



FOREGENIX

[CUSTOMER_Y_ENTITY]

SUPPLY OF SERVICES AGREEMENT

[DATE]



THE QUEEN'S AWARDS
FOR ENTERPRISE:
INTERNATIONAL TRADE
2019

Confidentiality Notice

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Parties

[FOREGENIX_ENTITY] (**Foregenix**) incorporated and registered in [FOREGENIX_ENTITY_COUNTRY] with company number [FOREGENIX_ENTITY_NUMBER] whose registered office is at [FOREGENIX_ENTITY_ADDRESS]; and [CUSTOMER_Y_ENTITY] (**The Client**) incorporated and registered in [CUSTOMER_Y_ENTITY_COUNTRY] with company number [CUSTOMER_Y_ENTITY_NUMBER] whose registered office is at [CUSTOMER_Y_ENTITY_ADDRESS].

Background

- A. Foregenix is a provider of consultancy and forensic services relating to information security, particularly in the payment card industry, and related software.
- B. The Client wishes to use Foregenix's service in its business operations.
- C. Foregenix has agreed to provide, and The Client has agreed to take and pay for Foregenix's service, subject to the terms and conditions of this Agreement.

Agreed Terms

1 Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions

Affiliate	in relation to a party, a person who is, from time to time, a subsidiary or holding company of that party, or is a subsidiary of that party's holding company.
Client's Equipment:	any equipment, systems, cabling or facilities provided by The Client and used directly or indirectly in the supply of the Services.
Document:	includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
Documentation:	the Documents made available to The Client by Foregenix online, via the Foregenix Portal or in hard copy which may include information, reports, conclusions and/or summaries derived from the provision of the Services, as well as the Specification.
Foregenix's Equipment:	any equipment, including tools, penetration testing appliances (including physical and virtual plugs), systems, cabling or facilities, provided by Foregenix or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to The Client.
Foregenix's Manager:	Foregenix's manager for the Services or Project.
Foregenix Portal:	Any online platform that may be used by Foregenix to deliver Documentation and Services to The Client.
Host:	any desktop computer or server which is part of The Client's Equipment

Input Material:	all Documents, information and materials provided by The Client relating to the Services, including computer programs, data, reports and specifications.
Intellectual Property Rights:	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Open-Source Software	means open-source software as defined by the Open Source Initiative (http://opensource.org) or the Free Software Foundation (http://www.fsf.org).
Price:	the price for the Services as set out in the Proposal.
Primary Contact:	the Client's manager for the Services.
Proposal:	the detailed proposal describing the scope of the Services annexed at Schedule [1] to this Agreement.
Services:	the services to be provided by Foregenix to The Client under this agreement, as more particularly described in the Proposal, together with any other services which Foregenix provides or agrees to provide to The Client.
Software:	any software applications provided by Foregenix (including the data supplied with it and Documentation) as part of the Services that are identified in the Proposal.
Specification	Any Documentation supplied by Foregenix online or in hard copy setting out details of the Software
VAT:	value added tax chargeable under the governing law for the time being and any similar additional tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assignees.
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written includes fax and e-mail.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.13 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.

2 Commencement and duration

- 2.1 Foregenix shall provide the Services to The Client on the terms and conditions of this agreement from the date (if any) specified in the Proposal or as otherwise agreed in writing between the parties.
- 2.2 The Services supplied under this agreement shall continue to be supplied for the period specified in the Proposal or as otherwise agreed in writing between the parties, unless this agreement is terminated in accordance with clause 18 ([Termination](#)).

