NON-DISCLOSURE AGREEMENT

(GSA reference:_____)

Concerning the release and use of Proprietary Information to the Contractor for the provision of services under GSA/OP/05/15/Lot2 –
"Provision of Quality Management Services to the GSA"

By and between,

The **European GNSS Agency**, hereinafter referred to as the **"GSA"**, set up by the Regulation (EU) No 912/2010 of the European Parliament and of the Council as amended by Regulation (EU) No 512/2014 of the European Parliament and of the Council, located at:

Janovskeho 438/2
17000 Prague
Czech Republic

Represented, for the purpose of the signature of this non-disclosure agreement, by Mr Carlo des Dorides, Executive Director,

and,

_____hereinafter referred to as the **"Recipient"**, whose registered office is at:

_____

_____

_____

_____

_____
[Official address in full]

Represented, for the purposes of the signature of this non-disclosure agreement, by _____

_____
[Title and name in full and function of company representative authorised to sign the agreement]

Hereinafter individually referred to as the **"Party"** or collectively referred to as the **"Parties"**

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European GNSS Agency
Janovskeho 438/2
170 00 Praha 7
Holesovice
Tel. +420 234766000
www.gsa.europa.eu

Recipient Initial	GSA Initial

PREAMBLE

WHEREAS, for the Recipient to provide services to the GSA under Contract GSA/OP/05/15/Lot2- "Provision of Quality Management Services to the GSA"- requires access to certain Proprietary Information linked with the service;

WHEREAS, any handling of such Proprietary Information must be done in accordance with the terms of this Agreement;

WHEREAS, the GSA is willing to provide access to the Proprietary Information pursuant to terms under this Non-Disclosure Agreement;

WHEREAS, in consideration of the above, the Recipient expressly agrees to always follow the provisions of this Agreement in his use of Proprietary Information.

THEREFORE, the Parties agree the following:

Article 1 – Definitions

For the purpose of this Agreement:

"Agreement" shall refer to the present Non-Disclosure Agreement.

"Proprietary Information" shall mean any information or data of financial, personal, commercial or technical nature, including but not limited to, any reports, analyses, compilations, studies, interpretations, assumptions, estimates, projections, forecasts prospects, whether it relates to technical, pricing, legal or other information, including ideas, know-how, concept, designs, specifications and data, and whether it is in written, electronic, photographic, oral and/or any other form relating to and/or disclosed by or on behalf of the GSA to the Recipient, pursuant to this Agreement, which has been explicitly marked as being Proprietary Information or which by its nature is to be considered Proprietary Information. Proprietary Information, which is orally disclosed, may only be protected under this Agreement if it is identified as Proprietary Information at the time of disclosure and then confirmed in writing (including in Minutes of Meeting signed by the Parties) within 7 working days from such oral disclosure.

"Purpose" shall refer to the performance of services subject to contract GSA/OP/05/15/Lot2.

"Completion of the Purpose" shall mean the date at which the contract GSA/OP/05/15/Lot2 effectively ends.

"Authorised Third Parties" shall mean persons or entities other than the Recipient who are directly involved in the Purpose, who have a need to know the Proprietary Information for

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the execution of their own tasks within the Purpose, and who the GSA has agreed in writing as being Authorised Third Parties. The GSA's agreement will generally require the Third Party's submission to the present NDA and possibly further requirements.

Article 2 – Scope

2.1 This Agreement sets forth the Recipient's obligations regarding access to, use, distribution, disclosure and protection of the Proprietary Information provided by the GSA for the Purpose.

2.2 Under this Agreement, the Recipient undertakes to use the Proprietary Information solely for pursuing the Purpose in accordance with the terms of this Agreement.

2.3 No provision of this Agreement shall be construed to be an obligation by either Party to disclose information to the other Party or to enter into further agreements with the other.

Article 3 – Confidentiality and conditions of access to and use of Proprietary Information

3.1 The Recipient undertakes to ensure that the access to, use, distribution, disclosure and protection of Proprietary Information will comply with following conditions:

3.1.1 Proprietary Information is supplied to the Recipient solely and exclusively for the Purpose. The Proprietary Information cannot be used totally or partially, directly or indirectly, for any other purpose than that defined in Article 2.2 above, unless the GSA gives its prior written authorisation.

