Preliminary Market Consultation

On

EGNOS V2 Maintenance and Evolution Services - Life Extension Maintenance Services “LIFEX”

EUSPA/MC/29/22
1 Introduction

The European Geostationary Navigation Overlay Service (EGNOS) is providing services since 2009 and its exploitation is under the responsibility of the European Agency for the Space Programmes (EUSPA).

The version 1 of EGNOS System was initially developed in early 2000’s. The version 2 currently under operation is based on this version 1 and has been subject in the last 10 years to evolutions aiming at enhancing its services and solving obsolescence situations. The EGNOS V2 system infrastructure is operated by the EGNOS Service Provider (ESP) which is an Air Navigation Service Provider (ANSP) certified by the European Union Aviation safety Agency (EASA) contracted by EUSPA to provide the EGNOS services.

EGNOS V2 is to be replaced in the second part of the 2020’s by a new generation system named EGNOS V3, which is currently under development. Meanwhile the maintenance of EGNOS V2 is to be sustained and its evolution planned to ensure the system operability, even in case of EGNOS V3 implementation delays. Therefore, apart from ensuring the continuation of the recurrent maintenance services, a number of obsolescence issues and tasks related to EGNOS evolution are to be tackled.

EUSPA is considering opening of a competitive procurement/s to address these needs and would like to consult the market to assess its readiness to undertake the services which will satisfy the needs and objectives above described and to understand the terms and conditions according to which this could happen, as further described hereinafter. The interested economic operators are invited to take part in this market consultation to facilitate the understanding of the market situation and the available feasible solutions under the conditions provided herewith.

The Agency is launching the present market consultation, according to article 166 of Regulation 2018/1046

Based on the outcome of the market consultation EUSPA may decide to prepare (series of) procurements for EGNOS V2 maintenance and evolution services (hereinafter referred to as Life Extension Maintenance Services (LIFEX)) which will allow to maintain in operating conditions the EGNOS V2 infrastructure in a time period which could span from the second half of 2024 to its decommissioning after its full replacement by EGNOS V3 at the latest in 2030.

Pursuant to article 14 b) of Regulation 2021/696 (Space of Regulation) in procurement procedures for the implementation of the EU Space Programme the contracting authorities shall ensure effective competition and, where possible, avoid reliance on a single provider, in particular for critical equipment and services. While taking into account the objectives of technological independence and continuity of services”.

Background information of the EGNOS V2 System and EGNOS Services can be found in Appendix C of this document.
## 2 Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
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<tbody>
<tr>
<td>ANSP</td>
<td>Air Navigation Service Provider</td>
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<tr>
<td>DFMC</td>
<td>Dual Frequency Multi Constellation</td>
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<td>EASA</td>
<td>European Aviation Safety Agency</td>
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<td>EGNOS</td>
<td>European Geostationary Overlay Service</td>
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<tr>
<td>EC</td>
<td>European Commission</td>
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<td>ESP</td>
<td>EGNOS Service Provider</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<td>EUSPA</td>
<td>European Union Space Programme Agency</td>
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<td>GEO</td>
<td>Geostationary Orbit satellite</td>
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<td>GNSS</td>
<td>Global Navigation Satellite System</td>
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<td>GPS</td>
<td>Global Positioning System</td>
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<td>HW</td>
<td>Hardware</td>
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<td>LIFEX</td>
<td>EGNOS V2 Life Extension Maintenance Services</td>
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<td>MOPS</td>
<td>Minimum Operational Performance Standard</td>
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<td>NDA</td>
<td>Non Disclosure Agreement</td>
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<tr>
<td>NDU</td>
<td>Non Disclosure Undertaking</td>
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<td>OS</td>
<td>Open Service</td>
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<td>QES</td>
<td>Qualified Electronic Signature</td>
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<td>SARPs</td>
<td>Standards and Recommended Practices</td>
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<td>SBAS</td>
<td>Satellite Based Augmentation System</td>
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<tr>
<td>SoL</td>
<td>Safety of Life</td>
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<td>SW</td>
<td>Software</td>
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3 Target Market

All economic operators involved, or wishing to be involved, in the maintenance and evolutions of the EGNOS V2 system are invited to express their opinion and to answer the questions identified below.
4 Main procurement needs

EGNOS V2 Life Extension Maintenance Services (LIFEX) shall allow to maintain in operating conditions the EGNOS V2 infrastructure in a time period comprised between the second half of 2024 to its decommissioning after its full replacement by EGNOS V3 at the latest in 2030.

