Terms of Service for the GAP, GAPplus & GROW Service

This Agreement is between Perinatal Institute (registered number 08466773) with its registered office at 2nd Floor, 5-6 Greenfield Crescent, Birmingham, England, B15 3BE (the "Company" or "PI") and you ("the Client"), individually a "Party" and collectively the "Parties".

By entering into the Service Agreement incorporating these terms, or by accepting Services by the Company, the Client has confirmed it has understood and accepted these Terms of Service.

IT IS AGREED AS FOLLOWS:
1.   DEFINITIONS

    1.1. In this Agreement

"Agreement"	means these PI Standard Terms of Service, together with the Service Agreement.
"Confidential Information"	means all information of a confidential nature disclosed (whether in writing, verbally or by any other means whether directly or indirectly) by either Party to the other whether before or after the date of this Agreement including, without limitation, any information relating to the Company's or the Client's Clients, all products and services offered by the Company, GROW-Service Content, GROW-Service Data Information, GROW-Service Documentation, SCORE application, SCORE Data Information, SCORE documentation, Personnel, suppliers, documents, operations, methodologies, processes, developments, specifications, materials, drawings, designs, plans, intentions, product information, software listings, source or object code, know-how, design rights, trade secrets, market opportunities, business affairs and the terms of and fees payable under the Agreement.
"Client User"	clinical user of software supplied by the Company.
"Data"	means all or any of the data the Client inputs which constitutes personal or sensitive personal data pursuant to the DPA.
"Deliverables"	means the items, charts, reports, documents or other outputs to be produced using PI Materials as a result of the Services as requested by the Client.
GAP	the GROW-Service accessed through the internet on a bespoke web application, including all training and auditing, GROW-Service Content, GROW-Service Data Information and GROW-Service Documentation
GAPplus	the GROW-Service accessed through an application programming interface (API) in conjunction with the MIS Provider, including all training and auditing, GROW -Service Content, GROW-Service Data Information, GROW-Service Documentation, and GROW-Service API.
GROW	Gestation Related Optimal Weight
GROW-Service	the GROW software provided as a service either as a web application with GAP or via the MIS provider as GAPplus.

GROW-Service Content	all content produced by the Perinatal Institute relating to GROW provided within GAP and GAPplus.
GROW-Service Data Information	data stored in and retrieved from GROW-Service
GROW-Service Documentation	the supporting documentation produced to assist and define the implementation and usage of the GROW-Service API as provided to the MIS provider prior to the signing of this agreement.
GROW-Service API	application programming interface (API) which will allow a maternity information system provided by the MIS provider to the Client to interface with GAPplus to allow the Client to access and use the tools within GAPplus service.
"MIS"	a maternity information system which the MIS provider licenses to the Client for their use.
"MIS User"	clinical user of the MIS at the Client.
"Personnel"	means the employees, agents or sub-contractors of the Company.
"PI Materials"	means the information charts, documents, data, software technologies, services, document packages and templates, and any similar materials, owned or supplied by the Company and utilised by the Company in performance of the Services including but not limited to, all the above in connection with GROW, GROW-Service, GROW-Service Content, SCORE and SCORE documentation.
"SCORE"	Standardised Clinical Outcome Review - software provided as a service
"SCORE Documentation"	The supporting documentation produced to assist and define the implementation and usage of SCORE
"Specification"	means the document detailing the Services provided to the client from time to time
"Services"	means the provision of the GROW-Service accessed by Client Users, in the case of GAP, MIS Users, in the case of GAPplus, and SCORE to produce the Deliverables.
"Service Agreement"	means the signed agreement incorporating these terms and the outline specification for the relevant year.
"Relationship Manager"	means the nominated PI representative.

1.2. Clauses, schedules and paragraph headings are for ease of reference and do not form part of or affect the interpretation of this Agreement

1.3. In the event of any inconsistency or ambiguity between the provisions of these Terms of Service and the Service Agreement, the latter shall prevail to the extent of the inconsistency.

1.4. Words in the singular shall include the plural and vice versa.

1.5. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.6. Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

2. **Engagement for Services**

2.1. The Client hereby engages the Company to provide the Services and Deliverables on the terms of the Agreement for the provision of Services agreed between the Company and the Client from time to time.

2.2. The Company may introduce to the Client additional products and services. Such additional products and services will be invoiced to the Client separately, and pursuant to the terms of this Agreement and any additional specific terms.

2.3. The Client acknowledges that the Company's ability to provide the Services may be dependent upon the Client's full and timely cooperation (which the Client agrees to provide, including in accordance with the Specification) as well as the accuracy and completeness of any information, data and other materials to be provided by the Client or third parties to the Company.

2.4. The Client agrees that the Company may communicate with its nominated MIS in order to enable the delivery of Services.

