GSA/OP/04/21

"Enhanced Galileo Green Lane - Design and Implementation"

Annex I.G to Invitation to Tender

'Template Non-Disclosure Undertaking'

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European
Global Navigation
Satellite Systems
Agency

Ref : GSA/2021/_____

According to section 2.2.2 of the Tender Specifications for open procedure GSA/OP/04/21 ("the Tender Specifications") only entities compliant with the requirements specified thereto and which have submitted duly signed NDU following the present template shall be given access to the Proprietary Information listed in section 2.1.3

NON-DISCLOSURE UNDERTAKING

_____
(name of undertaking entity)

the undertaking entity, hereinafter referred to as the **"Recipient"**, whose registered office is at:

_____

_____

_____
(Official address of Recipient in full)

represented, for the purposes of the signature of this non-disclosure undertaking (hereinafter the "Undertaking"), by _____

_____
(insert (i) name of representative of Recipient duly empowered to sign the Undertaking and (ii) his/her function).

Article 1 – Definitions

For the purpose of this Undertaking:

"**Proprietary Information**" shall refer to the Applicable Documents listed in section 2.1.3 of the Tender Specifications.

"Classified" shall refer to European Union classified information (such as RESTREINT UE/EU RESTRICTED, CONFIDENTIEL UE/EU CONFIDENTIAL, SECRET UE/EU SECRET).

"Purpose" shall refer to the Recipient's participation or involvement in procurement procedure GSA/OP/25/19 and to the provision of services as described in the Tender Specifications.

Article 2 – Confidentiality and conditions of access to and use of the Proprietary Information

2.1 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 purpose other than the Purpose of this Undertaking, unless the GSA gives its prior written authorisation. In any case,

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the Recipient shall not use the Proprietary Information in a manner conflicting with the objectives of the European GNSS programmes.

2.2 Subject to Article 2.3, the Recipient shall not copy, reproduce, distribute, communicate or otherwise make available the Proprietary Information to public, either in whole or in part, unless the GSA gives its prior written authorisation. 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. The Recipient shall be responsible for any disclosure of the Proprietary Information in breach of the provisions of the present Undertaking.

2.3 The Recipient shall not disclose the Proprietary Information to persons inside and outside its organisation unless such persons (for the purposes of the present clause "Receiving Persons") have a proven need to know for the Purpose. The Recipient shall ensure that the Receiving Persons are bound by provisions equally onerous to those of this Undertaking and fulfil the conditions of the tender specifications of the procurement procedure referred to in the Purpose before releasing to such persons the Proprietary Information. The Recipient shall assume full responsibility towards GSA for any breach of the present Undertaking by the Receiving Persons.

2.4. If the Proprietary Information is Classified non-PRS Proprietary Information, the Recipient shall request GSA authorisation to disclose such Proprietary Information to third parties and provide the GSA with an electronic copy of the non-disclosure undertaking signed by such third party or non-disclosure agreement between the Recipient and such third party.

2.5 Handling of Classified non-PRS Proprietary Information shall, in addition to the terms and conditions of this Undertaking, comply with the applicable security rules[1].

2.6 Nothing contained in this Undertaking 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 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 Undertaking.

2.7 The Proprietary Information is provided "as is". The Recipient acknowledges that 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.

2.8 The Recipient acknowledges and accepts that the GSA will not be liable for any damage related to the disclosure of the Proprietary Information, even when such disclosure has been authorised by the GSA, including, but not limited to, damages for loss of 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.

2.9 When the Recipient becomes aware of any unauthorised use of the Proprietary Information or of any unauthorised copy of the Proprietary Information or of any unauthorised derivative work, it shall immediately inform the GSA thereof.

[1] Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information, and Specific arrangement concluded between the European Commission.

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2.10 Should the Recipient breach any of its obligations under this Undertaking, and without prejudice to the right of the GSA to seek damages, the GSA may, by written notice to the Recipient, withdraw the right to use the Proprietary Information for the Purpose.

Article 3 – Limitation on protection of the Proprietary Information

The obligations set out in Article 2 are not applicable to information for which the Recipient can demonstrate that it:
a) 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;
b) was already lawfully developed or acquired by the Recipient at the date of receipt of the Proprietary Information from the GSA;
c) has been or is published without violation of this Undertaking;
d) was lawfully obtained by the Recipient without restriction and without breach of this Undertaking from a third party, who is in lawful possession thereof, and under no obligation of confidence to the GSA;
e) is disclosed pursuant to a 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;
f) was disclosed and/or used without restriction pursuant to written authorisation from the GSA;
g) is used by the Recepient to defend its righs in court proceedings, regardless from any court order in this respect.

Article 4 – Duration of this Undertaking and protection of the Proprietary Information

4.1 The effective date of this Undertaking shall be the date on which it is signed. This Undertaking shall remain in force for 10 years as from its signature unless a contract is signed including confidentiality obligations according to the following paragraph. Following signature of such a contract as a result of the tender, any information exchanged for the purpose of conclusion and execution of the contract signed following the tender is not covered by this Undertaking but by the resulting contract.

4.2 Upon the expiration of this Undertaking, the Recipient shall return to the GSA headquarters all the Proprietary Information and any copies made of them.

4.3 The Recipient shall use all reasonable endeavours to ensure that any third parties to whom the Recipient has supplied any Proprietary Information according to Article 2.3 and 2.4 above, return (in line with the previous paragraph) such Proprietary Information and any copies made of them.

4.4 Without prejudice to the provisions of the second paragraph of Article 4.1, if at any point during the validity of this Undertaking, the Recipient no longer meets the conditions for access to the Proprietary Information, namely – it is no longer compliant with the requirement set in section 2.9.8 of the Tender Specifications, it shall return immediately to the GSA the Classified Proprietary Information - in the case under letter (i), or all the Proprietary information - in the case of letter (ii) above.

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4.5 Should the Recipient return any Proprietary Information according with Article 4.4, all the other provisions of this Undertaking remain valid.

Article 5 – Applicable law; Dispute

5.1 This Undertaking shall be governed and construed in accordance with the laws of the European Union complemented when necessary by the law of Belgium. The Recipient and the GSA shall make their best efforts to settle amicably all disputes arising in connection with this Undertaking. 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 6 – Final provisions

6.2 If any term of this Undertaking 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 Undertaking, nor the legality, validity or enforceability in other jurisdictions of that or any other provision of this Undertaking.

6.3 Communication of the Proprietary Information:

	Recipient	GSA
Undertaking related communications	Mr/Ms _____ Function/title Company name Address Tel: Email:	European GNSS Agency Legal and Procurement Department Ms. Eva Vordogianni Janovského 438/2 17000 Prague 7 – Holesovice Czech Republic Email: tenders@gsa.europa.eu

In witness whereof, the Recipient has caused this Undertaking to be executed by its duly authorised representative,

Signature of representative of Recipient duly empowered[2] to sign the Undertaking	
Name	
Position	
Date	

[2] Signatory has to enclose the document proving his/her due empowerment to sign on behalf of Recipient.

Recipient's initials

Recipient's initials