**Agreement**

**for Security Operation Center Services**

between

**Horizon Deutschland AG**

Platz der Deutschen Einheit 1,

D-44137 Dortmund

‑ hereinafter referred to as **“Contractor”** ‑

and

**F.UN Business Services GmbH**

Musterstraße 33

D-22399 Hamburg

‑ hereinafter referred to as “**FBS**” ‑

‑ both hereinafter collectively referred to as the “**Contracting Parties**” ‑

**October 09, 2018**

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## Preamble

FBS is the IT service provider for the entire F.UN SE Group and, in this role, offers, *inter alia*, services in IT solutions, implementation, upgrades and hardware and software system operation as well as user consultation and customer service in the workplace.

The Contractor is a provider of telecommunication services and other information technology services, including security services to support security monitoring and management functions and programs of business corporations.

In order to improve the capability to protect F.UN’s IT-Environment and employees against cyber threats and attacks, FBS intends to establish cyber defence capabilities in the context of its IT security improvement program “protect.on”.

FBS therefore intends to implement a security operation center within the F.UN SE Group comprising the deployment of a security information and event management platform, a security incident management as well as a knowledge management platform and the performance of security event monitoring, all as further specified in this Agreement (together hereinafter referred to as the “SOC Services” or “Services”).

To this end and by entering into this Agreement, the Contractor agrees to being the SOC Service provider for F.UN and agrees to configure and deploy the aforementioned platforms as well as to render the security event monitoring services for the F.UN SE Group’s purposes.

NOW THEREFORE, in consideration of the foregoing, the Contracting Parties enter into the following Agreement:

### Subject Matter of Agreement

#### Under the terms of this Agreement, the Contractor is obligated, inter alia,

#### to configure the SIEM-Application and the Incident-Application;

#### to technically enable access to the SIEM-Application and the Incident-Application on a permanent basis,

#### to grant the rights of use required in order to use the SIEM-Application and the Incident-Application, it being understood that FBS will in that case not be the licence holder but recipient of the underlying services as defined further in this Agreement and

#### to perform the security event monitoring services,

all as described in particular in Part 1, Part 2 and Part 3 of this Agreement as well as **Annex 1** (*Statement of Work*) and **Annex 3** (*Project Schedule*) to this Agreement and FBS is required to pay for the Services accordingly.

#### The general terms and conditions used by either Contracting Party will not apply in connection with this Agreement. The foregoing exclusion will also apply even if one Party does not expressly reject the general terms and conditions of the other Party.

### Definitions

#### Capitalized terms used but not defined in this Agreement shall have the meanings set forth in **Annex 0** (*Definitions*).

## Part 1: SIEM-Application and Other Services

### Configuration and Testing the SIEM-Application (Project Phase)

#### Pursuant to this Agreement, the Contractor agrees to configure the SIEM-Application (on a phase approach) in a manner that the SIEM-Application will satisfy the requirements set forth in section 2 of **Annex 1** (*Statement of Work*) and in **Annex 3** (*Project Schedule*). The Contractor shall notify FBS in writing regarding the completion of the configuration and hence the availability of the SIEM-Application for the purpose of administering a Post Assurance Test (PAT).

#### For the purpose of the PAT the Parties shall mutually in advance define and describe the test cases, which create the basis on which the PAT is carried out. During the PAT, the Contractor shall be available to provide the urgent remedying of any still-existing errors and any onsite support (if needed).

#### FBS shall declare the successful execution of the SIEM-Application PAT, if the PAT reveals that the requirements for the configuration according to subsection 3.1 have been duly and completely performed. In this regard, the SIEM-Application must be, above all, unobjectionably usable [*einwandfrei nutzbar*]. The act of performing the PAT does not constitute a formal acceptance as per section 19 below.

#### The Contractor is obligated to ensure that the SIEM-Application is never declared by Contractor for use in production, as long as FBS has not yet issued the formal written acceptance as per section 19 below.

### Operation of the SIEM-Application Platform (Run Phase)

#### The Contractor is obligated to make the SIEM-Application Platform available, for use in production, to FBS as laid down in section 2 of **Annex 1** (*Statement of Work*) and in **Annex 3** (*Project Schedule*) at a point in time that is agreed to in the project schedule (“Go Live”) as set out in section 2 of **Annex 3** (*Project Schedule*).

#### The Contractor is obligated to use all reasonable efforts to ensure that the SIEM-Application, as provided and configured by Contractor does not contain any viruses or other malicous code.

#### The Contractor is not entitled

#### to limit or reduce the functionalities of the SIEM-Application or the SIEM-Application Platform below that functionality provided by the Contractor as set out in **Annex 1** (*Statement of Work*);

#### to modify the F.UN SE Group’s work processes that are supported by the SIEM-Application, or

#### to limit the usability or accessibility of the Application Data.

#### The Contractor is obligated to supply FBS with the access data required for using the SIEM-Application in a form and scale that allows all Users to gain access to the SIEM-Application and the Application Data. FBS must assign to the Users the applicable roles and authorizations that are to be afforded under the role and authorization concept. FBS must promptly notify the Contractor in writing when Users, roles or authorizations change.

#### The Contractor is obligated to design the SIEM-Application such that the Users can at any time gain access to, and fully utilize (read only), the SIEM-Application excluding scheduled maintenance periods. Furthermore, the SIEM-Application must allow the Users to store the Application Data and to download it at any time within the agreed availability level and excluding scheduled maintenance periods. FBS will ensure employees requiring access to the SOC Services (Windows and current Internet Browsing) will install a standard VPN Client. The SIEM Application is accessible via internet using VPN Client.

#### The Contractor hereby guarantees that except for such software and/or hardware as set forth in section 2 and 3 of **Annex 1** (*Statement of Work*) no further software and/or hardware is necessary to use the SIEM-Application and that FBS does not need to procure any other software (prerequisites).