2.5. The Services are provided on an 'as is' basis and are delivered in good faith. The Client is responsible for making its own clinical decisions and be responsible for the results of such decisions in relation to any advice, reports or any other aspect of the Services provided to it by the Company, which are for guidance purposes only. For the avoidance of doubt, the Services are not intended to be a substitute for the clinical judgements and evaluations of the Client Users or other members of the Client's clinical staff.

3. **The Company's Obligations**

3.1. The Company will provide the Services to the Client as outlined in the Specification and shall perform its obligations with reasonable skill, care and diligence.

3.2. A separate purchase order from the Client shall be required for individual requests for Services by the Client.

3.3. During the term of this Agreement as set out in the Specification the Company shall make itself available to the Client from time to time at such times and at such locations as indicated in the Specification or as otherwise agreed. The Company shall provide all necessary Personnel, material, equipment, and services to provide the Services. The Client agrees that where any requirements are not covered by the Specifications or an existinga purchase order, the Client commits to paying the Company sufficient fees to cover any additional requirements, with the invoice to be raised at the time or as soon as practicable by the Company.

3.4. The Company shall endeavour to deliver any Deliverables and complete the Services as set out in the Specification or as otherwise agreed.

4. **Purchase Order Formation**

4.1. Each purchase order for GAP, GAPplus or GROW-Service issued by the Client shall be governed by the terms of this Agreement and shall be deemed a separate contract for such individual request for Services.

4.2. Expiry or termination of a purchase order shall not, in and of itself, give rise to an expiry or termination of any other purchase order.

5. **Alteration or Cancellation**

5.1. Should the Client wish to adjust the Services following commencement of the Agreement or part way through delivery of the said Services, this shall be by agreement with the Company.

6. **Fees & Payment**

6.1. The Client shall pay the Company fees as outlined in the Specification (the "Fees"), without any deduction or set off.

6.2. Where set out in the Specification overhead charges, hours of travel, travelling, and hotel expenses and other related costs incurred by the Company may be charged separately to the Client.

6.3. If the Client disputes any amount due, the Client must notify the Company within 5 business days and the Parties shall use reasonable endeavours to resolve any such dispute under Clause 17. Following resolution of the dispute the Client shall pay any outstanding amounts promptly.

6.4. If the Client fails to make a payment due in accordance with this Clause 6, then the Company shall be entitled to charge interest at the rate of 3% above the base rate of Barclays Bank from time to time from the date due until paid in full and calculated on a daily basis.

7. Data Protection

7.1. In performing its obligations under this Agreement, each Party shall comply with the terms of Schedule 1.

8. Personnel

8.1. The Company will be responsible for the allocation of tasks, scheduling of tasks and acceptance of completed tasks in respect to the Personnel provided by the Company. The Client will provide the necessary information and assistance to the Company's Personnel in order for them to perform the Services.

8.2. The Company reserves the right to provide a suitable substitute in the event certain Personnel assigned to the Services are unable to complete delivery of the Services.

9. Intellectual Property

9.1. The Company grants, subject to the terms of this agreement, the Client the non-exclusive, non-transferable right to use the GROW-Service, GAP and GAPplus and the Deliverables for health care purposes for its patients.

9.2. The Client and the patients of the Client may make such copies of the Deliverables as are reasonably necessary for use in accordance with clause 9.1 for the purposes of maintaining health. The Client has no further right to make, or authorise the making of, any other copies of the Deliverables or software supplied as part of the Services.

9.3. The Company shall at all times own all copies of all or any part of the software delivered as part of the Services.

9.4. The Client shall not sub-license, rent, lend, assign or transfer in any other way any software or Deliverables supplied as part of the Services to any person without the prior written consent of the Company.

9.5. The Client shall not give access to the software through any network of computers to users who are not employees or agents of the Client.

9.6. The Client may not, without the Company's prior consent, make adaptations or variations of any software supplied as part of the services.

9.7. The Client may not disassemble, decompile, reverse translate or in any other manner decode any software supplied as part of the services, except as permitted by law.

9.8. The Client shall notify the Company in the event of a breach of the intellectual property rights of the Company.

10. Term and Termination

10.1. The Agreement shall commence on the date the terms are signed by the Client and returned to the Company, or the date of the first engagement for Services by the Client, whichever is earlier. The Client at all times shall be deemed to have accepted and understood the terms and conditions within the Agreement.

10.2. The Company shall be entitled to immediately terminate this Agreement in the event that the Client is in material breach of its obligations hereunder, in particular, but not limited to its payment obligations under Clause 6.

10.3. The Client shall have the right to terminate this Agreement in whole or in part, provided that the Client provides 30 days' notice and ensures that prior to such termination all Fees are paid in clear funds without deduction or set off prior to the expiry of such notice. The Company may charge additional sums in respect of terminating the Services in some cases, e.g. where an annual project required up-front efforts in training and implementation.

