

ANNEX 8:

NON-DISCLOSURE AGREEMENT



European GNSS Supervisory Authority

Ref: GSA/09/\_\_\_\_/HW/ra  
Issue: 1

CONFIDENTIALITY AGREEMENT

Concerning the release and use of confidential information in the frame of procurement procedure No. GSA/OP/02/09 — FORge for Tamper RESpondent Security modules (FORTRESS)

By and between,

The European GNSS Supervisory Authority, hereinafter referred to as the "GSA", set up by Council Regulation (EC) No 1321/2004 of 12 July 2004 as amended by Council Regulation (EC) No. 1942/2006, located at:

56, Rue de la Loi  
B-1049 Brussels  
Belgium

Represented, for the purpose of the signature of this confidentiality agreement, by Ms Heike WIELAND, Head of Legal Office

and,

\_\_\_\_\_ [official company name in full]  
hereinafter referred to as the "Recipient", whose Registered Office is at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[official address in full]

Represented, for the purpose of the signature of this confidentiality agreement, by

\_\_\_\_\_  
[Title and name in full of company representative authorised to sign the Agreement and function].

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

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PREAMBLE

WHEREAS, the GSA has launched an open call for tenders for the provision of a FORge for Tamper RESpondent Security modules (FORTRESS);

WHEREAS, in order to assess the required effort, the Recipient needs to have access to the Confidential Information;

WHEREAS, the Confidential Information is Classified up to EU RESTRICTED and any handling of such Confidential 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 Confidential Information pursuant to the security procedures specified by the authorities concerned;

WHEREAS, in consideration of the above, the Recipient expressly agrees to use the Confidential 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:

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## Article 1 – Definitions

For the purpose of this Agreement:

"Agreement" shall refer to the present Confidentiality Agreement.

"Confidential Information" shall refer to each or all documents listed in the annex to this Agreement.<sup>1</sup>

"Classified" shall refer to the national or European Security classification of information (such as EU TOP SECRET, EU SECRET, EU CONFIDENTIAL and EU RESTRICTED).

"Purpose" shall refer to the Recipient's participation in procurement procedure No. GSA/OP/02/09.

"Completion of the Purpose" shall mean two months following publication of the award notice regarding call No. GSA/OP/02/09.

"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 Confidential Information for the execution of their own tasks within the Purpose, and who the GSA has agreed in writing as being Authorised Third Parties.

## Article 2 – Scope

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

2.2 Under this Agreement, the Recipient undertakes to use the Confidential 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.

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<sup>1</sup> For the purpose of this Agreement the expression "Confidential Information" does not make reference to the EU classification of documents. The Confidential Information may however include EU classified information. The exchange of classified information must respect the rules on the exchange of Classified information applied by the Parties.

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### Article 3 – Confidentiality and conditions of access to and use of the Confidential 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 Confidential Information is supplied to the Recipient solely and exclusively for the Purpose. The Confidential 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 the Confidential 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 Confidential 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 Confidential Information and any copies thereof secure by effective and reasonable means in such a way as to prevent unauthorised access.

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 Confidential 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 Confidential Information or elements of it, such as its structure or content for so long as it is

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bound by this Agreement.

3.1.6 In the event that the Recipient becomes aware of any unauthorised use of the Confidential Information or of any unauthorised copy of the Confidential 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 Confidential Information to the Authorised Third Parties which:

- (i) are duly informed of the commercial in confidence nature of such information; 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 Confidential Information to Authorised Third Parties and provide the GSA with an electronic copy of the signed confidentiality agreement between the Recipient and the Authorised Third Party.