In any case, the Recipient and Authorised Third Parties shall not use Proprietary Information:

(i) in a manner conflicting with the objectives of the European GNSS programmes;

(ii) after Completion of the Purpose.

3.1.2 The Recipient shall not copy, reproduce, duplicate, distribute, communicate or otherwise make available the Proprietary Information, either in whole or in part, to persons or parties who are not Authorised Third Parties, unless the GSA gives its prior written authorisation.

3.1.3 The Recipient shall keep the Proprietary Information and any copies thereof secure by effective and reasonable means in such a way as to prevent unauthorised access.

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3.1.4 The Recipient will not object to an application for a patent filed by the GSA pleading want of novelty if it is due to:

(i) receipt of information to be treated as confidential pursuant to this Agreement; or

(ii) breach of this Agreement by the Recipient or an Authorised Third Party.

3.1.5 Nothing contained in this Agreement shall be construed as granting any right, title or interest in the Proprietary Information including any intellectual property right. The Recipient shall not itself, nor authorise Authorised Third Party or any third party to, write, publish or disseminate any description of the Proprietary Information or elements of it, such as its structure or content for so long as it is bound by this Agreement.

3.1.6 In the event that the Recipient becomes aware of any unauthorised use of the Proprietary Information or of any unauthorised copy of the Proprietary Information in the public domain or with third parties or of any unauthorised derivative work, it shall immediately inform the GSA.

3.1.7 The Recipient shall only and exclusively provide access to the Proprietary Information to the Authorised Third Parties which:

(i) are duly informed of the commercial in confidence nature and/or classification of such information, as the case may be; and

(ii) observe confidentiality obligations equivalent to and equally onerous as all the confidentiality obligations stemming from this Agreement

3.1.8 The Recipient shall inform the GSA of the disclosure of Proprietary Information to Authorised Third Parties and provide the GSA with an electronic copy of the signed non-disclosure agreement between the Recipient and the Authorised Third Party.

Article 4 – Limitation on protection of the Proprietary Information

The obligations contained in Article 3 are not applicable to information that the Recipient can demonstrate by written evidence:

4.1 has come into the public domain prior to, or after, the date of receipt of the Proprietary Information from the GSA through no fault or unauthorised act of the Recipient or an Authorised Third Party;

4.2 was already lawfully developed or acquired by the Recipient at the date of receipt of the Proprietary Information from the GSA;

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4.3 has been or is published without violation of this Agreement;

4.4 was lawfully obtained by the Recipient without restriction and without breach of this Agreement from a third party, who is in lawful possession thereof, and under no obligation of confidence to the GSA;

4.5 is disclosed pursuant to the request of a governmental or jurisdictional authority or is disclosed according to the law or regulations of any country with jurisdiction over the Recipient; in either case the Recipient, subject to possible constraints of such governmental or jurisdictional authority, shall immediately give the GSA a written notice of the above request and shall reasonably cooperate with the GSA in order to avoid or limit such disclosure;

4.6 was disclosed and/or used without restriction pursuant to written authorisation from the GSA.

Article 5 – Return/Destruction of Proprietary Information

5.1 Upon Completion of the Purpose or the GSA's written request, the Recipient, as shall either return to the GSA or destroy all the Proprietary Information, whichever requested by the GSA. In case of destruction, it shall be certified in writing by the Recipient and given to the GSA.

5.2 The Recipient shall use all reasonable endeavours to ensure that any Authorised Third Parties to whom the Recipient has supplied any Proprietary Information either return or destroy it and any copies thereof as requested by the GSA.

5.3 Paragraphs 5.1 and 5.2 above shall not apply to the extent that the Recipient is required to retain any such Proprietary Information by any applicable law, rule or regulation or by any competent judicial or governmental body.

Article 6 – Breach of obligations

Should the Recipient or any Authorised Third Party breach any of its obligations of confidentiality under this Agreement and without prejudice to any right of the GSA to seek damages before the competent jurisdiction, the GSA may, by written notice to the Recipient, withdraw the right of the Recipient to use the Proprietary Information for the Purpose.