In order to achieve this objective, LIFEX contract/s is/are expected

i. to provide Maintenance services for the current infrastructure to support the operations and service provision – a description of the expected service and performances is provided in Appendix D,

ii. to manage obsolescence situation in the considered period – a description of the obsolescence status is provided in Appendix E,

iii. to adapt the system to changes in its operational environment (e.g. new GPS III-F satellites) – a description of the possible evolutions is provided in Appendix F.
5 Purpose of the Preliminary Market Consultation

Since the start of the EGNOS V2 programme, the maintenance and evolution of EGNOS System have been procured through the original equipment manufacturer.

The purpose of this Preliminary Market Consultation is to acquire information regarding the interest of the industrial actors to undertake the LIFEX services and at which terms and conditions.

In particular the addressees of this market consultation are invited to answer the following questions:

For market operators expressing interest in EGNOS V2 maintenance services:

i. What are the envisaged solutions/approach to maintain the EGNOS V2 infrastructure in operational conditions up to 2030 notably considering subsystems obsolescence status;

ii. What are the main perceived issues to be tackled in order to enable the performance of these services or subset of interest for you

iii. What are the expected handover activities from the incumbent of these services in order to undertake the services in question

iv. What approach for resolution of the existing captivity situations you see as suitable for the solutions you may suggest (mandatory subcontracting / customer undertakings, licensing terms, alternative solutions development, etc.)

v. Whether the services to be provided are perceived as being part of a consistent whole or they can be split in autonomous/self standing subset of activities:
   a. Whether a possible split is perceived as fostering the competition for the provision of maintenance services
   b. What these subset of activities would be (e.g. HW repairs and preventive maintenance, spares delivery, SW corrective maintenance, obsolescence resolution through introduction of new subsystem generation (iso requirement) and evolutions through introduction of new applicable standards and/or system requirements, etc.) and how the interfaces between them would be established to ensure consistency and continuity
   c. How and by whom, in case of split, shall the responsibility for delivering the LIFEX services in their entirety should be allocated

vi. What is the feasible timeline of such (subset of) services implementation

vii. What would be the overall organisation and solutions that you believe could answer the need to maintain EGNOS V2 infrastructure allowing to support service provision up to 2030.

For market operators expressing interest in EGNOS V2 evolutions:
i. What are the envisaged solutions/approach to modify the EGNOS V2 infrastructure so how to ensure the EGNOS services up to 2030 notably considering subsystems obsolescence status and GPS constellation evolutions (GPS block III-F introduction and L2P(Y) decommissioning);

ii. What is the associated timeline/release roadmap;

iii. What are the main perceived issues to be tackled in order to implement such evolutions

iv. What are the expected handover activities from the incumbent EGNOS V2 Prime in order to undertake these evolutions

v. What approach for resolution of the existing captivity situations you see as suitable for the solutions you may suggest (mandatory subcontracting / customer undertakings, licensing terms, alternative solutions development, etc.)

vi. In case of the entity performing infrastructure evolutions is different from the entity(ies) providing maintenance services, how and by whom shall the responsibility for keeping the design and qualification file be allocated and what interfaces would then be necessary between these entities.

vii. What would be the overall organisation and solutions that you believe could answer the need to evolve EGNOS V2 infrastructure allowing to support service provision up to 2030.

For the avoidance of doubts market operators are allowed to address both the areas identified here above, if so they are interested into.
6 Disclaimer

EUSPA reserves at its sole discretion to decide whether and when it will launch an actual procurement/s for the LIFEX services.

The descriptive part of the present consultation is intended solely for the purpose of providing the broader context information to the market.

Neither the present consultation nor the answers to it are in any way binding on EUSPA in its preparation of the potential procurement documentation – no expectation shall be created or derived whatsoever.

EUSPA will also take measures to ensure that the opinions expressed in the replies will not unduly bias its procurement and the resulting tender specifications will ensure as wide competition as possible.
7 Confidentiality and Equality of treatment

The Agency commits to observe the strictest confidentiality on the answer obtained in reply to the present market consultation and not to use any possible results thereof in a way which would impair impartiality and equality of treatment in the preparation and carrying out of possible future procurements.