#### Contractor does not and cannot guarantee the continued interoperability of this software and hardware, or of any other used within the IT environment at FBS or the F.UN Group. FBS (or the relevant F.UN Group member) shall be responsible to procure such additional or alternative software or hardware if the same becomes necessary for the continued operability with and use of the SIEM-Application. Contractor shall notify FBS in writing of any interoperability issues that may result in the need for additional and/or alternative software or hardware.

### Documentation

#### The Contractor is obligated to generate, update and physically handover the Documentation according to the stipulations set out in section 6 of **Annex 1** (*Statement of Work*) and in **Annex 3** (*Project Schedule*).

### Training Courses

#### The Contractor is obligated to carry out the training courses according to the stipulations set out in section 7 of **Annex 1** (*Statement of Work*).

### Rights of Use

#### Rights of Use to the SIEM-Application

#### Subject to section 1.1.3 the Contractor grants FBS the non-exclusive, geographically unrestricted within the European Economic Area (EEA) and non transferable right, which is limited in duration to the term of this Agreement, to use the SIEM-Application by the Users simultaneously or to allow it to be used by the Users (hereinafter referred to as the ***“Right of Use***”).

#### Rights of Use to the Documentation

#### With respect to the Documentation, the Contractor grants FBS the corresponding Rights of Use as defined in subsection 7.1, subject to the condition that the Right of Use will be limited in time and to the condition that the Documentation will replace the SIEM-Application. FBS is also entitled to edit and modify (also through a third party).

#### Rights of Use to the course materials

#### With respect to the course material, the Contractor grants FBS the corresponding Rights of Use as defined in subsection 7.1, subject to the condition that the course materials will replace the SIEM-Application. FBS is also entitled to edit and modify (also through a third party). Contractor does not grant such Right of Use in case he is not allowed to do so due to third party restrictions in which case Contractor shall inform FBS about such restrictions and shall use reasonable efforts to obtain a right of use to the benefit of FBS from the relevant third party that comes as close as possible to the Right of Use as defined in subsection 7.1, which may be subject to an additional charge.

#### Rights of Use to work product

#### With respect to work products, the Contractor grants FBS the rights, as described in subsection 7.1 subject to the condition that the Right of Use will be unlimited in time and to the condition that FBS will receive the exclusive Right of Use only to those components of the work product, which were specifically and uniquely generated for FBS under this Agreement. In addition, FBS is also entitled to edit and modify (also through a third party). It is understood that Contractor remains owner of the underlying intellectual property of the respective work product.

#### Rights to Databases and Copyrighted Database Works

#### If, during the term of this Agreement, databases within the meaning of § 87a Urhebergesetz and/or copyrighted database works within the meaning of § 4 subsection 2 Urhebergesetz are created on the SIEM-Application by compilation of data which may be, in the broadest sense, attributable to the F.UN SE Group Companies and which are saved on the SIEM-Application, then any and all rights to databases will be held by FBS. Even after the Agreement ends, FBS will be deemed the copyright holder.

### Availability of the SIEM-Application

#### With respect to the availability of the SIEM Application the provisions set out in section 9 of **Annex 1** (*Statement of Work*) shall apply.

### Support and Disruption Remedy for the SIEM-Application

#### With respect to support and disruption remedy for the SIEM Application the provisions set out in section 9 of **Annex 1** (*Statement of Work*) shall apply.

## Part 2: Incident-Application

### Configuration and Testing the Incident- Application (Project Phase)

#### Pursuant to this Agreement, the Contractor agrees to configure the Incident-Application (on a phase approach) in a manner that the Incident-Application will satisfy the requirements set forth in section 3 of **Annex 1** (*Statement of Work*) and in **Annex 3** (*Project Schedule*). The Contractor shall notify FBS in writing regarding the completion of the configuration and hence the availability of the Incident- Application for the purpose of administering a Post Assurance Test (PAT).

#### For the purpose of the PAT the Parties shall mutually in advance define and describe the test cases,which create the basis on which the PAT is carried out. During the PAT, the Contractor shall be available to provide the urgent remedying of any still-existing errors and any onsite support (if needed).

#### FBS shall declare successful exection of the Incident-Application if the PAT reveals that the requirements for the configuration as prescribed in this Agreement have been duly and completely performed. In this regard, the Incident-Application must be, above all, unobjectionably usable [*einwandfrei nutzbar*]. The act of performing the PAT does not constitute a formal acceptance as per section 19 below.

#### The Contractor is obligated to ensure that the Incident-Application is never declared by Contractor for use in production, as long as FBS has not yet issued the formal written acceptance as per section 19 below.

### Operation of the Incident-Application (Run Phase)

#### The Contractor is obligated to make the Incident-Application available, for use in production, to the Users as laid down in section 4 of **Annex 1** (*Statement of Work*) and in **Annex 3** (*Project Schedule*) at a point in time that is agreed to in the Project Schedule (“Go Live”) as set out in section 2 of **Annex 3** (*Project Schedule*).

#### The Contractor is obligated to use all reasonable efforts to ensure that the Incident-Application, as provided and configured by Contractor does not contain any viruses or other malicous code.

#### Contractor shall on an ongoing basis monitor the Incident-Application with regards to IT security risks of the offered services including the technical and organizational interfaces as set out in section 4.4.5 (“risk assessment”) of **Annex 1** (*Statement of Work*). Where Contractor identifies such risks Contractor shall ‑ if reasonably and technically practicable ‑ implement compensating controls in order to mitigate or eliminate the respective risk.

#### The Contractor is not entitled

#### to limit or reduce the functionalities of the Incident-Application below the functionality provided by the Contractor as set out in **Annex 1** (*Statement of Work*);

#### to modify the F.UN SE Group’s work processes that are supported by the Incident-Application; or

* + 1. to limit the usability or accessibility of the Application Data.

#### The Contractor is obligated to supply FBS with the access data required for using the Incident-Application in a form and scale that allows all Users to gain access to the Incident-Application and the Application Data in accordance with the role and authorization concept [*Rollen- und Berechtigungskonzept*]. FBS must assign to the Users the applicable roles and authorizations that are to be afforded under the role and authorization concept, and provide detailed written communication of the same to Contractor. FBS must promptly notify the Contractor in writing when Users, roles or authorizations change.

