

Terms of Service

This Agreement is between Perinatal Institute (registered number 08466773) with its registered office at Chamber Of Commerce House 75 Harborne Road, Edgbaston, Birmingham, West Midlands, B15 3BU (the "Company or PI") and you ("the Client"), individually a "Party" and collectively the "Parties".

By accepting Services by the Company, the Client is deemed to have accepted the terms of this Agreement, and any terms of any Purchase Order agreed between the Parties).

BACKGROUND

It is agreed:

- (A) that the Client wishes to enter into this framework agreement (the "Agreement") with the Company that will enable the Client, from time to time, to enter into Purchase Orders for the supply by the Company some or all of the Services offered by the Company from time to time; and
- (B) this Agreement shall be the framework agreement upon which all Services to be provided by the Company under any Purchase Order agreed between the Parties from time to time shall be provided.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

1.1. In this Agreement

"Agreement"	means these PI Standard Terms of Service, together with all Purchase Orders agreed and executed between the Parties from time to time.
"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 or any Purchase Order including, without limitation, any information relating to the Company's or the Client's customers, all products and services offered by the Company, GROW-Service Content, GROW-Service Data Information, GROW-Service Documentation, SCOR application, SCOR Data Information, SCOR 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 this Agreement or any Purchase Order.
"Company Intellectual Property Rights"	means all those Intellectual Property Rights developed independently by the Company prior to the engagement under this Agreement, including but not limited to information, documents, data, software technologies, services, document packages and templates, and any similar materials, owned or supplied by the Company and utilised in performance of the Services and delivery of the Deliverables.
"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 in a Purchase Order.
“Foreground Intellectual Property Rights”	means all those Intellectual Property Rights, including where applicable Company Background Intellectual Property Rights, and all rights created and/or developed by the Company in the course of producing the Deliverables for the Client pursuant to performing the Services.
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 API in conjunction with the MIS Provider, including all training and auditing, 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 GAP Plus.
GROW-Service Content	all content produced by the Perinatal Institute relating to GROW provided within GAP and GAP Plus.
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 GAP Plus to allow the Client to access and use the tools within GAPplus service.
“Intellectual Property Rights”	means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
“Milestones”	means the dates or a description of the deliverables for performance of the Services or production of the Deliverables as specified in a Purchase Order.
“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 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, SCOR and SCOR documentation.

“Purchase Order”	means an agreement representing a request/work order by the Client to the Company for the provision of Services to be provided by the Company to the Client on the terms and conditions of this Agreement and a Purchase Order.
“SCOR”	Standardised Clinical Outcome Review - software provided as a service
“SCOR Documentation”	The supporting documentation produced to assist and define the implementation and usage of SCOR
“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 SCOR to produce the Deliverables.
“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 this Agreement and a Purchase Order, 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 this Agreement and upon the terms of any Purchase Order or separate 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 any proposal attached to a Purchase Order) 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 is entitled to communication on its behalf with its nominated MIS and take all actions on behalf of the client in respect of ensuring the delivery of Services.

The Services are provided on an 'as is' basis and are delivered in good faith. The Client is responsible for making its own medical 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.

3. The Company's Obligations

- 3.1. The Company will provide the Services to the Client as outlined in a valid and current Purchase Order, formed pursuant to Clause 4, and shall perform its obligations with reasonable skill, care and diligence in accordance with prudent industry practice.
- 3.2. A separate Purchase Order shall be required for individual requests for Services by the Client.
- 3.3. During this Agreement or any Purchase Order the Company shall make itself available to the Client from time to time at such times and at such locations as specified in a Purchase Order or as otherwise agreed. The Company shall provide all necessary Personnel, material, equipment, and services. The Client agrees that where any requirements are not covered by a 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 within the time periods or Milestones stated in a Purchase Order. The Client accepts that at times such deadlines may be difficult to adhere to where the Company is waiting for feedback or approval from the Client, or the Company suffers other direct consequences preventing it to maintain any deadlines. In such instances, the Company will not be responsible for any loss or damage caused by such delays.
- 3.5. Where the Client requires additional services, including notification announcements that are in addition to any mentioned in a Purchase Order, then the Client agrees that such additional services shall be chargeable.

4. Purchase Order Formation

- 4.1. Whenever during the term of this Agreement the Client requires Services to be performed, the Parties shall endeavour to enter into a Purchase Order for each individual piece of work.
- 4.2. Each Purchase Order shall be governed by the terms of this Agreement, and shall be deemed an independent agreement for individual request for Services.
- 4.3. The Parties agree that with all intents and purposes, the Purchase Order is a commitment by the Company to deliver the Services, as well as a commitment by the Client to pay for such Services.
- 4.4. This Agreement commences on the Commencement Date and continues in force unless terminated in accordance with Clause 11. For the avoidance of doubt all obligations of the Parties under any Purchase Order entered into prior to the effective date of termination shall continue until satisfaction of the Parties' respective obligations in accordance with the terms of this Agreement and the Purchase Order, unless agreed otherwise in writing between the Parties.
- 4.5. 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 or this Agreement.
- 4.6. In the event that there is a conflict between a Purchase Order and this Agreement, the Purchase Order shall take precedence, (provided that if the conflict in question relates to any Intellectual Property Rights or liability of the Company, this agreement shall prevail).