The candidates replying to the present market consultation are required to enter in the confidentiality undertakings and observe the procedure as follows:

7.1 Proprietary Information

Appendixes C, D, E and F contain unclassified Proprietary Information and shall be made available to the interested parties subject to submission of Non-Disclosure Undertaking (NDU) or entering into a nondisclosure agreement (NDA)\(^1\) in the form provided in attachments 1 and 2 according to the procedure described in section 8.

EUSPA reserves the right to share the information received from participants with the European Commission, committees foreseen in the Space Regulation\(^2\) and/or ESA.

7.2 Request for access to Proprietary Information

In order to be given access to the Proprietary Information as defined in section 7.1 interested parties shall submit a request to EUSPA via email to tenders@euspa.europa.eu including a scan of a duly signed Non-Disclosure Agreement / Non-Disclosure Undertaking according to template provided in Appendix A and B (the original to follow by mail) with attached to it a copy of its registration and documents establishing the authorisation rights of the signatory of the NDA/NDU. Once the original documents are received the EUSPA shall send Appendix C, D, E and F to the interested party.

The interested parties may only submit the NDA/U electronically via email to tenders@euspa.europa.eu, under the condition that the document is signed electronically with a Qualified Electronic Signature (QES) of a person that is authorised to represent the interested entity. Please note that only QES within the meaning of Regulation (EU) No 910/2014 (eIDAS Regulation) will be accepted.

\(^1\) It is at party’s discretion to decide whether it will submit an NDU or NDA, depending on its need to formally protect the information shared through its participation in the Consultation

8 Data protection section

Any personal data that may be included in the replies to the present consultation will be processed in accordance with (1) the applicable rules on the protection of natural persons with regard to the processing of personal data by the EU institutions, bodies, offices and agencies (currently Regulation (EU) 2018/1725) and (2) the modalities of the following privacy statement:

Identity of the controller:

- **Controller:** European Union Agency for the Space Programme (EUSPA), Head of EGNOS Exploitation Department, Janovskeho 438/2 170 00 Prague 7, Czech Republic, EGNOS.data.protection@euspa.europa.eu
- **Data Protection Officer:** EUSPA Data Protection Officer, Janovskeho 438/2 170 00 Prague 7, Czech Republic, dpo@euspa.europa.eu

Purpose of the processing: The management and administration of the Preliminary Market Consultation and the follow up procurement as needed;

Data concerned: Contact information of participants, e.g. name and last name of authorised representatives, email address, postal address, telephone numbers, company/agency/body and department, country of establishment, position;

Legal basis: Article 5(1)(a) of Regulation (EU) 2018/1725

Lawfulness of the processing:

Article 5(1)(a): the processing is necessary for the performance of a task carried out in the public interest, specifically the management and functioning of EUSPA through the launching of tender procedures.

Recipients of the data processed: for the purpose detailed above, access to your personal data is given to EUSPA staff and contractors of the EUSPA without prejudice to a possible transmission to the bodies in charge of a monitoring or inspection task in accordance with European Union law.

Information on the retention period of personal data: responses to the stakeholder consultation, including personal data, will be retained by EUSPA for a period of 10 years following the closure of the stakeholder consultation.

Data subject’s rights and contact data:
• Data subjects have the right of access, rectification and erasure of their personal data or restriction of processing at any time, provided that there are grounds for the exercise of this right, as per the applicable rules

• Data subjects have the right to object, on grounds relating to his or her particular situation, at any time to the processing of personal data concerning him or her. Requests shall be addressed to EUSPA EGNOS Exploitation Department at EGNOS.data.protection@euspa.europa.eu by describing the request explicitly. It is noted that pursuant to such a request, the Controller shall no longer process the personal data unless the Controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims

• Data subjects may obtain their personal data, submitted to EUSPA, in a structured, commonly used and machine-readable format and transmit them to another controller, provided that there are grounds for the exercise of this right, as per the applicable rules

• Data subjects are entitled to lodge a complaint at any time with the European Data Protection Supervisor (http://www.edps.europa.eu; EDPS@edps.europa.eu) if they consider that their rights under the applicable rules on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data have been infringed as a result of the processing of their personal data by EUSPA

Any request for the exercise of any of the abovementioned rights shall be addressed to EUSPA EGNOS Exploitation Department at EGNOS.data.protection@euspa.europa.eu; data subjects are kindly requested to describe their requests explicitly.
9 Submission of Responses

Submission of a response implies acceptance of the conditions of the Market Consultation.