#### The Contractor is obligated to design the Incident-Application such that the User can at any time gain access to, and fully utilize, the Incident-Application excluding scheduled maintenance periods. Furthermore, the Application Platform must allow the Users to store the Application Data and to download it at any time excluding scheduled maintenance periods.

#### The Contractor hereby guarantees that except for such software and/or hardware as set forth in section 4 of **Annex 1** (*Statement of Work*) no further software and/or hardware is necessary to use the Incident-Application as of the effective date of this Agreement and that FBS does not need to procure any other software and/or hardware (prerequisites). Contractor does not and cannot guarantee the continued interoperability of this software and hardware, or of any other used within the IT environment at FBS or the F.UN Group. FBS (or the relevant F.UN Group member) shall be responsible to procure such additional or alternative software or hardware if the same becomes necessary for the continued operability with and use of the Incident-Application. Contractor shall notify FBS in writing of any interoperability issues that may result in the need for additional and/or alternative software or hardware.

#### FBS will ensure employees requiring access to the SOC Services (Windows and current Internet Browsing) will install a standard VPN Client. The Incident Application is accessible via internet using VPN Client.

### Documentation

#### The Contractor is obligated to generate, update and physically handover the Documentation according to the stipulations set out in section 6 of **Annex 1** (*Statement of Work*) and in **Annex 3** (*Project Schedule*).

### Training Courses

#### The Contractor is obligated to carry out the training courses according to the stipulations set out in section 7 of **Annex 1** (*Statement of Work*).

### Rights of Use

#### Rights of Use to the Incident-Application

#### The Contractor grants FBS the non-exclusive, geographically unrestricted and non transferable right, which is limited in duration to the term of this Agreement, to use the Incident-Application by the Users simultaneously or to allow it to be used by the Users (hereinafter referred to as the ***“Right of Use***”).

#### Rights of Use to the Documentation

#### With respect to the Documentation, the Contractor grants FBS the corresponding Rights of Use as defined in subsection 14.1, subject to the condition that the Right of Use will be limited in time and to the condition that the Documentation will replace the Incident-Application. FBS is also entitled to edit and modify (also through a third party).

#### Rights of Use to the course materials

#### With respect to the course material, the Contractor grants FBS the corresponding Rights of Use as defined in subsection 14.1, subject to the condition that the course materials will replace the Incident-Application. FBS is also entitled to edit and modify (also through a third party). Contractor does not grant such Right of Use in case he is not allowed to do so due to third party restrictions.

#### Rights of Use to work product

#### With respect to work products, the Contractor grants FBS the rights, as described in subsection 14.1 subject to the condition that the Right of Use will be unlimited in time and to the condition that FBS will receive the exclusive Right of Use only to those components of the work product, which were specifically and uniquely generated for FBS under this Agreement. In addition, FBS is also entitled to edit and modify (also through a third party). It is understood that Contractor remains owner of the underlying intellectual property of the respective work product.

#### Rights to Databases and Copyrighted Database Works

#### If, during the term of this Agreement, databases within the meaning of § 87a Urhebergesetz and/or copyrighted database works within the meaning of § 4 subsection 2 Urhebergesetz are created on the Incident-Application by compilation of data which may be, in the broadest sense, attributable to the F.UN SE Group Companies and which are saved on the Incident-Application, then any and all rights to those databases will be held by FBS. Even after the Agreement ends, FBS will be deemed the copyright holder or exclusive licensee of the databases and database works.

### Availability of the Incident-Application

#### The Parties agree that the Service Level Agreements with respect to the availability of the Incident-Application as set out in section 9 of **Annex 1** (*Statement of Work*) shall apply.

### Support and Disruption Remedy for the Incident-Application

#### With respect to support and disruption remedy for the Incident-Application the provisions set out in section 9 of **Annex 1** (*Statement of Work*) shall apply.

## Part 3: Security Event Monitoring Services

### Security Event Monitoring Services Implementation and Performance

#### As part of the SOC Services, the Contractor shall perform security event monitoring services, covering in particular cyber threat intelligence services, maturity assessments etc., as described in detail in sections 4 of **Annex 1** (*Statement of Work*) and in **Annex 3** (*Project Schedule*).

#### The Contractor shall use qualified IT security analysts for performance of these monitoring services that shall hold the qualifications and skills as set forth in section 4.4.3 of **Annex 1** (*Statement of Work*).

#### In advance to the commencement of such security event monitoring services, the Contractor shall be obliged to carry out any and all activities, in particular as described in section 4 of **Annex 1** (*Statement of Work*) and in **Annex 3** (*Project Schedule*) that are required to properly commence with the agreed monitoring services on the Go Live Date.

### Rights to the product of the Services

#### With respect to work products deriving from the security event monitoring services, the Contractor grants FBS the rights, as described in subsection 14.1 subject to the condition that the Right of Use will be unlimited in time and to the condition that FBS will receive the exclusive Right of Use only to those components of the work product, which were specifically and uniquely generated for FBS under this Agreement. In addition, FBS is also entitled to edit and modify (also through a third party). It is understood that Contractor remains owner of the underlying intellectual property of the respective work product.

## Part 4: Contract Performance

### Formal Acceptance

#### The Contractor shall notify FBS in writing regarding the completion of any and all project activities required to properly commence with the ongoing SOC Services, in particular after having successfully performed the PATs as described in section 3.1 and 10.1 as well as successfully performed the activities referred to in section 17.3 for the purpose of administering a User Acceptance Test (UAT) for the commencement of the ongoing SOC Services. The Parties may agree on performing the UAT without performing any prior PAT as described in sections 3.1 and 10.1.

#### Prior to the possible formal acceptance [*Abnahme*], the UAT shall be carried out by the F.UN SE Group Companies and/or FBS. For this purpose, the Parties shall mutually in advance define and describe the test cases, which create the basis on which the UAT is carried out. During the UAT, the Contractor shall be available to provide the urgent remedying of any still-existing errors and any onsite support (if needed).