3 Foregenix's obligations

- 3.1 The format of the Services shall be those set out in the Proposal.
- 3.2 Foregenix will use its reasonable endeavours to ensure that:
 - 3.2.1 any work carried out for the Client:
 - 3.2.1.1 is in accordance with the Proposal in all material respects; and
 - 3.2.1.2 will be carried out with reasonable skill and care and diligence in a professional manner; and
 - 3.2.2 that all Foregenix personnel engaged in fulfilling Foregenix's obligations under this agreement have sufficient qualifications and professional competency and experience to carry out the Services under this agreement in accordance with the standards and practices normal for the industry.
- 3.3 Unless otherwise agreed in the Proposal:
 - 3.3.1 on-site engagements will be conducted onsite at The Client's premises and information collation and report writing will be conducted from Foregenix offices;
 - 3.3.2 any network vulnerability assessment Services will be restricted to identifying potential vulnerabilities in the system that could be exploited and making practical cost effective recommendations for vulnerabilities resolution, and will not include such techniques as social engineering or physical access attempts and no attempts shall be made by Foregenix to copy corrupt or damage The Client's data or The Client's networks; and
 - 3.3.3 the review and testing will culminate in a final report, which Foregenix will present to The Client's team on completion. However, if any serious vulnerability or other significant issue is identified, this will be reported immediately to the Primary Contact.

- 3.4 Foregenix shall use reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time for performance by Foregenix shall not be of the essence of this agreement.
- 3.5 Any performance dates discussed with or provided to The Client shall be considered indicative only and not an estimate or a commitment until both parties have:
 - 3.5.1 signed the present agreement and all required legal documents (including but not limited to this agreement, a Non-Disclosure Agreement and a Purchase Orders) have been signed and submitted to Foregenix; and
 - 3.5.2 The advanced payment has been made as set out in clause 13 (Charges and Payment).
- 3.6 Foregenix consultants shall conform to The Client's normal codes of staff and security practice.
- 3.7 All other conditions, warranties or other or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

4 Client's obligations

- 4.1 The Client shall:
 - 4.1.1 be responsible for ensuring the Services as defined in the Schedules are suitable for its business requirements;
 - 4.1.2 co-operate with Foregenix in all matters relating to the Services and appoint the Primary Contact in relation to the Services, who shall have the authority:
 - 4.1.2.1 contractually to bind The Client on matters relating to the Services;
 - 4.1.2.2 to schedule any testing and manage any issues that may arise; and
 - 4.1.2.3 to co-ordinate Foregenix access to systems being tested;
 - 4.1.3 provide, for Foregenix, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to The Client's premises, office accommodation, data and other facilities as reasonably required by Foregenix or any of them;
 - 4.1.4 provide, in a timely manner, such resources as Foregenix may reasonably require;
 - 4.1.5 provide, in a timely manner, such Input Material and other information as Foregenix may reasonably require, and ensure that it is accurate in all material respects;
 - 4.1.6 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services;
 - 4.1.7 inform Foregenix of all health and safety rules and regulations and any other reasonable security requirements that apply at any of The Client's premises;
 - 4.1.8 ensure that all Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services;
 - 4.1.9 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of Foregenix's Equipment, the use of Input Material and the use of the Client's Equipment in relation to Foregenix's Equipment, in all cases before the date on which the Services are to start;
 - 4.1.10 Keep and maintain Foregenix's Equipment in good condition OR in accordance with Foregenix's instructions as notified in writing from time to time and shall not dispose of or use Foregenix's Equipment other than in accordance with Foregenix's written instructions or authorisation;

- 4.1.11 before allowing access procure that the Primary Contact shall inform Foregenix in writing of any security and access standard or requirements; and
- 4.1.12 during testing by Foregenix, ensure that its network configuration is kept as stable and static as possible and that any Foregenix appliances provided for the performance of the Penetration Testing, if applicable for the Services, will be kept available for the full duration of the testing, including after hours. If changes are required, the Primary Contact will arrange a mutually acceptable testing time with Foregenix.
- 4.2 If Foregenix's performance of its obligations under this agreement is prevented or delayed by any act or omission of The Client, its agents, subcontractors, consultants or employees, Foregenix shall not be deemed in breach of its obligations under the Agreement, or otherwise liable for any costs, charges or losses sustained or incurred by The Client that arise directly or indirectly from such prevention or delay.
- 4.3 The Client acknowledges that the provision of Services is dependent upon the performance of The Client and its Affiliates of their obligations under this agreement, and that Foregenix shall not be liable for any failure to perform the Services to the extent such failure is due to:
 - 4.3.1 a failure by The Client or any third party retained by, or under the control of The Client, to provide data or materials that The Client or such third party is required to provide to Foregenix or required by Foregenix to perform the Services under this Agreement;
 - 4.3.2 a failure by The Client to timely and accurately perform its responsibilities as set forth in this agreement; or
 - 4.3.3 a failure by The Client to obtain consents, approvals or access to systems, data and general Input materials required for the delivery of the Services.

