



European
Global Navigation
Satellite Systems
Agency

GSA/RP/17/14

"Maintenance of security systems of GSA premises" "

Annex IF to Invitation to Conditions for Request to Participate

NON-DISCLOSURE AGREEMENT

Recipient initial
GSA initial

NON-DISCLOSURE AGREEMENT

(GSA reference: _____)

**Concerning the release and use of proprietary information for procurement procedure and,
if applicable, the execution of subsequent contract GSA/RP/17/14**

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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PREAMBLE

- WHEREAS,** the GSA has launched a procurement procedure with the aim to enter into framework service contract for the maintenance of security systems of GSA premises;
- WHEREAS,** in order to assess the required effort for the tasks of the contract listed in the Contract Notice and Tender Specifications with their annexes, the Recipient needs to have access to the Proprietary Information;
- WHEREAS,** the Proprietary Information is classified up to SECRET UE and any handling of Classified Proprietary Information must be done in accordance with the terms of this Agreement and the security procedures specified by the authorities concerned;
- WHEREAS,** the GSA is willing to provide access to the Proprietary Information pursuant to the security procedures specified by the authorities concerned;
- WHEREAS,** the Recipient will be provided access to sensitive information regarding the operations, which, if allowed to be disclosed freely and without restriction could seriously impair the security and safety interests of the European Union and its Member States as well as the safety of air traffic in its sphere of application;
- WHEREAS,** in consideration of the above, the Recipient expressly agrees to use the Proprietary Information in accordance with the terms of this Agreement and pursuant to the security procedures specified by the authorities concerned.

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 Party, pursuant to this Agreement. 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.

"Classified" shall refer to the national or EU security classification of information (such as

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"Purpose" shall refer to the Recipient's participation or involvement in procurement procedure GSA/RP/17/14 and any subsequent participation in the execution of Framework Service Contract GSA/RP/17/14, if applicable.

"Completion of the Purpose" shall mean the termination of the participation of the Recipient in procurement procedure GSA/RP/17/14 or the termination of Framework Service Contract GSA/RP/17/14, whichever is the case.

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 the Proprietary Information

- 3.1 The Recipient undertakes to ensure that the access to, use, distribution, disclosure and protection of such information will comply with following conditions:
 - 3.1.1 The 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 shall not use the Proprietary Information:

- (i) in a manner conflicting with the objectives of the European GNSS programmes;
- (ii) after Completion of the Purpose and subject to the provision of art. 7.2 below.

- 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 third parties unless and to the extent the GSA gives its express prior written authorisation thereto subject to the Recipient demonstration of a strict need-to know of the third party and the submission to the GSA of a signed NDA with the third party having the same obligations as this Agreement.

- 3.1.3 Proprietary Information may be disclosed only to those representatives and

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employees of the Recipient who have a strict need-to-know for the implementation of the Purpose and subject to them being bound to the same obligations provided in this Agreement;

- 3.1.4 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.
- 3.1.5 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.
- 3.1.6 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 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.
- 3.1.7 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 thereof.
- 3.2 Disclosure, protection and use of Classified Proprietary Information shall, in addition to the terms and conditions of this Agreement, be made pursuant to the security procedures specified by the authorities concerned.

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;
- 4.2 was already lawfully developed or acquired by the Recipient at the date of receipt of the Proprietary Information from the GSA;
- 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 confidentiality to the GSA (or any other person/entity);

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- 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 pursuant to and to the extent of an express written authorisation from the GSA.

Article 5 – Return of Proprietary Information

- 5.1 Upon Completion of the Purpose or at the GSA's written request, the Recipient shall return to the GSA all the Proprietary Information.
- 5.2 Paragraph 5.1 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. In such a case the recipient shall provide due justification (with supporting documents) to the GSA.

Article 6 – Breach of obligations

Should the Recipient 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 jurisdictions, 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.
- 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 twelve years with regards to Proprietary Information;
- in accordance with the procedures and duration specified by the authorities concerned with regards to Classified Proprietary Information

from the date of entry into force of the Agreement, notwithstanding the Completion of the Purpose.

Article 8 – Communication of the Proprietary Information and regarding the Agreement

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8.1 The GSA shall send the Proprietary Information 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	
Official address in full	
Telephone number	
Fax number	
Email address	

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- 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 Article 5 above, the Recipient shall return the Proprietary Information 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

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 any 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.

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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 General Court of the Court of Justice of the European Union 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 express 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 jurisdiction, this 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,

On behalf of _____ <i>[Recipient name]</i>	On behalf of the GSA
Read and agreed,	Read and agreed,
On <i>[date]</i> _____, in	On _____, in

Recipient initial
GSA initial

<p><i>[place]</i> _____</p> <p><i>Signature:</i></p> <p>_____ <i>[Name of authorised representative],</i> _____ <i>[Function of authorised representative],</i> authorised representative of _____ <i>[Recipient name]</i> for the signature of this Agreement</p>	<p>Prague</p> <p><i>Signature:</i></p> <p>Mr Carlo des Dorides, Executive Director of the GSA for the signature of this Agreement</p>
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Recipient initial
GSA initial



APPENDIX I

Legal Identification Form

Template to be downloaded, depending on the Tenderer's nationality and legal form, from the following website:

http://ec.europa.eu/budget/info_contract/legal_entities_en.htm



APPENDIX II

Proof of Local Security Officer Appointment *(no template applicable)*

APPENDIX III

A scanned copy of the initialled, dated, completed and signed Compliance Matrix to the Security Aspects Letter (Annex I.H to the Conditions for Request to Participate) together with associated supporting evidences, as appropriate.