#### If the UAT reveals that the project activities as referenced to in section 19.1 have been duly and completely performed, FBS shall declare formal acceptance. The act of performing the UAT does not constitute a formal acceptance.

#### In case of any other Services for performance [Werkleistungen] provided under this Agreement, Contractor shall notify FBS in writing regarding the completion of any and all activities to be provided by Contractor according to the corresponding Change Order Form. The test procedures for the formal acceptance will be agreed by the Parties in that Change Order Form. Prior to the possible formal acceptance these test procedures shall be carried out by the F.UN SE Group Companies and/or FBS. During the performance of those test procedures, the Contractor shall be available to provide the urgent remedying of any still-existing errors and any onsite support (if needed). If the performance of those test procedures reveals that the Services for performance have been duly and completely performed, FBS shall declare formal acceptance. The act of performing the test procedures does not constitute a formal acceptance.

### Place, Time and Geographical Scope of Performance

#### The Contractor is not allowed to perform and administrate the services that are the subject matter of the Agreement from locations that are outside of the European Economic Area (EEA).

#### Each Party is obligated to meet all of the deadlines defined in the schedule that are associated with its tasks and responsibilities. The initial schedule is included in **Annex 3** (*Project Schedule*).

### Delivery of New Program Versions

#### The Contractor shall in regular intervals offer FBS a New Program Version with respect to both the SIEM-Application and the Incident-Application. In the event that such a New Program Version is installed, the Contractor will then owe all of the duties defined in this Agreement with respect to the New Program Version.

#### The Contractor is obligated to ensure that the New Program Versions will completely satisfy the requirements defined under this Agreement.

#### In addition, the Contractor is obligated to supply FBS with current Documentation regarding a New Program Version, upon delivery of the New Program Version and said Documentation must show the features as referred to in sections 5 and 12.

#### The Contractor shall grant FBS the Right of Use to the Innovations as described in section 7 and section 14.

### Data Backup and Processing

#### The Contractor is also obligated to back-up the SIEM-Application and Incident-Application on a regular basis but at least daily.

#### The Contractor is obligated at least weekly to create a complete backup copy of the data, which is stored on the Incident-Application, and to deliver such copy to FBS on customary data carriers, if requested by FBS.

#### The backup concept shall use a common rotation scheme like “grandfather-father-son” and shall provide a backup availability for the term of the Agreement. Upon expiry or termination of the Agreement Contractor shall provide the backup data to FBS as provided for in section 43.

#### The Contractor is obligated to test back up copies within regular intervals as agreed in writing with FBS for the duration of the term of this Agreement.

#### FBS’ right to create separate backup copies will not be affected thereby.

### Reporting

#### Reporting on the availability and support inquiries regarding the SIEM-Application and Incident-Application.

#### Without prejudice to any other reporting obligations resulting from this Agreement or one of its Annexes, the Contractor is obligated to file a monthly report, as follows, concerning any downtime period as defined in section 8 of **Annex 1** (*Statement of Work*) and the disruptions as reported by FBS and defined in section 9 of **Annex 1** (*Statement of Work*):

* + - 1. The Contractor is obligated to disclose the number of downtime periods, the number of reported disruptions and the number of other service inquiries.
      2. The Contractor shall prepare a short summary concerning each inquiry within the meaning of subsection 23.1.1 and to disclose the current processing status.
      3. The Contractor is obligated to separately indicate the percentage of shortfall availability as well as the disruptions, which were reported by FBS and which were remedied within the processing periods indicated in the relevant subsection of section 9 and 16. The defects, which were not remedied within the processing periods described in the respective subsections of section 9 and 16, should be separately identified and accompanied with explanations.

#### Other Reporting

#### Contractor shall deliver at least every 6 months an IT security risk report listing all identified IT security risks and implemented counter-measures as per sections 4.4.5 of **Annex 1** (*Statement of Work*). These reports shall include the results of the performed back up tests (see 22.4).

#### The Contractor is obligated to issue reports in writing and in the English language.

### Governance, Integration, Audit

#### The Services Contractor performs under this Agreement are dependent on various other activities/measures which take place in FBS’ IT environment. In order to coordinate and steer all such activities FBS is entitled to set up a governance structure which is defined in **Annex 6** (*Governance Model*).

#### Each Party shall comply with this governance regime and shall actively support and work with the relevant bodies to the extent commercially reasonable under the circumstances. Contractor itself shall become a member of the governance body of aforementioned regime as set out in **Annex 6** (*Governance Model*). In particular, Contractor shall collaboratively work with the Outsourcing Providers to duly perform the Services owed under this Agreement.

#### FBS shall be entitled to conduct recurring audits with respect to the performance of the Services under this Agreement. An auditor from FBS or a third party auditor nominated by FBS is entitled to conduct such audits on a quarterly basis. The audit shall be subject to security policies of Contractor and will be conducted after giving reasonable advance notice and shall further not interfere with normal business operations. In case an external auditor shall be used to conduct the audit, the Parties shall mutually agree on the third party who shall be the external auditor. FBS will utilize Contractor resources which have been directly dedicated to FBS as part of this Agreement to support any audits. Any additional support by Contractor will be provided without additional charge, as long as the efforts are reasonable. The Parties will agree upon the scope and schedule of the audit. Contractor cannot be obligated to provide access to systems or information that are not dedicated to the provision of the Services or that would otherwise jeopardize the integrity or confidentiality of information of third parties (such as other customers or vendors, or financial markets sensitive information).