5 Intellectual property rights

- 5.1 All intellectual property rights in the Software, the Foregenix Portal and the Documentation anywhere in the world (excluding Open Source Software) shall belong to Foregenix. Those rights are licensed (not sold) to The Client, and The Client shall have no rights in, or to, the Software, the Foregenix Portal or the Documentation other than the right to use them in accordance with the terms of this agreement.

6 Software licence

- 6.1 Where the Proposal includes Software, in consideration of payment by The Client of the Price and The Client agreeing to abide by the terms of this agreement, Foregenix hereby grants to The Client a non-exclusive, non-transferable licence to use the Software on the terms of this clause.
- 6.2 The Client may:
 - 6.2.1 install and use the Software for its internal business purposes subject to the number of Hosts, users, frequency, storage or other conditions specified in the Proposal;
 - 6.2.2 receive and use any free update of the Software incorporating "patches" and corrections of errors as may be provided by Foregenix from time to time in accordance with the Proposal.

7 Access to Foregenix Portal and Documentation

- 7.1 Where the Proposal includes access to the Foregenix Portal and/or Documentation, in consideration of payment by The Client of the Price and The Client agreeing to abide by the terms of this agreement, Foregenix hereby grants to the Client a non-exclusive, non-transferable licence to use the Foregenix Portal and Documentation on the terms of this clause.
- 7.2 The Client may:
 - 7.2.1 use the Foregenix Portal for its internal business purposes on Client Equipment subject to any conditions specified in the Proposal; and

- 7.2.2 use any Documentation accessed via the Foregenix Portal or otherwise supplied by Foregenix and make such number of copies of the Documentation as are reasonably necessary for its lawful use.

8 Client's undertakings

- 8.1 Except as expressly set out in this agreement or as permitted by any local law, The Client undertakes:
- 8.1.1 not to copy the Software or Documentation except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up or operational security;
 - 8.1.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documentation;
 - 8.1.3 not to make alterations to, or modifications of, the whole or any part of the Software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
 - 8.1.4 not to disassemble, decompile, reverse engineer or create derivative works based on, the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by the Client during such activities:
 - 8.1.4.1 is used only for the purpose of achieving inter-operability of the Software with another software program; and
 - 8.1.4.2 is not unnecessarily disclosed or communicated without Foregenix's prior written consent to any third party; and
 - 8.1.4.3 is not used to create any software which is substantially similar to the Software;
 - 8.1.5 to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
 - 8.1.6 to supervise and control use of the Software and Foregenix Portal and ensure that the Software and Foregenix Portal are used by the Client's employees and representatives in accordance with the terms of this agreement;
 - 8.1.7 to replace the current version of the Software with any updated or upgraded version or new release provided by Foregenix under the terms of this agreement immediately on receipt;
 - 8.1.8 to include the copyright notice of Foregenix on all entire and partial copies the Client makes of the Software on any medium;
 - 8.1.9 not to provide or otherwise make available the Software or Documentation in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than The Client's employees without prior written consent from Foregenix;
 - 8.1.10 to limit access to the Foregenix portal to only those employees and/or contractors who have executed a written confidentiality agreement with The Client and only to those who have a requirement for such access on a "need to know" basis;
 - 8.1.11 to comply with any licences relating to any Open-Source Software, including the General Public Licence (if applicable) and any proprietary third-party software licences relating to the Software, and shall indemnify and hold Foregenix harmless against any loss or damage which Foregenix may suffer or incur as a result of The Client's breach of such terms. Foregenix may treat The Client's breach of any such terms as a breach of this agreement;