10.4. The Company shall have the right to immediately terminate this Agreement in the event that the MIS provider terminates it's licence with the Company.

11. **Force Majeure**

11.1. If the Company is delayed or prevented from carrying out any of its Services due to circumstances beyond its reasonable control including (but not limited to) Acts of God, war, fire, acts of any government authority, lack of financial or human resources, the Company shall be excused from performance of such obligation for as long as and to the extent that the prevention or delay continues.

12. **Confidentiality**

12.1. Any data and information supplied to one Party by or on behalf of the other Party identified as confidential and belonging to either the Party, their contractors, subcontractors or suppliers shall be governed by the following terms and conditions:

12.1.1. Either Party agrees to protect such data and information with the same degree of care which each Party uses to protect their own like data and information;

12.1.2. Either Party shall not disclose or have disclosed to third parties in any manner or form, or otherwise publish such data and information so long as it remains confidential without the explicit authorisation by the other Party.

12.1.3. Either Party agrees that it shall use such data and information solely in connection with the performance of the Services, unless otherwise explicitly authorised by or on behalf of the other Party.

12.2. The provisions of this Clause 12 shall not apply to Confidential Information which:

12.2.1. at the time of disclosure is already lawfully in the possession of the other Party;

12.2.2. at the time of its disclosure is in the public domain;

12.2.3. is anonymised in accordance with UK GDPR for audit, research and publication with the purpose to improve health care.

12.2.4. subsequent to its disclosure is lawfully acquired by the Party to which it has been disclosed; or

12.2.5. falls into the public domain otherwise than through any breach of the terms of this Agreement or any Purchase Order on the part of either Party.

12.3. The provisions of this Clause 12 shall survive for a period of 1 year from termination of this Agreement or any Purchase Order.

13. **Liability**

13.1. If the Client demonstrates that it has suffered damage due to an error that would not have occurred if the Company had acted with observance of due care, the Company shall only be liable if the loss or damage was caused by any non-adherence to the standards of due care, expertise and professional skills that the Company may be expected to observe when performing the Services. The Company's liability is in any event limited to the fee that the Company has received for the relevant Services. As regards to Services that have a lead time of 6 months or more, the Company's liability is further limited to the fees paid over the last six months.

13.2. The Client shall indemnify and hold the Company harmless from and against claims of third parties for damage caused by the Client providing the Company incorrect or incomplete information.

13.3. The Company shall not be liable, except as otherwise provided for under this Agreement or any Purchase Order, for indirect or consequential losses or damage of any nature whatsoever, including, but not limited to third party claims, lost management time, economic loss or other loss of business, production, revenue, profit, goodwill, loss of data and anticipated savings or tax mitigation or similar losses.

13.4. Nothing in this Agreement or any Purchase Order shall exclude or restrict either Party's liability for fraud or fraudulent misrepresentation or for death or personal injury resulting from the negligence of that Party, its Personnel or its employees while acting in the course of their employment or for any other liability which cannot be excluded or limited at law

13.5. The Client acknowledges that the Company shall not be held responsible for inaccuracies incurred by an MIS User in entering data into the GAP or GAPplus service.

14. **Bribery and Corruption**

14.1. In accordance with the provisions of the Bribery Act 2010 each of the Parties acknowledges and confirms that it does not enter into this Agreement on the basis of any gift in kind, reward, compensation, inducement or other advantage or offer or promise of the same.

15. **Assignment**

15.1. Neither Party shall assign, transfer, charge or make over this Agreement or any Purchase Order or any of its rights or obligations without the prior written consent of the other Party, provided that the Company may assign this Agreement or any Purchase Order within the Company group of companies.

16. **Notices**

16.1. Any notice on the contract which may be given by a Party under this Agreement or any Purchase Order shall be left at or delivered by post (whether by letter or, where the Parties agree, in any other form), or facsimile transmission (confirmed by letter sent by post) to the following addresses:

Company – Perinatal Institute, 2nd Floor, 5-6 Greenfield, Birmingham, England, B15 3BE

Client - the Client's address included in the Service Agreement.

16.2. A document sent by post shall not be deemed to have been delivered unless actually delivered at the relevant address.

16.3. Any notice, demand, acceptance, agreement or other communication made under this Agreement or any Purchase Order shall only be binding on a Party if made in writing (including email) by an authorised representative of that Party as notified to the other Party from time to time.