3.2 Any Confidential Information disclosed by the GSA under this Agreement being the subject of a national or European security classification shall be identified as such by the GSA at the time of disclosure. Disclosure, protection and use of such Confidential 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 Confidential 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 Confidential 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 Confidential Information from the GSA;
- 4.3 has been or is published without violation of this Agreement;

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- 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 of Confidential Information

- 5.1 If the Recipient fails to submit an offer, he must then return all documents provided by the GSA within two months following the deadline for the submission of offers.
- 5.2 If the Recipient submits an offer but is not awarded the contract, he must return all documents provided by the GSA within two months following publication of the award notice.
- 5.3 The Recipient shall use all reasonable endeavours to ensure that any Authorised Third Parties to whom the Recipient has supplied any Confidential Information return such Confidential Information and any copies made of them to the GSA within the applicable deadlines stipulated under Articles 5.1 and 5.2 above.
- 5.4 Paragraphs 5.1 and 5.2 above shall not apply to the extent that the Recipient is required to retain any such Confidential 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 Confidential Information for the Purpose.

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**Article 7 – Duration of this Agreement and protection of the Confidential 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 Confidential Information for pursuing the Purpose shall apply:

- for ten years with regards to Confidential Information;
- in accordance with the procedures and duration specified by the authorities concerned with regards to Classified Confidential Information

from the date of receipt of the Confidential Information by the Recipient, notwithstanding the Completion of the Purpose.

**Article 8 – Communication of the Confidential Information**

8.1 The Confidential Information shall be sent by the GSA to the following person:

[Title and full name] \_\_\_\_\_  
 [Function] \_\_\_\_\_  
 [Company name] \_\_\_\_\_  
 [Official address in full] \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

8.2 The Recipient shall send any communication regarding the Confidentiality Agreement to the following address:

Ms Heike Wieland  
 Head of Legal Office  
 European GNSS Supervisory Authority  
 Rue de la Loi 56  
 L-56, 07/28  
 BE-1049 Brussels  
 Belgium

8.3 In accordance with Articles 5.1 and 5.2 above, the Confidential Information shall be returned by the Recipient to the following person:

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Mr Olivier Crop  
Head of Security Department  
European GNSS Supervisory Authority  
Rue de la Loi 56  
L-56, 07/85  
BE-1049 Brussels  
Belgium

#### 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 Confidential Information is provided "as is" and the GSA disclaims all warranties of any kind relating to the Confidential 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 Confidential 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

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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 Confidential 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 confidentiality 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 confidentiality agreements will survive.
- 11.4 If any term of this Agreement is or becomes illegal, invalid or unenforceable in any 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,

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<p>On behalf of _____          [Company name]</p> <p>Read and agreed,</p> <p>On _____ [date], in          _____</p>  <p>_____ [Title, name in full,          function], authorised representative of          _____ [Company name]          for the signature of this Agreement</p>	<p>On behalf of the GSA</p> <p>Read and agreed,</p> <p>On _____, in          _____</p>  <p>Ms Heike Wieland, Head of Legal          Department, authorised representative          of the GSA for the signature of this          Agreement</p>
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## ANNEX

### LIST OF CONFIDENTIAL INFORMATION

This list of Confidential Information can subsequently be enlarged by registered letter by the GSA.

Document Title	Document Reference	Issue	Classification
RD4			
Full Statement of Work of FORTRESS Call for Tender	GSA/OP/02/09 [RD4]	1.0	RESTREINT UE
RD5			
PRS Technologies Development Plan	D3800-2	0.0	RESTREINT UE
Final Report on User Interfaces and Market	D4600-1	1.0	RESTREINT UE
Equipment Segmentation Requirements	O3100-1	1.0	RESTREINT UE
Comparison with other Technologies	O3120-1	1.0	RESTREINT UE
Security Modules	O-3210-2	0.2	RESTREINT UE
Signal Processing Techniques and Technologies	O-3230-2	N/A	RESTREINT UE
Functional Analysis	O3310-1	N/A	RESTREINT UE
Initial Architecture	O4100-1	1.0	RESTREINT UE
Functional Map	O4210-1	1.0	RESTREINT UE
Roadmap for the Exploitation of PRS	O4500-1	1.0	RESTREINT UE
RD6			
Policy for the Use and Management of PRS in Member States	GSASS-T1-GL-LOG-A-0033	1.2	RESTREINT UE

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