- 8.1.12 not to use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Services or the Software;
- 8.1.13 not to use data which is made available as part of the Services and belongs to a third party for any purpose other than viewing and downloading in accordance with the terms of this agreement, unless the third party in question has consented to the Client's use of such data; and
- 8.1.14 to comply with all applicable laws and regulations in your use of and access to the Documentation, the Software, the Foregenix Portal and the Services.
- 8.2 The Client acknowledges that it shall have no right to have access to the Software in source code form or in unlocked coding or with comments.
- 8.3 The integrity of the Software is protected by technical protection measures (TPM) so that the Intellectual Property Rights, including copyright, in the Software of Foregenix are not misappropriated. The Client must not attempt in any way to remove or circumvent any such TPM, nor apply or manufacture for sale or hire, import, distribute, sell or let for hire, offer or expose for sale or hire, advertise for sale or hire or have in its possession for private or commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of such TPM.

9 Software Support

- 9.1 Foregenix will provide support for the Software in accordance with the Proposal.

10 Software Warranty

- 10.1 Foregenix warrants that:
 - 10.1.1 the Software will, when properly used, perform substantially in accordance with the functions described in the Specification (provided that the Software is properly used on the computer and with the operating system for which it was designed as referred to in the accompanying documentation), and that the Specification correctly describes the operation of the Software in all material respects provided that no warranty or representation is given as to the accuracy of results provided to you through your use of the Software and, subject to clause 16 ([Limitation of Liability](#)), Foregenix shall not be liable for any such inaccuracies;
 - 10.2 The Client acknowledges that the Software has not been developed to meet The Client's individual requirements, and that it is therefore The Client's responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet The Client's requirements.
 - 10.3 The Client acknowledges that the Software may not be free of bugs or errors, and agree that the existence of minor errors shall not constitute a breach of this agreement.
 - 10.4 If, within the duration of the agreement, the Client notifies Foregenix in writing of any defect or fault in the Software in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from The Client having amended the Software or used it in contravention of the terms of this Licence, Foregenix will, at its sole option, either repair or replace the Software, provided that The Client makes available all the information that may be necessary to help Foregenix to remedy the defect or fault, including sufficient information to enable Foregenix to recreate the defect or fault.
 - 10.5 Any Open-Source Software provided by Foregenix may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to clause 3.7. Without limiting the generality of the foregoing, the names of the copyright holders of any such Open-Source Software or any proprietary third-party software licences relating to the Software ("Third Party Licensors") may not be used to endorse or promote products derived from the Open-Source Software without the prior written agreement of the relevant Third Party Licensor.

10.6 THE OPEN-SOURCE SOFTWARE IS PROVIDED BY THE THIRD PARTY LICENSORS AND THEIR CONTRIBUTORS "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS ARE DISCLAIMED. IN NO EVENT SHALL THE THIRD PARTY LICENSORS OR THEIR CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

11 Non-solicitation

11.1 Neither party shall, without the prior written consent of the other, at any time from the date of this agreement to the expiry of 2 years after the termination of this agreement, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the other.

12 Change control

12.1 If The Client requests a change to the scope or execution of the Services, Foregenix has no obligation to do so unless and until this agreement has been varied in accordance with clause 21 (['Variation'](#)) by agreeing a revised Proposal and/or any changes to the terms of this agreement.

12.2 Notwithstanding clause 12.1, Foregenix may, from time to time, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services, and that The Client is given reasonable notice of the changes.

13 Charges and payment

13.1 In consideration of the provision of the Services by Foregenix, The Client shall pay the Price.

13.2 The Price excludes:

13.2.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Foregenix engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by Foregenix for the supply of the Services. Such expenses, materials and third party services shall be invoiced separately by Foregenix; and

13.2.2 all taxes (including but not limited to VAT and withholding taxes).

13.3 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

13.4 In the event that The Client's procedures require that an invoice be submitted against a purchase order to payment, the Client shall be responsible for issuing such purchase order before the Services are rendered.