5. Alteration or Cancellation

- 5.1. Should the Client wish to adjust the Services under a Purchase Order part way through delivery of the said Services, the Company shall be entitled to invoice, and the Client will pay, a pro-rated amount of the value of the Purchase Order affected, plus any costs or losses incurred by the Company.

6. Fees & Payment

- 6.1. Subject to any express payment terms of a Purchase Order the Client shall pay the Company fee's as outlined in a Purchase Order or company invoice (the "Fees"), without any deduction or set off, which are exclusive of Value Added Tax ("VAT").

- 6.2. Overhead charges, hours of travel, travelling, and hotel expenses and other Services related costs incurred by the Company may be charged separately to the Client, unless otherwise agreed in a Purchase Order.
- 6.3. If, after the conclusion of the Services but before the activities have been completed in full, Fees become subject to changes, the Company shall be entitled to adjust the agreed fee accordingly, unless the Company and the Client have agreed otherwise in this respect in writing.
- 6.4. The Fees plus, if applicable, any advances and invoices of third parties whose assistance has been called upon, shall be charged to the Client per month, per quarter, per year or after completion of the Services or of a Milestone, unless the Company and the Client have agreed otherwise in respect of this in a Purchase Order.
- 6.5. 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 19. Following resolution of the dispute the Client shall pay any outstanding amounts promptly.
- 6.6. 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. Acceptance of Deliverables

- 7.1. Where a Purchase Order specifies Deliverables, the Client shall have two weeks from delivery in which to raise any objections with the Deliverables. If no objections have been raised within this period, the Deliverables shall be considered to have been accepted. Deliverables may be accepted sooner if the Client states so in writing, or authorises work depending upon the Deliverables without first raising an objection.
- 7.2. Where the Deliverables involve meeting with the Client or third parties, the Client shall be responsible for arranging this meeting in a timely manner. If the Client is unable to arrange the meeting within a reasonable time-frame, it shall be dropped from the Deliverables without otherwise changing the contract.
- 7.3. Where the specification for the Deliverables is ambiguous, then the Company, acting in good faith will refine the specification and decide what features and performance characteristics are in scope. This is done in accordance with the agile development approach in order to deliver the best final product while avoiding extra upfront costs.

8. Expenses

- 8.1. Where agreed, the Client shall reimburse all expenses incurred in providing Services.

9. Data Protection

- 9.1. In performing its obligations under this Agreement, each Party shall comply with the Data Protection Act 1998 and any legislation or guidelines which amend or replace such legislation (DPA) to the extent necessary to perform its obligations under this Agreement.
- 9.2. The Company shall only use the Data obtained in relation to this Agreement to carry out the Services detailed in a Purchase Order and shall not use the information for any other purpose unless otherwise instructed by the Client in writing.
- 9.3. Upon termination of this Agreement, the Company shall return or destroy all Data obtained under this Agreement, as instructed by the Client.
- 9.4. The Company shall take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against actual loss or destruction of, or damage to, personal data.

- 9.5. Where the Client has received a request from an individual for details of information held on them, and the Client notifies the Company that they require information from them the Company shall provide such information to the Client within a reasonable time, and upon payment of reasonable charges requested by the Company for the action of such request.
- 9.6. The Company shall not be held liable for any fine or costs for breaches that have incurred in respect of the Data, if the breach is as a result of information or instructions provided by the Client.

10. Personnel

- 10.1. 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.
- 10.2. 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.