Article 7 – Duration of this Agreement and protection of the Proprietary Information

7.1 This Agreement shall enter into force on the date of the last signature by the Parties and shall remain in effect until the Completion of the Purpose with the exceptions stipulated under section 7.2 below.

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7.2 The obligations imposed by Articles 2 and 3 above with respect to the access to, use, distribution, disclosure and protection of Proprietary Information for pursuing the Purpose shall apply for 4 (four) years with regards to Proprietary Information from the date of receipt of the Proprietary Information by the Recipient, notwithstanding the Completion of the Purpose.

Article 8 – Communication of the Proprietary Information

8.1 The Proprietary Information and any communication regarding the Agreement shall be sent by the GSA to the following person:

Title and full name	
Function	
Company name	
Official address in full	
Telephone number	
Fax number	
Email address	

8.2 The GSA shall send any communication regarding the Agreement to the following person

Title and full name	
Function	
Company name	

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Official address in full	
Telephone number	
Fax number	
Email address	

8.3 The Recipient shall send any communication regarding the Agreement to the following person:

Title and full name	Head of Legal and Procurement Department
Company name	European GNSS Agency
Official address in full	Janovskeho 438/2 17000 Prague Czech Republic
Email address	tenders@gsa.europa.eu

8.4 In accordance with Articles 5.1 and 5.2 above, the Proprietary Information, if so request by the GSA, shall be returned by the Recipient to the following person:

Function	Local Security Officer
Company name	European GNSS Agency
Official address in full	Janovskeho 438/2 17000 Prague Czech Republic
Email address	LSO@gsa.europa.eu

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Article 9 – Waiver, disclaimer and liability

9.1 No failure or delay by the GSA in exercising any of its rights under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise of such rights.

9.2 The Proprietary Information is provided "as is" and the GSA disclaims all warranties of any kind relating to the Proprietary Information, whether expressed or implied, including but not limited to, any implied warranty against infringement of third party property rights or as to merchantability or fitness for a particular purpose.

9.3 The GSA will not be liable for any damages whatsoever including, but not limited to, damages for loss of business profit, business interruption, loss of business information, or any other pecuniary loss arising out of the use of, or inability to use, the Proprietary Information.

Article 10 – Applicable law; Dispute

10.1 This Agreement shall be governed and construed in accordance with the laws of Belgium.

10.2 The Parties shall make their best efforts to settle amicably all disputes arising in connection with this Agreement.

10.3 If such amicable settlement fails, the said dispute shall be finally settled by the European Court of Justice in accordance with its rules of procedure.

Article 11 – Final provisions

11.1 The Parties shall bear their own costs incurred under or in connection with the present Agreement.

11.2 This Agreement and the rights and obligations hereunder may not be transferred or assigned by the Recipient without the prior written approval of the GSA.

11.3 This Agreement represents the entire understanding and agreement of the Parties with respect to the Proprietary Information, as defined in Article 2 above, and supersedes and cancels any and all previous declarations, negotiations, commitments, communications either oral or written, approvals, agreements and non-disclosure agreements between the Parties in respect thereto. Any rights and obligations which, by their nature, are to remain in effect beyond expiration or termination of such non-disclosure agreements will survive.

11.4 If any term of this Agreement is or becomes illegal, invalid or unenforceable in any

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jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction of any other terms of this Agreement, nor the legality, validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

11.5 No amendment or modification of this Agreement shall be binding or effective unless made in writing and signed on behalf of both Parties by their respective duly authorised representative.

Done in two originals in the English language one for each Party,

On behalf of _____ *[Recipient name]* Read and agreed, On *[date]* _____, in *[place]* _____ *Signature:* _____ *[Name of authorised representative]*, _____ *[Function of authorised representative]*, authorised representative of _____ *[Recipient name]* for the signature of this Agreement	On behalf of the GSA Read and agreed, On _____, in Prague *Signature:* Mr Carlo des Dorides, Executive Director of the GSA

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