13.5 The Client shall pay according to the following schedule:

13.5.1 **50% advance payment** received in full within thirty (30) days of signing this agreement or prior to service commencement (whichever occurs first).

13.5.2 **Remaining 50% will be invoiced when the final deliverable enters the QA stage, or the service delivery is considered complete (whichever occurs first).**

13.6 All Third-party Products shall be paid in full upfront, in order for the service accounts to be activated.

- 13.7 The Client shall pay each invoice submitted to it by Foregenix, in full and in cleared funds and in pounds sterling (£), within 30 days of receipt or prior to service completion (whichever event occurs soonest) to a bank account nominated in writing by Foregenix.
- 13.8 All invoices will be issued from the legal entity noted in section "Signatures" of the Proposal.
- 13.9 Without prejudice to any other right or remedy that it may have, if the Client fails to pay Foregenix on the due date:
- 13.9.1 The Client shall pay interest on the overdue amount at the rate of 2.5% per annum above the base rate of Lloyds Bank plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Client shall pay the interest together with the overdue amount; and
- 13.9.2 Foregenix may suspend all Services until payment has been made in full.
- 13.10 All sums payable to Foregenix under this agreement shall become due immediately on its termination, despite any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- 13.11 If the Client cancels any planned onsite engagement at the Client's premises less than two weeks prior to the visit, Foregenix shall be entitled to charge the Client a cancellation charge equal to 40% of the agreed fees related to the engagement.

14 Confidentiality and authorised disclosure

- 14.1 Foregenix and The Client hereby confirm that the provisions of any mutual non-disclosure agreement between Foregenix and The Client, if executed, shall be in full force and effect and continue to apply to all information furnished by either party in connection with the Services. In addition, when the Services include the performance of a PCI Forensic Investigation by Foregenix, The Client authorises Foregenix to release all related forensic reports to the Client's merchant acquiring bank, if applicable, and the relevant payment card brand.
- 14.2 Foregenix shall not disclose the making of this agreement with The Client in any journal, magazine or publication or otherwise without the prior written consent of The Client. Both parties' obligations of confidentiality shall survive termination of this agreement for whatever reason.

15 Indemnity

- 15.1 Each party ("the indemnifying Party") shall indemnify and hold harmless the other party and its Affiliates and their respective officers, directors, employees, partners, agents, successors and assigns from, and shall defend them against, any costs, liabilities, damages or expenses (including reasonable solicitors' fees) arising out of or relating to any third party claim that the Services, Software, or any work performed by the indemnifying Party, or its agents, consultants or contractors under this agreement infringes the proprietary rights of any third party.
- 15.2 A party seeking indemnification under clause 15.1 shall:
- 15.2.1 give the other prompt written notice upon becoming aware of the possibility of a claim;
- 15.2.2 not make any admission which may be prejudicial to the defence of the claim without the indemnifying Party's prior written consent;
- 15.2.3 allow the indemnifying Party exclusive control of the defence or settlement of the claim;
- 15.2.4 reasonably co-operate, at the expense of the indemnifying Party, in the defence of settlement of the claim.
- 15.3 In the event of any alleged or actual infringement under English law of any third party's Intellectual Property Rights or other rights arising out of the authorised use or supply of the Services, Foregenix will:

- 15.3.1 procure for The Client the right to use the item in question;
- 15.3.2 replace or modify the item so that it becomes non-infringing; or
- 15.3.3 if neither option in clauses 15.3.1 or 15.3.2 is reasonably available to Foregenix, Foregenix may terminate this agreement without the imposition of any penalty.
- 15.4 To the extent permitted by applicable law, The Client undertakes to indemnify and hold Foregenix harmless from any loss, liability, cost, actions, damages or expense (including without limitation legal and professional costs) suffered or incurred arising out of or in connection with:
 - 15.4.1 any breach by The Client of this agreement;
 - 15.4.2 any breach by The Client of any applicable laws and regulations in connection with the Services;
 - 15.4.3 The Client's use of the Services;
 - 15.4.4 any breach by The Client of data protection laws and regulations as set out in clause 17, or of The Client's obligations of privacy to any third party.
- 15.5 The provisions of clause 15 shall survive termination of this agreement, however arising.