### Principles of Cooperation

#### FBS ascribes a very high level of importance to social responsibility in connection with business activities and is therefore a participant in the initiative “United Nations Global Compact”. The initiative is based on ten fundamental principles, which are intended to make the globalization process more social and economically responsible and to prevent corruption. The bulletin, “Principles of Responsible Procurement at F.UN”, describes the principles of the UN Global Compact and can be downloaded from the following website:

#### <https://www.fun-einkauf.com/content/dam/fun-einkauf/downloads/en/1107_FUN_Procurement_Policy.pdf>

#### The Contractor agrees to comply with these principles unless such is contradicting or in violation with Contractors applicable policies. In that case Contractor will inform FBS thereof and the Parties will mutually agree on a resolution.

#### The Contractor shall designate a competent official contact within its organisation who is able to provide the necessary information and render decisions on behalf of the Contractor. FBS shall exclusively communicate its instructions with respect to the services to be rendered to this official contact.

#### All persons (including subcontractors commissioned by the Contractor and their employees) the Contractor deploys for rendering its services to FBS (hereinafter referred to as ***“Personnel”***) shall, in organisational terms, remain the employees of the Contractor or its subcontractors, irrespective of whether they are deployed at FBS for an extended period of time. The Contractor has the sole authority to instruct and direct its Personnel and shall manage its Personnel independently. The Personnel is not deemed to enter into an employment relationship with FBS, not even where they render services at its premises. The Contractor is obligated to produce unbidden a permit for the supply of temporary workers before the services are commissioned.

#### Where Personnel is deployed that is not national of an EU Member State, the Contractor must submit corresponding appropriate residence or work permits to FBS prior to their commencement of work, insofar only as required by law and performance takes place at FBS locations.

#### In accordance with section 12b of the German Nuclear Act (Atomgesetz), a reliability check (“Zuverlässigkeitsüberprüfung”) will be performed on Personnel providing services that are related to the handling or transport of radioactive substances or to the installation and operation of facilities within the meaning of section 7, section 11 (1) no. 2, or section 9a (3) of the German Nuclear Act (Atomgesetz), in particular Personnel who have RSA-accounts, access to the technical design or network. The checks shall be renewed every 5 years for German nationals, annually for non-German nationals. The performance of such reliability checks shall under no circumstances entitle Contractor to increase its compensation.

### Replacement of Personnel

#### Personnel of this contract may only be replaced by another following FBS' prior written consent. If the replacement entails on-the-job training, then any such shall be for the account of the Contractor.

#### FBS may demand the replacement of Personnel if that Personnel has repeatedly breached contractual obligations.

#### The costs arising as a result of the replacement of Personnel shall be for the account of the Contractor.

#### Reassignment of any deployed Personnel to a higher qualification level is not permitted during the term of this Agreement.

### Sending of Written Notifications and Information

#### Unless otherwise expressly stated in this Agreement, all written notifications from FBS to the Contractor must be sent *via* regular mail to the following address:

Horizon Deutschland AG

C/O Legal Department (Commercial)

Hasengasse 5-7,

60311 Frankfurt am Main

#### All written notices which relate to this Agreement, such as Contract Changes, must be sent from the Contractor to FBS *via* regular mail to the following address:

F.UN Business Services GmbH

Head of Vendor & Contract Management

Unfallstraße 5

22399 Hamburg

### Disputes

#### In case of any disputes arising between the Parties under or in connection with this Agreement and/or the performance under the Agreement (the **Dispute**(**s**)), the Parties shall instigate a dispute resolution procedure within each Party’s management organizations is set out in **Annex 6-A** (*Governance Processes and Procedures*).

#### Any Dispute shall be settled amicably, as far as possible. In case a settlement cannot be reached, these Disputes shall be finally settled in accordance with the rules of conciliation and arbitration of the German Institute of Arbitration (*DIS*) by three (3) arbitrators qualified to be appointed as ordinary judges (*Befähigung zum Richteramt*) (the ***„Arbitration Court“***) and shall be decided by the Arbitration Court in a final manner without recourse to the ordinary courts of law. Place of arbitration shall be Hamburg (*Germany*). Each Party shall be entitled to instigate the independent proceedings for taking evidence (*selbständiges Beweisverfahren*) pursuant to section 485 et. seqq. German Civil Procedure Act (*Zivilprozessordnung*). In such a case, the evidence taken by the Arbitration Court shall be binding.

#### If a Dispute between the Parties arises and during the Dispute resolution proceduresin no event except for reason of non or delayed payment for more than three consecutive months shall Contractor interrupt the performance of the Services to FBS, disable any equipment or Software used to perform the Services, or perform any other action that prevents, impedes, or reduces in any way the performance of the Services or FBS’ ability to conduct its activities, unless (i) authority to do so is explicitly granted by FBS in writing; or (ii) the Agreement or the respective Service has been terminated or has expired; or (iii) FBS does not participate in the Dispute procedures in accordance with the Agreement.

### Use of Subcontractors

#### The Contractor may not use any subcontractors without the prior written consent of FBS which shall not be unreasonably withheld. FBS hereby consents to the use of Contractor’s subcontractors who are listed in **Annex 5** (*Contractors Subcontractors*). The Contractor shall not be relieved from such liability as the general contractor for the work performed by the subcontractors and suppliers whom it engages.

### Change Management Process

#### The Change Management Process is set out in **Annex 6-A** (*Governance Processes and Procedures*).

### FBS Duties to Cooperate and Reserve Availability

#### The contractual duties of FBS to cooperate and reserve availability are owed to the extent as set forth in the relevant sections (headed by “FBS Duties to Cooperate and Reserve Availibility”) of **Annex 1** (*Statement of Work*). The Parties agree, that the essential part of the duties of cooperation are already covered by the aforementioned sections of **Annex 1** (*Statement of Work*). However, where Contractor requires further cooperation of FBS, Contractor will inform FBS of the actions required to be taken and FBS will perform such additional duties that have a minor cost and time impact. Where FBS considers such further cooperation as significant with regards to the cost and time impact, the Parties will discuss in good faith how to commercially solve it.