11. Intellectual Property

- 11.1. The Client accepts that the Deliverables may be a development of the Company Intellectual Property Rights. In such case, and subject to all undisputed Fees being paid in full, the Company will grant the Client a non-exclusive, non-transferable licence in respect of the Intellectual Property Rights, that shall include a royalty free irrevocable perpetual licence to the Client to use for its own purpose those the Company Intellectual Property Rights within the Deliverables to the extent required to allow the Client to obtain maximum benefit from the Deliverables and/or the Services.
- 11.2. With regard to the Foreground Intellectual Property Rights, The Company hereby agrees to assign to the Client and/or the End User (as appropriate on the written request of the Client) with full title guarantee and by way of future assignment all Intellectual Property Rights in any such Foreground Intellectual Property Rights with the intent that the same shall vest in the Client and/or the End User forthwith upon the same coming into existence. To this end, The Company shall do all acts and things and execute all documents (or shall procure that its Personnel do all acts and things and execute all documents) as may be reasonably required by the Client to vest ownership in the Client and/or the End User of all right, title and interest in the Foreground Intellectual Property Rights.
- 11.3. In order to effectively assign the Foreground Intellectual Property Rights to the Client and/or the End User in accordance with Clause 11.2 above, The Company warrants that all Personnel performing the Services to the Client shall be its employees or employed contractors and that under the contract of employment, or any consultancy agreement, of each, any Intellectual Property Rights arising out of or in relation to work done by that person for The Company will vest in The Company and that employees and consultants will have no title right or interest whether legal or beneficial in any such intellectual property rights.
- 11.4. Each Party shall notify the other Party as soon as it becomes aware of any actual or potential infringement of the other Party's (or, in the case of the Client, the End User's) Intellectual Property Rights and shall, at the request and cost of the other Party, give full co-operation to the other Party and/or its nominees in respect of any claim or proceedings threatened or brought in respect of any infringement. Each Party and/or its nominees shall have the conduct of all claims and proceedings relating to infringement of its Intellectual Property Rights by any third party and shall decide in its absolute discretion what, if any, action to take in respect of any infringement or alleged infringements of its Intellectual Property Rights by any third party. Each Party and/or its nominees shall not be obliged to bring or continue any proceedings in relation to any infringement of its Intellectual Property Rights if they decide in their absolute discretion not to do so. Neither Party shall be entitled to take any proceedings in respect of any infringement of the other Party's Intellectual Property Rights.
- 11.5. The Company will indemnify the Client and/or the End User against all losses, damages, costs, actions, proceedings, claims, demands, liabilities and expenses which the Client and/or End User may suffer, incur or sustain as a result of any claim that the use of or possession by such Party of the Intellectual Property Rights or the Foreground Intellectual Property Rights created by The Company or the Personnel further to the provision of the Services infringes the Intellectual Property Rights of any third party.

12. Variations

12.1. The Company reserves the right to amend the terms of this Agreement from time to time.

13. Term and Termination

13.1. This Agreement shall commence on the date the terms are served upon the Client, 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 this Agreement.

13.2. The Company shall be entitled to terminate this Agreement or any Purchase Order 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.

13.3. The Client shall have the right to terminate this Agreement or any Purchase Order in whole or in part, provided that the Client provides 30 days notice and ensures that prior to such termination all Fee's are paid in clear funds without deduction or set off. 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.

14. Force Majeure

14.1. 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 performance of such obligation for as long as and to the extent that the prevention or delay continues.

15. Confidentiality

15.1. 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:

15.1.1. 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;

15.1.2. 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.

15.1.3. 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.

15.2. The provisions of this Clause 13 shall not apply to Confidential Information which:

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

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

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

15.2.4. 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.

15.3. The provisions of this Clause 13 shall survive for a period of 1 year from termination of this Agreement or any Purchase Order.

16. Liability

- 16.1. 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.
- 16.2. 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.
- 16.3. 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.
- 16.4. 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
- 16.5. The Client acknowledges that the Company shall not be held responsible for inaccuracies incurred by an MIS User in entering data into the GAP of GAP plus service.

17. Bribery and Corruption

- 17.1. 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.

18. Tax Liabilities

- 18.1. It is hereby declared that it is the intention of the Parties that the Company shall be responsible for undertaking independent specialist services and the relationship is not of master and servant or employer and employee.

19. Assignment

- 19.1. 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.

20. Notices

- 20.1. 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	Chamber Of Commerce House 75 Harborne Road, Edgbaston, Birmingham, West Midlands, B15 3BU
Client	the Client's registered office, or last known trading address.

- 20.2. A document sent by post shall not be deemed to have been delivered unless actually delivered at the relevant address.
- 20.3. 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 and signed by an authorised representative of that Party as notified to the other Party from time to time.

21. Disputes

21.1. The Parties shall use reasonable endeavours to settle all disputes amicably between the Company and the Relationship Manager. If the dispute is not resolved, then either Party may, within 30 days, 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 such steps as it considers appropriate to resolve the dispute including the initiation of court proceedings.

22. Non Solicitation

22.1. For the duration of this Agreement or any Purchase Order and 6 months thereafter, neither Party may employ, unless by mutual consent, those people employed by the other Party and involved in work on a Purchase Order.

23. Relationships of the Parties

23.1. 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 this Agreement or any Purchase Order or as the Parties may otherwise agree.

24. Waiver

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

25. Entire Agreement

25.1. This Agreement and all Purchase Order(s) constitutes the entire Agreement between the Parties and supersedes all previous agreements or understandings, whether written or oral, relating to the subject matter hereof.

25.2. Each party acknowledges that, in entering into this Agreement and any Purchase Order, 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 or Purchase Order. 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 or Purchase Order.

25.3. Nothing in this Clause shall limit or exclude any liability for fraud.

26. Severability

26.1. If any provision of this 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 effect 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.

27. Third Party Rights

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

28. Law and Jurisdiction

28.1. This Agreement and any Purchase Order shall be subject to the laws of England and the Parties submit to the exclusive jurisdiction of the English Courts.