



GSA/OP/09/16
"Provision of specialised support to GSA's market development"
LOT 5

ANNEX I.K to the framework contract

Template Non-Disclosure Agreement

By and between,

The **European GNSS Agency**, hereinafter referred to as the "**GSA**", set up by Regulation (EU) No 912/2010 of the European Parliament and of the Council of 22 September 2010 as amended by Regulation (EU) No 512/2014 of the European Parliament and of the Council of 16 April 2014, located at:

**Janovského 438/2
170 00 Prague 7
Czech Republic**

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

and,

_____ [name of entity] hereinafter referred to as _____ [adjust as necessary], whose registered office is at:

[Insert official address in full]

Represented, for the purposes of the signature of this non-disclosure agreement, by _____ [insert (i) name of representative empowered to sign the non-disclosure agreement and (ii) his/her function].

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

Recipient Initial	GSA Initial



PREAMBLE

- WHEREAS,** the GSA has launched a procurement procedure GSA/OP/09/16 with 5 lots for provision of specialised support to GSA/s market development, the GSA requires the signature of this Non Disclosure Agreement (NDA)
- WHEREAS,** a disclosure of Proprietary Information shall be done between the parties during the resulting from the procurement procedure framework contract implementation;
- WHEREAS,** the Proprietary Information is Classified up to **SECRET UE**; ;
- WHEREAS,** The Proprietary Information contains PRS Information;
- WHEREAS,** in consideration of the above, the Parties expressly agree to use the Proprietary Information in accordance with the terms of this Agreement.

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 Framework Contract (FWC) GSA/OP/09/16 / Lot 5 and/or disclosed by or on behalf of the Disclosing Party to the Receiving Party, pursuant to this Agreement.

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

"PRS Information" shall refer to any information or material which is related to PRS and is either appropriately classified or unclassified, with or without marking limiting its distribution.

"Purpose" shall refer to the award and implementation of the contract under **procurement procedure GSA/OP/09/16/Lot 5, for the provision of specialised support to GSA market development** in the

Recipient Initial	GSA Initial



area of EGNSS market development in governmental applications.

"Disclosing Party" shall mean the Party disclosing Proprietary Information.

"Receiving Party" shall mean the Party to which Proprietary Information is disclosed.

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

2.1 The Proprietary Information is supplied to the Parties 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 Agreement, unless the Disclosing Party gives its prior written authorisation. In any case, the Parties 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 Receiving Party shall not copy, reproduce, distribute, communicate or otherwise make available the Proprietary Information to public, either in whole or in part, unless the Disclosing Party gives its prior written authorisation. The Receiving Party 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 Receiving Party shall be responsible for any disclosure of the Proprietary Information in breach of the provisions of the present Agreement.

2.3 The Receiving Party 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 Receiving Party shall ensure that the Receiving Persons are bound by the provisions of this Agreement 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 Receiving Party shall assume full responsibility towards the Disclosing Party for any breach of the present Agreement by the Receiving Persons.

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

2.5 Handling of Classified non-PRS Information shall, in addition to the terms and conditions of this Agreement, comply with the applicable security rules¹.

2.6 If the Proprietary Information is PRS Information, the Receiving Party shall not disclose such Proprietary Information to third parties. Instead, third parties shall request the Disclosing Party the signature of the non-disclosure agreement.

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.

Recipient Initial	GSA Initial



2.7 Handling of PRS Information shall, in addition to the terms and conditions of this Agreement, comply with the applicable security rules².

2.8 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 Receiving Party 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 Agreement.

2.9 The Proprietary Information is provided "as is". The Receiving Party acknowledges that the Disclosing Party 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.

2.10 The Receiving Party acknowledges and accepts that the Disclosing Party will not be liable for any damage related to the disclosure of the Proprietary Information, even when such disclosure has been authorised by the Disclosing Party, 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.

2.11 When the Receiving Party 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 Disclosing Party thereof.

2.12 Should the Receiving Party breach any of its obligations under this Agreement, and without prejudice to the right of the Disclosing Party to seek damages, the Disclosing Party may, by written notice to the Receiving Party, withdraw the right to use the Proprietary Information for the Purpose.