17. **Disputes**

17.1. The Parties shall use reasonable endeavours to settle all disputes amicably between the Client and the Relationship Manager. If the dispute is not resolved, then either Party may, within 30 days of the start of the dispute, give written notice to escalate the dispute to a meeting of higher management. The notice must set out the nature of the dispute and full particulars together with relevant supporting documentation and the meeting shall be held within 7 days following the date of the notice at a place to be agreed by the Parties. If after the meeting the Parties are for any reason unable to resolve the dispute then either Party may take suchsteps as it considers appropriate to resolve the dispute including the initiation of court proceedings. In the eventthere is a failure to hold the meeting within 14 days of giving notice then either Party may take such steps as itconsiders appropriate to resolve the dispute including the initiation of court proceedings.

18. **Non Solicitation**

18.1. For the duration of this Agreement and 6 months thereafter, neither Party may employ, unless by mutual consent, those people employed by the other Party and involved in providing the Services.

19. **Relationships of the Parties**

19.1. Neither Party shall have authority to make any agreement or incur any liability on behalf of the other, nor shall either Party be liable for any acts, omissions to act, contracts, commitments, promises or representations made by the other, except as specifically authorised in the Agreement or as the Parties may otherwise agree. It is hereby declared that it is the intention of the Parties that the Company shall be responsible for undertaking independent specialist services and no joint venture or partnership is formed between the Parties.

20. **Waiver**

20.1. Any failure by the Company to enforce any of its rights under the Agreement shall not be construed as a waiver of those rights which may be exercised by the Company at any time at its option.

21. **Entire Agreement**

21.1. The Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements or understandings, whether written or oral, relating to the subject matter hereof.

21.2. Each party acknowledges that, in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (a "Representation") of any person (whether a party to this agreement or not) other than as expressly set out in this Agreement. Each Party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.

22. **Severability**

22.1. If any provision of the Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or non-enforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or enforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic, legal and commercial objective of the invalid or unenforceable provision.

23. **Third Party Rights**

23.1. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the Client and the Company shall have any rights under it.

24. **Law and Jurisdiction**

24.1. The Agreement shall be subject to the laws of England and the Parties submit to the exclusive jurisdiction of the English Courts.

Schedule 1- Data Processing Arrangements.

1.1   In this Schedule the following additional definitions shall apply:

Controller, Processor, Data Subject, Personal Data, Personal Data Breach	have the meaning given in the GPDR;
Data Subject	an individual who is the subject of Personal Data;
Data Protection Legislation	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy;
Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
DPA	Data Protection Act 2018
GDPR	the General Data Protection Regulation *(Regulation (EU) 2016/679)*
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which theProcessor is bound to comply
LED	Law Enforcement Directive (Directive (EU) 2016/680);
Protective Measures	appropriate technical and organisational measure which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of system and service, ensuring availability of and access to personal Data can be resorted in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures as adopted;

1.2   The Parties agree that each shall be a Controller in relation to Personal Data processed in connection with this Agreement.

1.3   Each Party shall comply with its obligations as a Controller under the Data Protection Legislation. The Parties shall provide each other with all reasonable assistance to facilitate compliance by both Parties with the Data Protection Legislation. Neither Party shall do or omit from doing anything that would put the other Party in breach of the Data Protection Legislation.

1.4   When either Party obtains Personal Data in connection with this Agreement from a person who is not a Party to this Agreement it shall ensure that any such Personal Data has been collected in accordance with the Data Protection Legislation.

1.5   The Parties acknowledge that Data Subjects may exercise their GDPR rights against either or both Parties. Each Party shall provide reasonable assistance to the other to facilitate the handling of such claims. Each Party shall bear any costs it incurs in providing such assistance.

1.6   Each Party shall be responsible for providing Data Subjects with the information set out in Articles 13 and 14 of the GDPR ("**Fair Processing Information**") in accordance with those Articles.

1.7   Fair Processing Information will be made available to Data Subjects who elect to use the Services (and therefore whose Personal Data may be shared) when they register for the Services in each Party's privacy policy available on their website.

1.8   Where either Party relies on the consent of the Data Subject to meet its obligations under clause 1.3 that Party warrants that:

    1.8.1   the consent entitles either Party to process the Personal Data as set out in this Agreement;

    1.8.2   the consent has been collected in accordance with the Data Protection Legislation; and

    1.8.3   it will promptly notify the other Party in the event that the relevant Data Subject withdraws his or her consent.

1.9   Without limitation to clause 1.3, each party shall:

    1.9.1   implement and maintain Protective Measures to protect such Personal Data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage;

    1.9.2   ensure that employees who have access to Personal Data have undergone training in the Data Protection Legislation and in the care and handling of Personal Data;

    1.9.3   notify the other party promptly of any known breach of technical and organisational security measures where the breach has affected or could have affected Personal Data transferred under this Agreement.

1.10   Each party undertakes to ensure that, as far as reasonably possible, all data obtained pursuant to this Agreement is obtained and processed lawfully by that party in accordance with the laws applicable in jurisdiction in which it is based.