16 Limitation of liability

- 16.1 Nothing in this agreement limits or excludes Foregenix's liability for:
 - 16.1.1 death or personal injury caused by its negligence or;
 - 16.1.2 fraud or fraudulent misrepresentation.
- 16.2 Subject to clause 16.1, Foregenix shall not be liable to The Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
 - 16.2.1 loss of profits;
 - 16.2.2 loss of sales or revenue or business or business opportunity;
 - 16.2.3 loss of agreements or contracts;
 - 16.2.4 business interruption;
 - 16.2.5 loss of anticipated savings;
 - 16.2.6 loss of or damage to goodwill or reputation;
 - 16.2.7 loss of use or corruption of software, data or information;
 - 16.2.8 loss for any outages or slow downs of The Client's computer systems resulting from the performance of any services, unless such outages or slowdowns are the result of Foregenix gross negligence, recklessness or willful misconduct;
 - 16.2.9 any loss resulting from The Client's failure to take back-up copies of data in accordance with best computing practice; or
 - 16.2.10 **any indirect or consequential loss.**
- 16.3 Subject to clause 16.1 and clause 16.2, Foregenix's total liability to The Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to in respect of all claims (connected or unconnected) an aggregate amount **equivalent to the total charges paid by The Client under this agreement.**
- 16.4 Subject to clause 16.1, condition 16.2 and condition 16.3, Foregenix's liability for infringement of third-party intellectual property rights shall be limited to breaches of rights subsisting in the UK.

17 Data protection

17.1 In this Clause 17:

17.1.1 the expressions “personal data”, “data controller”, “data processor” and “process” have the meanings respectively set out in the DPA;

17.1.2 “Customer Data” means the data concerning visitors to the Host that is collected through the Client’s use of the Software, analysed by Foregenix and made available to the Client as part of the Services.

17.2 In relation to all personal data provided by the Client, or otherwise obtained by Foregenix in connection with this Agreement the Client acknowledges that the Client is the data controller, and that Foregenix is only acting on the Client’s behalf as a data processor.

17.3 In addition to product registration information, Foregenix may process and store certain information about The Client’s computer systems to provide the Services. To improve its products, Foregenix may periodically upload information electronically from installed Software about product usage, detected malware or potentially unwanted files and may use service traffic to improve its databases and heuristics. The Client agrees that Foregenix may use uploaded data from installed Software to improve its products and services, share data that has been identified as high risk, malicious or unwanted content with affiliates and security partners and use and disclose uploaded data for analysis or reporting purposes provided that such use, sharing or disclosure does not identify The Client, its Affiliates or include any information that can be used to identify any individual person.

17.4 Foregenix may retain and use, subject to the terms of its privacy policy, certain information collected in The Client’s use of the Services. However, Foregenix will not share the Client’s Customer Data or any third party’s Customer Data with any other party unless:

17.4.1 Foregenix has obtained The Client’s consent or the relevant third party’s consent; or

17.4.2 Foregenix reasonably considers that it is legally required to do so; or

17.4.3 Foregenix reasonably believes that it is necessary to protect its rights, property or safety, or that of its users or the public;

17.5 Foregenix may provide Customer Data to third parties appointed by it to carry out certain tasks subject to such third parties entering confidentiality undertakings and implementing security measures that will prevent such Customer Data from being disclosed.

17.6 Each party agree that:

17.6.1 in the performance of its respective obligations under this agreement, it shall comply with the provisions of the DPA;

17.6.2 it shall, where applicable, obtain and maintain all appropriate registrations and consents under the DPA in order to allow that party to perform its obligations under this agreement.