Article 3 – Limitation on protection of the Proprietary Information

The obligations contained in Article 2 are not applicable to information that the Receiving Party can demonstrate by written evidence:

- a) has come into the public domain prior to, or after, the date of receipt of the Proprietary Information from the Disclosing Party through no fault or unauthorised act of the Receiving Party or an Authorised Third Party;
- b) was already lawfully developed or acquired by the Receiving Party at the date of receipt of the Proprietary Information from the Disclosing Party;
- c) has been or is published without violation of this Agreement;

² Specific arrangement concluded between the European Commission and the European GNSS Agency pursuant to Article 14(c) of Decision No 1104/2011/EU to the Commission Decision approving the specific arrangement with the European GNSS Agency referred to in Article 14(c) of Decision No 1104/2011/EU

Recipient Initial	GSA Initial



- d) was lawfully obtained by the Receiving Party 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 Disclosing Party;
- e) 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 Receiving Party; in either case the Receiving Party, subject to possible constraints of such governmental or jurisdictional authority, shall immediately give the Disclosing Party a written notice of the above request and shall reasonably cooperate with the Disclosing Party in order to avoid or limit such disclosure;
- f) was disclosed and/or used without restriction pursuant to written authorisation from the Disclosing Party.

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

4.1 This Agreement shall enter into force on the date of the last signature by the Parties and shall remain in effect for 10 years from its last signature.

4.2 Upon expiration of this Agreement, the Receiving Party shall return to the Disclosing Party all the Proprietary Information and any copies made of them [of any Classified Proprietary Information and/or PRS Information.

Upon expiration of this Agreement, the Receiving Party shall destroy all non-Classified and/or non-PRS Information Proprietary Information and any copies made of them. The destruction shall be certified in writing by the Receiving Party and sent to the Disclosing Party.

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

Article 5 – Communication of the Proprietary Information

5.1 The GSA shall send the Proprietary Information to the following person:

Mr/Ms _____
Function/title _____
Company name _____
Address _____
Address _____
Tel: _____
Fax: _____
Email: _____

Recipient Initial	GSA Initial



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

Mr/Ms _____
Function/title _____
Company name _____
Address _____
Address _____
Tel: _____
Fax: _____
Email: _____

5.3 _____ [insert name of other Party] shall send the Proprietary Information to the following person:

Non-classified information:

Valeria Catalano

European GNSS Agency – [insert department]
Janovského 438/2
17000 Prague 7 - Holesovice
Czech Republic
Email: valeria.catalano@gsa.europa.eu

Classified and PRS information:

Local Security Officer
European GNSS Agency – Security Department
Janovského 438/2
17000 Prague 7 - Holesovice
Czech Republic
Email: lso@gsa.europa.eu

5.4 _____ [insert name of other Party] shall send any communication regarding the Agreement to the following person:

contracts@gsa.europa.eu
European GNSS Agency – Legal & Procurement Department
European GNSS Agency – Legal & Procurement Department
Janovského 438/2
17000 Prague 7 - Holesovice
Czech Republic
Email: lso@gsa.europa.eu

Recipient Initial	GSA Initial



Article 6 – Applicable law; Dispute

6.1 This Agreement shall be governed and construed in accordance with the laws of the European Union complemented when necessary by the law of Belgium. The Parties shall make their best efforts to settle amicably all disputes arising in connection with this Agreement. 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 7 – Final provisions

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

7.2 This Agreement and the rights and obligations hereunder may not be transferred or assigned by one Party without the prior written approval of the other Party.

7.3 This Agreement represents the entire understanding and agreement of the Parties with respect to the Proprietary Information, as defined in Article 1 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.

7.4 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.

Recipient Initial	GSA Initial



7.5 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,

<p>On behalf of _____ [Recipient name]</p> <p>Read and agreed,</p> <p>On [date] _____, in</p> <p>[place] _____</p> <p><i>Signature</i>³:</p> <p>_____ [insert name], _____ [insert function] authorised representative of _____ [insert company] for the signature of this Agreement</p>	<p>On behalf of the GSA</p> <p>Read and agreed,</p> <p>On _____, in</p> <p>Prague</p> <p><i>Signature</i>:</p> <p>Mr Carlo des Dorides, Executive Director, authorised representative of the GSA for the signature of this Agreement</p>
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(no template applicable)

³ Signatory has to enclose the document proving his/her due empowerment to sign on behalf of Recipient.

Recipient Initial	GSA Initial