#### Additionally, FBS may be provided with one or more user IDs, account numbers, personal identification numbers or codes, passwords, digital certificates or such other means of authentication (“Login”) to access a web-based portal, dashboard, or other form of user interface (“User Interface”). The User Interface and Login may be used for accessing on-line services, authorizing instructions and requests and/or ordering additional services or Service Tickets. FBS shall at all times keep its Login strictly confidential and shall take all reasonable precautions to prevent unauthorized use, misuse or compromise of its Login. FBS agrees to notify Horizon promptly upon learning of any actual or threatened unauthorized use, misuse, or compromise of its Login. Contractor is entitled to rely on FBS’ Login as conclusive evidence of identity and authority.

## Part 5: Compensation

### Compensation

#### The compensation for the SOC Services that Contractor shall perform under this Agreement is specified in **Annex 2** (*Pricing*).

#### The aforementioned compensation elements cover all of the services which the Contractor is obligated to provide, as well as the grant of all Rights of Use stipulated in this Agreement and all claims arising from or related to any domestic or foreign trips, including travel costs, accommodations, cost of materials and daily allowances as well as any surcharges and travel time together with all material expenses and incidental costs. For the avoidance of doubt, Contractor does not cover, and FBS is to cover, for any costs and expenses incurred by FBS or any third party (such as the Outsourcing Providers) that may be involved in the project in respect of which Contractor provides the Services.

#### Where Parties ‑ in exceptional cases ‑ agree on additional services to be performed on a time and material basis other than caused by a Change Request, the hourly rates as defined in **Annex 2** (*Pricing*) shall apply.

#### All listed prices are listed on a purely net basis, and to the extent that a duty to pay value added tax exists, the statutory value added tax applicable as of the date of service will be added to that net price.

### Terms of Payment

#### Remuneration shall become due upon receipt of the relevant verifiable invoice in line with **Annex 2** (*Pricing*) and **Annex 3** (*Project Schedule*).

#### The payment period starts with the first day after capturing the invoice in FBS’ payment system, but not later than two days after having received the invoice (“Payment Period Start”).

#### The payment period expires with the end of the month in which  45 days since Payment Period Start have passed (“Payment Period Expiration”). FBS will issue the payment five days after Payment Period Expiration respectively on the following working day.

#### Determining for the timeliness of the payment is the moment of submitting the transfer order to the bank. Section 286 para. 3 of the German Civil Code is waived.

#### Contractor may, subject to giving FBS reasonable notice where practicable, suspend any Services (in whole or in part) if FBS is past due on any invoice hereunder (excluding disputed amounts) that has not been remedied within 10 days after FBS is informed in writing or text form by Contractor of such non-payment and the dispute resolution procedure as set out in section 28 has been initiated. To dispute an amount (and without affecting such statutory claims as FBS may have in case of a written notice of a disputed amount) FBS must give Contractor notice within 6 months from the date of the invoice, adequately supported by bona fide explanation and documentation (including the specific legal basis and facts therefor).

#### Each invoice must separately itemize the statutory value added tax in the amount required by law. The original invoices must be sent in written or text form (as defined by law) [*Textform*] to the administrative headquarters of FBS located in Hanover (F.UN Business Services GmbH, Musterstraße 33, 22399 Hamburg). The purchase order number must be provided, and the invoice documentation must be enclosed.

#### The non-recurring charges (NRC) are billable for new installs or physical location moves. Unless expressly indicated otherwise, all NRCs will be invoiced upon Delivery Date and the initial monthly recurring charges (MRCs) will be invoiced upon Service Activation Date.

## Part 6: Other Provisions

### Compliance with Applicable Law

#### Each Party will comply with all applicable laws as they relate to performance of their respective obligations under the Agreement. Contractor is not assuming the risk of any laws and regulations, or changes thereto, as may be applicable to FBS or any member of the F.UN Group. FBS hereby confirms that, as of the effective date of this Agreement, the Services and the manner in which they are to be provided as set out in this Agreement, are not in violation of any laws and regulations as applicable to FBS and any member of the F.UN Group. Either Party shall promptly notify the other Party of any anticipated and effective changes in such laws and regulations that may have an impact on the Services or the manner in which they are provided and following the receipt of such notification the Parties shall promptly engage work together in good faith such that the general performance of the Services is in line with any such change.

### Non-Disclosure and Confidentiality

#### Both Parties are obligated to treat as confidential any and all business and trade documents (including Application Data) made available to them by each other or, as approved subcontractors and the F.UN SE Group Companies, and shall specifically ensure that third parties cannot gain access to view such materials. F.UN Group SE Companies and Contractors approved subcontractors are not considered as third parties within the meaning of this section 35 The documents, which are made available, must be returned to the originating party upon request. Subsection 43.1 shall remain unaffected thereby.

#### The Contractor is obligated not to disclose any information to a third party, to which it becomes privy to in connection with its work for the F.UN SE Group, irrespective of whether the information relates to the F.UN SE Group itself or to its business network, unless FBS had in writing previously released the Contractor from such duty of non-disclosure, or unless Contractor is obligated or mandated to do so by law or an administrative or judicial order or instruction. Where Contractor is required to disclose or becomes aware that it is required to disclose any of the Confidential Information in one of the aforementioned cases, Contractor shall use reasonable endeavours to limit the release/disclosure and shall inform FBS without undue delay of the nature and extent of the Confidential Information required to be disclosed by providing FBS with written proof that Contractor was instructed to disclose.

#### The duties prescribed in subsections 35.1 and 35.2 will not be affected by the expiration or termination of the Agreement.

### Security and Data Protection

#### Contractor shall be ISO 27001 certified and will provide relevant documentation upon FBS’ request.

#### The provisions of a separate data protection agreement (“DP Agreement”) shall apply with regard to the Data Processing of Personal Data (“Data Processing” and “Personal Data” as specified as “Data Processing” and “Type of Data” in the DP Agreement) in connection with this Agreement. Unless explicitly provided for otherwise, the provisions of the DP Agreement shall prevail over the provisions of this Agreement with regard to the Data Processing of Personal Data in case of contradictions. The DP Agreement furthermore includes a description of technical and organizational security measures Contractor is obliged to comply with.