17.7 The Client undertakes that it will not (and will not permit a third party to) use the Services to monitor, collect, process or upload any data that personally identifies an individual (such as names, email addresses or bank account information) without that individual’s consent. The Client will publish and comply with an appropriate privacy policy and will comply with all applicable laws and regulations relating to the collection of information from visitors to the Host. The Client’s privacy policy must provide notice of any use by you of cookies and you must not circumvent any privacy features that are part of the Services.

18 Termination

18.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- 18.1.1 the other party fails to pay any amount due under this agreement on the due date for payment;
- 18.1.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 18.1.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 18.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 18.1.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 18.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 18.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- 18.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 18.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 18.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 56 days;
- 18.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.1.4 to clause 18.1.10 (inclusive);
- 18.1.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 18.1.13 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

19 Consequences of termination

- 19.1 On termination or expiry of this agreement:
 - 19.1.1 The Client shall immediately pay to Foregenix all of Foregenix's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Foregenix may submit an invoice, which shall be payable immediately on receipt;
 - 19.1.2 all rights granted to The Client under this agreement shall cease;

- 19.1.3 Foregenix shall stop providing the Services and The Client will stop accessing the Services;
- 19.1.4 The Client shall not be entitled to receive and Foregenix shall not be obliged to provide to The Client any of the historical data relating to the Services provided to The Client during the term of the agreement;
- 19.1.5 The Client must cease all activities authorised by this agreement;
- 19.1.6 The Client shall immediately return all of Foregenix's Equipment and Software. Until they have been returned or repossessed, The Client shall be solely responsible for their safe keeping;
- 19.1.7 the following clauses shall continue in force: clause 5 ([‘Intellectual property rights’](#)), clause 14 ([‘Confidentiality and authorised disclosure’](#)), clause 16 ([‘Limitation of liability’](#)), clause 17 ([‘Data protection’](#)), clause 28 ([‘Notices’](#)), clause 30 ([‘Arbitration’](#)), and clause 31 ([‘Governing law’](#)), and clause 32 ([‘Jurisdiction’](#)).
- 19.2 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 the agreement which existed at or before the date of termination or expiry.

20 Force majeure

- 20.1 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or Services.
- 20.2 The relevant party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

21 Variation

- 21.1 Subject to clause 12 ([‘Change Control’](#)), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22 Waiver

- 22.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23 Severance

- 23.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 23.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24 Entire agreement

- 24.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 24.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 24.3 Nothing in this clause shall limit or exclude any liability for fraud.

25 Conflict

- 25.1 If there is any inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the Schedule of this agreement shall prevail.

26 No partnership or agency

- 26.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

27 Third party rights

- 27.1 No one other than a party to this agreement shall have any right to enforce any of its terms.

28 Notices

- 28.1 Except as otherwise provided in this agreement, all notices, consents, or approvals required by this agreement shall be in writing sent by certified or registered mail, postage prepaid, or by facsimile or electronic mail (confirmed by certified or registered mail) to the address listed below.

Party	Contact	Address	Contact number	Email Address
Foregenix	Accounts Team	First Floor, 8-9 High Street, Marlborough, Wiltshire, SN8 1AA, UK	+44 (0) 845 309 6231	accounts@foregenix.com

[CUSTOMER_Y_ENTITY]

XXXXX

[CUSTOMER_Y_ENTITY_ADDRESS]

XXXXX

- 28.2 Notice will be deemed received and properly served 24 hours after an e-mail or fax is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail or fax, that such e-mail or fax was sent to the specified e-mail or fax address of the addressee.

29 Counterparts

- 29.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

30 Arbitration

- 30.1 All disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with said Rules. **The place of arbitration shall be England.** The language of the arbitration shall be English.

31 Governing law

- 31.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with **the law of England and Wales.**

32 Jurisdiction

- 32.1 Each party irrevocably agrees that the **courts of England and Wales** shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

33 Signatures

Signed by:

On behalf of [CUSTOMER_Y_ENTITY]	
Signature:	
Print Name:	
Title:	
Date:	

[FOREGENIX_ENTITY]	
Signature:	
Print Name:	
Title:	
Date:	