

# Nightingale

## General Terms and Conditions for Metabolic Biomarker Analyses (web orders)

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

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

### Definitions

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

<b>Agreement</b>	means the agreement entered between Nightingale and the Customer, which consists of the Order Form, these Terms and Conditions, the Appendices to these Terms and Conditions and the Order Confirmation issued by Nightingale.	<b>Platform</b>	means Nightingale’s proprietary biomarker analysis platform for NMR-based metabolomics analyses of Samples.
<b>Analysed Sample Material</b>	means sample material that is used for the Service.	<b>Processor</b>	means the Party which processes personal data on behalf of the Controller.
<b>Appendices</b>	<i>Appendix 1</i> Sample Handling and Shipping for Blood Samples (web orders) <i>Appendix 2</i> Service Deliverables for Blood Analysis (web orders) <i>Appendix 3</i> Processing of Personal Data (web orders) <i>Appendix 4</i> Remaining Sample Material (web orders)	<b>Remaining Sample Material</b>	means sample material delivered to Nightingale, which is not used for the Service.
<b>Blood</b>	means human venous blood samples.	<b>Samples</b>	means human serum, EDTA plasma, citrate plasma or heparin plasma separated from Blood or serum specified in the Order Form and Order Confirmation.
<b>Controller</b>	means the Party which determines the purposes and means of the processing of Personal Data.	<b>Sample Analysis Service</b>	means the Service as defined in Section 3 of this Agreement.
<b>Effective Date</b>	means the date referred to in the Order Confirmation on which Nightingale accepted the Order.	<b>Service</b>	means service provided by Nightingale under the Agreement. Nightingale performs the Service by applying the Platform.
<b>Order</b>	means the web order placed by the Customer via the Order Form.	<b>Service Deliverables</b>	means in the results of the Service as defined in Appendix 2 Service Deliverables for Blood Analysis (web orders).
<b>Order Confirmation</b>	means the written acceptance of the Order, in which these Terms and Conditions are referred to, issued by Nightingale.		
<b>Order Form</b>	means the web order form at Nightingale’s website, in which these Terms and Conditions are referred to, used by the Customer to place the Order.		
<b>Other Type of Samples</b>	means any other type of sample than human serum, EDTA plasma, citrate plasma or heparin plasma samples separated from Blood.		
<b>Personal Data</b>	means information relating to an identified or identifiable natural person.		

## 1 Background

Nightingale has a proprietary Platform for NMR-based quantitative metabolomics analyses of Samples.

Based on the Platform and other Nightingale's proprietary and confidential information and intellectual property rights, Nightingale provides Sample Analysis Service, as further described in this Agreement.

## 2 Terms of the Service

This Agreement sets forth the terms for purchasing the Service. Customer's Order constitutes a legally binding offer to enter into an Agreement. By placing the Order, the Order shall become binding on the Customer. The acceptance of the Order shall be by way of a written Order Confirmation issued by Nightingale to its earliest convenience. Only accepted Order shall become binding on Nightingale. In no event will Nightingale's absence of a response constitute an acceptance of the Order.

By placing the Order, the Customer (a) acknowledges and 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 fills out the Order Form and places the Order has the authority to bind the Customer to this Agreement.

In the Order Form and Order Confirmation the Parties specify

- i. the type of Service,
- ii. the type, volume and number of the Samples,
- iii. whether possible Remaining Sample Material will be disposed of or returned,
- iv. the schedule for planned sample shipping and estimated results delivery, and
- v. the specific pricing and payment terms.

In case of any contradiction between the Order Confirmation and these Terms and Conditions, the Order Confirmation 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. 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, if not otherwise agreed between the Parties.

## 3 Scope of the Service

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

The Sample Analysis 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 of the Remaining Sample Material. Returning of the Remaining Sample Material can be organized as an additional service as specified in the Order Form and Order Confirmation.

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

Unless otherwise agreed, the 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 shall be agreed and charged separately, in accordance with Nightingale's then current price list. 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 back to the Customer if the Customer has not chosen the Remaining Sample Material service option where Nightingale arranges also the shipment for a separately invoiced fee specified in the Order Form and Order Confirmation.

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.

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

## 6 Service Deliverables

The Service Deliverables (Appendix 2) 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 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 Service 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 Agreement.

The estimated delivery time for the Service Deliverables is specified in the Order Form and Order Confirmation. Nightingale shall use all commercially reasonable measures to deliver the Service Deliverables according to the schedule specified in the Order Form and Order Confirmation. 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.

Nightingale shall notify the Customer when the Service Deliverables are ready to be delivered. Subject to payment of all applicable fees agreed upon in the Agreement, Nightingale will send the Customer instructions for receiving the Service Deliverables. Unless otherwise agreed, the Service Deliverables are provided to the Customer via a secure web-based tool.

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 the Customer wishes to receive the Remaining Sample Material, the Customer shall notify Nightingale thereof in the Order Form. However, Nightingale may dispose the Remaining Sample Material if the Customer has requested to return the Remaining Sample Material but has failed to comply with the Sample return procedure specified in Appendix 4.

Shipping of the Remaining Sample Material can be organized either by Nightingale or by the Customer as specified in the Order Form and Order Confirmation and instructed in Appendix 4. 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.

## 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.

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.

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, 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, or that the receiving Party shall disclose pursuant to a law, decree, or other order issued by the authorities or judicial order.

Upon the expiry or termination of the Agreement 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 is limited to the amount paid by the Customer to Nightingale based on this Agreement. 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

The 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, provided that such unauthorized use is not as a result of Nightingale's breach of this Agreement.

The 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 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 the 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. The use of subcontractors in the processing of Personal Data is subject to Appendix 3.

When using 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 according to its established laboratory procedures conforming to standard industry practice. 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. The Customer shall use the Service Deliverables in its operations at its own discretion and responsibility.

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 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 and shall remain in force until the Service is completed. The estimated schedule for the Service is confirmed in the Order Confirmation.

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.