### Group-wide Procurement

#### FBS is entitled to share the data, which was supplied by the Contractor in connection with the purchase order, with companies of the F.UN SE Group for the sole purposes of Group-wide procurement and to store such data even after the end of the Agreement in accordance with the applicable statutory data retention rules or for possible additional purchase orders. FBS shall ensure that all such F.UN SE Group Companies to whom it provides data are bound by confidentiality and restricted use obligations that are at least as protective of Contractor’s) information and intellectual property rights as provided for by this Agreement. For the avoidance of doubt, any prices and charges set forth in this Agreement are valid as between FBS and Contractor only, and only for purchases made under this Agreement as of the effective date hereof. This Agreement is not intended to allow, and does not allow, F.UN SE Group members to purchase products and services under it from Contractor (or any Contractor affiliates).

### Third Party Intellectual Property Rights

#### The Contractor warrants that its goods and services are free and clear of any third party rights and that the contractual use of such goods and services will not infringe any patents, copyrights or other intellectual property rights of third parties. The Contractor shall indemnify FBS and F.UN SE Group Companies with respect to all demands and claims and shall defend it against all claims, which are enforced on the basis of an infringement of such third party rights. Defensive measures and settlement negotiations taken against the enforcement of demands and claims arising from the infringement of such rights shall always be carried only with consent and mutual support of the Contracting Parties.

#### The Contracting Parties shall therefore without undue delay inform one another in writing, if claims are asserted against them based on an infringement of intellectual property rights in connection with the goods and/or services which are the subject matter of this Agreement.

#### If the agreed goods and/or services or the use thereof infringe third party rights, then the Contractor shall, in its own discretion, either procure the right of unrestricted use for FBS or without undue delay modify the goods and/or services in question at its own cost such that the goods and/or services in question can be delivered without infringing such intellectual property rights. More extensive claims and rights held by FBS shall not be affected thereby.

### Insurance Policies

#### The Contractor promises to execute a liability insurance policy, which contains terms and conditions customary in the industry and which covers at least EUR 1.5 million per claim based on personal injury, property damage and pecuniary losses. The Contractor is obligated to maintain such insurance coverage for at least 12 weeks following the end of the Agreement. Proof of the insurance policy must be provided when the Agreement is concluded.

### Service Level Agreements and Contractual Penalties

#### The Service Level Agreements (SLA) as set out in section 9 of **Annex 1** (*Statement of Work*) shall apply.

#### The provision under § 341 (3) BGB is not applicable.

#### If the Contractor culpably fails to meet its contractual obligations on confidentiality and data protection as well as data security and processing, then the Contractor agrees to pay a contractual penalty of € 10,000 for each individual case of a contractual breach.

### Limitation of Liability

Contractor’s liability is limited as set forth in the following paragraphs.

Contractor's liability due to simple negligence shall be limited to the amount of the typically foreseeable damages.

The typically foreseeable damages shall be considered for pecuniary damages caused by simple negligence: (a) For one incident as up to an amount of Euro 250,000 (two hundred and fifty thousand Euros); and (b) per contract year as up to an amount of 100% (one hundred per cent) of the annual charges paid or payable by FBS to Contractor in which the relevant damage has occurred.

Contractor's liability with respect to breaches of any data privacy or data protection provision as set forth in this Agreement or the Data Processing Agreement shall be unlimited, irrespective of the degree of misconduct.

The preceding limitations of liability shall not apply insofar as Contractor is held liable under the German Product Liability Act.

FBS acknowledges and agrees that charges for the Services do not include any risk contingency or other assumption of risk, beyond the cost of performance. Contractor is not assuming responsibility for any losses that may occur as a result of the failure to identify all possible threats or vulnerabilities or Scanning Risks and Contractor is not acting in the capacity or taking on the responsibility of an insurer and is not charging a fee that would allow it to do so.  It is the responsibility of FBS, as FBS deems fit, to obtain adequate insurance covering potential damages to FBS` customers or third parties.

The Parties agree that it is impossible to detect, disclose, resolve every vulnerability or security hazard, that unauthorized access may occur and that impenetrable security can not be attained. FBS accepts and agrees that, notwithstanding the nature of the products and/or services acquired from Contractor, nothing in this Agreement shall release FBS of its obligation to exercise care reasonable under the circumstances in monitoring and managing its security environment and to mitigate the risks associated with any potential or actual security hazard.

### Contract Term and Termination

#### This Agreement enters into effect on 01 January 2015. The Agreement will then be in place for a fixed period of 72 months from this date (hereinafter referred to as “***Operational Year***”). After the expiration of this Operational Year, the Agreement will end automatically without any need for a notice of termination.

#### FBS is authorized, at any time upon giving 6 weeks’ notice to the end of any given month, to terminate all or part of this Agreement without having to provide any grounds for the termination subject to payment of the applicable termination fee as set out in **Annex 2** (*Pricing Sheet*).

#### The Contracting Parties reserve the right to extraordinary termination [*außerordentlichen Kündigung*]. FBS may in particular terminate the Agreement for cause if Contractor is in breach of the Data Processing Agreement.

#### Both Parties are entitled to terminate the Agreement for cause if the respective other Party commits a material breach of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) Calendar Days after being notified in writing to do so; or

#### Either 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.

### Duties upon and following the Expiration or Termination of the Agreement

#### Duty to release documents

#### The Contractor is obligated unbidden to release to FBS the documents requiring release in the event this Agreement ends and to do so on dates and at times thereupon determined by FBS. With the last release of the documents requiring release, the Contractor shall be obligated without undue delay to delete the intangible documents requiring release in a manner compliant with the data protection laws and to supply FBS with written confirmation of the deletion/destruction. If FBS expressly and in writing partially or completely waives its right to demand the release of physical (tangible) documents requiring release, then sentence 1 of the provision will also apply to the documents requiring release, which are still in the possession of the Contractor, except that such documents must be destroyed in a manner compliant with the data protection laws.

