE SMTA.

12 Indemnity

The Customer shall indemnify Nightingale and its Affiliates against all liabilities, loss, damage, expense, cost, claim or proceeding suffered by Nightingale resulting from any negligence or omission by the Customer, its employees, agents or subcontractors.

The Customer shall indemnify Nightingale and its Affiliates against all liabilities, damage, expense, cost, claim or proceeding concerning unauthorized use of Samples or data provided by the Customer to Nightingale, including Personal Information, provided that such unauthorized use is not as a direct result of Nightingale's breach of this Agreement.

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

13 Data Protection and Privacy

The Customer shall be responsible for any use of Personal Information included in the material within the scope of the Agreement, including any individually identifiable health information. The Customer shall comply with applicable privacy and data protection laws and regulations, including the Health Insurance Portability and Accountability Act and its implementing regulations.

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

Any Personal Information provided to Nightingale shall be limited to the minimum necessary for its intended purpose and, where appropriate, shall be in the form of a limited data set in accordance with 45 C.F.R. § 164.514(e) or de-identified by Customer in accordance with applicable laws and regulations. Should Customer de-identify the Personal Information, Customer may assign a code or other means of record identification to allow re-identification by Customer, provided that such code or other means of record identification shall not be derived from or related to the Personal Information and shall not be capable of being translated to identify the individual. Such code or other means of record identification shall not be provided to Nightingale.

Obligations regarding the use and disclosure of Personal Information are agreed in more detail in Appendix 3.

14 Economic Sanctions and Export Control

The Customer warrants that, in relation to any economic and trade sanctions imposed by the United Nations, the European Union, the United States of America or any other country, that:

- i. it is not the target of any economic sanctions;
- ii. it is not controlled or beneficially owned by any person subject to economic sanctions;
- iii. it shall comply with all economic sanctions laws. Without limiting the generality of the foregoing, the Customer shall not (a) directly or indirectly export, re-export, transship, or otherwise deliver the services or any portion of the services in violation of any economic sanctions law, or (b) broker, finance or otherwise facilitate any transaction in violation of any economic sanctions law; and
- iv. it is not engaged in any proceedings or subject to any investigations from authorities for the alleged breach of any economic sanctions law.

Without affecting any other right or remedy available to it, Nightingale may terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer shall commit a breach of this Clause 14, and the Customer shall not be entitled to claim any compensation or refund.

For the purpose of this Clause 14, the use of the term "economic sanctions" comprises any economic sanctions, restrictive measures or trade embargoes adopted by the UN Security Council, the European Union, the United States of America, or any other sovereign government and economic sanctions law means any law, regulation or decision enacting economic sanctions.

The Customer shall adhere to any relevant export control laws and regulations with respect to providing the information and Samples 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 and Affiliates

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

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

16 Warranty and Guarantee

Nightingale warrants to the Customer that Nightingale will provide the Service in a professional manner following its established laboratory procedures conforming to standard industry practice.

OTHER THAN THE WARRANTIES PROVIDED IN THIS SECTION 16, THE SERVICE IS PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, AND NIGHTINGALE (AND OUR LICENSORS AND SUPPLIERS) EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE (AND OUR SUPPLIERS) MAKE NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SERVICE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF RECEIPT OF THE SERVICE DELIVERABLES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

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 not intended for diagnostic use. Customer shall use the Service Deliverables in its operations at its own discretion and responsibility.

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 provision.

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.

Nightingale may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.

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 to the subject of 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.

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. When a reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. No provision of this Agreement will be interpreted in favor of, or against, any of the Parties by reason of the extent to which such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or such provision.

Any notice required to be given hereunder shall be given in writing.

Except as set out in these Terms and Conditions, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

Unless it expressly states otherwise, this Agreement does not give rise to any rights of any third parties to enforce any term of this Agreement.

18 Applicable Law and Dispute Resolution

The Agreement shall be governed by the laws of the State of California, excluding its rules and principles 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 Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held in San Francisco, California, and the language of the arbitration shall be English. Notwithstanding the foregoing arbitration clause, the Customer agrees that Nightingale, at its sole option and for its benefit, may elect to bring action for the collection of unpaid fees in courts of California, to whose jurisdiction the Customer irrevocably submits for the purposes of such action.

EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY).

Nothing contained in this Agreement shall deny either Party the right to seek injunctive or other equitable relief from a court of competent jurisdiction in the context of a bona fide emergency or prospective irreparable harm and such an action may be filed and maintained notwithstanding any ongoing arbitration proceeding.

19 Termination

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

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.

On termination or expiry of this Agreement the Customer shall immediately pay to Nightingale all of Nightingale's outstanding unpaid invoices and statutory interest and, in respect of Services supplied but for which no invoice has been submitted, Nightingale shall submit an invoice, which shall be payable by the Customer immediately on receipt.

Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry. 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.