#### At the request of FBS, any electronically stored data or copyrighted database works shall be released on electronic data carriers or transferred online in a format considered customary in the market.

#### Documents requiring release within the meaning of this Agreement are all tangible and intangible files, documents, data and records (including any copies thereof), which the Contractor has received or produced on the basis of this Agreement. The data includes, above all, application data as well as databases and database works. It also includes data that is generated for data security and logging.

#### Support services

#### At the demand of FBS, the Contractor will also be obligated ‑ on the dates to be determined by FBS but in any case for a maximum period of 12 months from the effective date of the termination ‑ to provide any and all the services, which FBS will define in its fair discretion and which are required to transition the services (that are the subject matter of this Agreement) to FBS or to a third party designated by FBS. This includes, but is not limited to, the following listed services

* + - 1. the migration to another IT system,
      2. disclosure of all hardware and software, which is deployed in order to provide the services that are the subject matter of this Agreement.
    1. The Contractor shall closely collaborate with FBS and the third party designated by FBS and ensure that no disruptions in the provision of services arise during the transition and that FBS or the third party designated by FBS will be in a position to take up the operation of the services which are the subject matter of the Agreement after the date of the termination.

The compensation for the performance of the services as defined in sections 43.1 and 43.2 is a price that will be mutually agreed upon.

The compensation set forth above shall cover all claims arising from or connected with any trips including the travel costs, accommodation expenses, costs of materials and daily allowances as well as any surcharges and travel time.

### Assignment; right of retention

#### FBS is entitled to transfer the contractual rights and obligations in whole or in part subject to Contractor’s prior written consent. The Contractor will consent to such transfer, unless the transfer causes a deterioration of the Contractor’s economic situation or the rights or obligations are to be transferred to a direct competitor of the Contractor or otherwise has reasonable grounds to object.

#### Assignments as well as any other transfers of the rights and duties of the Contractor are hereby prohibited except where covered by the scope of § 354 a of the German Commercial Code [Handelsgesetzbuch - HGB]; any exceptions to the foregoing shall require FBS's written consent.

#### The Contractor may not enforce a right to withhold counter-performance under this contractual relationship, if such rights are based on other contractual relationships with FBS.

### Publications, advertising

#### Any disclosure of the business relationship with FBS shall require both Parties prior written consent. The foregoing also applies to the publication of data related to this contractual relationship with FBS.

### Order of Precedence

#### The contractual agreements have the following order of precedence

* + 1. Individual modifications and/or addenda after the contract is formed
    2. This Agreement excluding Annexes.
    3. The Data Processing Agreement
    4. The Annexes to this Agreement.
    5. Statutory provisions.

#### Where there are any conflicts or inconsistencies, the rules and provisions set forth higher in the aforementioned list will always take precedence over those set forth lower on that list. Any gaps or omissions will be constructively filled by referring to the rules and provisions set forth lower on the aforementioned list. For documents listed at the same level, the more recent document will take precedence over the older document.

#### The Contractor is obligated to ensure that the services which are the subject matter of the Agreement satisfy all statutory provisions applicable at the time that the service is rendered.

### Final Provisions

#### If, under the terms of this Agreement, documents must be delivered to FBS, then they must be without exception in the English language and must be created in the versions of Microsoft Word, Microsoft Excel and Microsoft Project that are used by FBS. Unless this Agreement expressly provides otherwise, all documents within the meaning of sentence 1 shall be delivered in electronic and in written form (single copy).

#### No ancillary oral agreements have been reached. All agreements, which contain a modification, addendum or specification to this Agreement, must be made in writing to be valid. The foregoing rule also applies to a rescission of this writing requirement.

#### **Annexes 1** through **6-A and Data Processing Agreement** are a part of, and incorporated by reference into, this Agreement.

#### The laws of the Federal Republic of Germany shall exclusively govern all legal relations under and in connection with this Agreement to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980.

#### Should any one or more provisions of this Agreement be or become invalid or should this Agreement contain contractual gaps, then the remaining provisions of this Agreement will not be affected thereby. In that case, the Contracting Parties agree to work towards reaching a valid agreement, which would most closely reflect economically that which the Contracting Parties would have agreed to, had they known about the invalidity or omission.

#### FBS warrants and shall ensure that (i) it has and will continue to have full rights, power, and authority to consent to having the Services provided (including, without limitation, all rights, power, permissions and authority necessary and as may need to be given by any User or any F.UN SE Group Company); (ii) it maintains no agreements with third parties that would prevent or hamper Contractor to perform the Services; (iii) it will use the Services and any results generated by such services for lawful purposes only.

Hamburg, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Hamburg, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Horizon Deutschland AG F.UN Business Services GmbH

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## Annex 0

to the Agreement for Security Operation Center Services between F.UN Business Services GmbH and Horizon Deutschland AG.

**Definitions**

## Annex 1

to the Agreement for Security Operation Center Services between F.UN Business Services GmbH and Horizon Deutschland AG.

**Statement of Work**

## Annex 2

to the Agreement for Security Operation Center Services between F.UN Business Services GmbH and Horizon Deutschland AG.

**Pricing**

## Annex 2-A

to the Agreement for Security Operation Center Services between F.UN Business Services GmbH and Horizon Deutschland AG

**Pricing Detailed Summary**

## Annex 3

to the Agreement for Security Operation Center Services between F.UN Business Services GmbH and Horizon Deutschland AG.

**Project Schedule**

## Annex **4**

to the Agreement for Security Operation Center Services between F.UN Business Services GmbH and Horizon Deutschland AG.

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## Annex 5

to the Agreement for Security Operation Center Services between F.UN Business Services GmbH and Horizon Deutschland AG.

**Contractor’s Subcontractors**

## Annex 6

to the Agreement for Security Operation Center Services between F.UN Business Services GmbH and Horizon Deutschland AG.

**Governance Model**

## Annex 6-A

to the Agreement for Security Operation Center Services between F.UN Business Services GmbH and Horizon Deutschland AG.

**Governance Processes and Procedures**