The participants shall answer the question listed in section 4.

The responses to this Preliminary Market Consultation should be sent in English in electronic format by email to the following address: tenders@euspa.europa.eu.

The deadline for submission of responses is 31 August 2022, 23:59 CET (at the latest).

EUSPA shall treat the provided information as confidential and use it only for the purpose of the Market consultation, reserving the right to share the information received from the participants with the European Commission – within the framework of existing confidentiality obligations between EUSPA and such parties.
10 List of Appendixes

The present consultation has following annexes either attached herewith or to be provided against submission of signed NDU / entering into an NDA

<table>
<thead>
<tr>
<th>Ref. no</th>
<th>Title</th>
<th>Provision to the interested parties</th>
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<tbody>
<tr>
<td>Appendix A</td>
<td>Template Non-Disclosure Agreement</td>
<td>attached herewith</td>
</tr>
<tr>
<td>Appendix B</td>
<td>Template Non-Disclosure Undertaking</td>
<td></td>
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<tr>
<td>Appendix C</td>
<td>BACKGROUND INFORMATION ON EGNOS SYSTEM</td>
<td>to be provided against submission of a duly signed Non-Disclosure Agreement / Non-Disclosure Undertaking according to template provided in Appendixes I and II</td>
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<td>Appendix D</td>
<td>EGNOS LIFEX MAINTENANCE AND EVOLUTION SERVICES</td>
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<tr>
<td>Appendix E</td>
<td>EGNOS V2 OBsolescence STATUS</td>
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<td>Appendix F</td>
<td>EGNOS V2 EVOLUTION ROADMAP</td>
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</tbody>
</table>
Appendix A  Non-Disclosure Agreement

BILATERAL NON-DISCLOSURE AGREEMENT

“Insert title” [optional]

By and between,


Janovského 438/2
170 00 Prague 7
Czech Republic

Represented, for the purpose of the signature of this non-disclosure agreement, by Mr Rodrigo da Costa,

EUSPA
Janovskeho 438/2
170 00 Prague 7
Holesovice, Czech Republic
www.EUSPA.europa.eu
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".

PREAMBLE

WHEREAS, EUSPA has launched a Stakeholder’s Consultation GSA/MC/29/22 on EGNOS V2 Maintenance and Evolution Services - Life Extension Maintenance Services “LIFEX” ("the Consultation")

WHEREAS, _ for the conduct of the Consultation procedure the Parties have access to the Proprietary 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 refer to Appendixes C, D, E and F of Market Consultation EUSPA/MC/29/22 and 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 Market Consultation EUSPA/MC/29/22 on EGNOS V2 Maintenance and Evolution Services - Life Extension Maintenance Services “LIFEX” and any follow-up exchange related to it disclosed by or on behalf of the EUSPA to the Recipient, pursuant to this Agreement.

"Purpose" shall refer Market Consultation EUSPA/MC/29/22 on EGNOS V2 Maintenance and Evolution Services - Life Extension Maintenance Services “LIFEX” and any follow-up exchange related to it.

"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 provisions equally onerous to those of this Agreement 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 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.

2.5 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.
2.6 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.

2.7 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.

2.8 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 a Receiving Person;

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;

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;

g) is used by the Receiving Party to defend its rights in court proceedings, regardless from any court order in this respect.

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 destroy all 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 above, destroy (such Proprietary Information and any copies made of them.

Article 5 – Communication of the Proprietary Information

EUSPA
Janovskeho 438/2
170 00 Prague 7
Holesovice, Czech Republic
www.EUSPA.europa.eu
### 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 disputed 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

EUSPA

Janovského 438/2

170 00 Prague 7

Holesovice, Czech Republic

www.EUSPA.europa.eu
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.

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,

<table>
<thead>
<tr>
<th>On behalf of ______ [Counterparty name]</th>
<th>On behalf of EUSPA</th>
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<tbody>
<tr>
<td>Read and agreed,</td>
<td>Read and agreed,</td>
</tr>
<tr>
<td>On [date] _____________, in [place] _____________</td>
<td>On ____________________, in Prague</td>
</tr>
<tr>
<td>Signature¹:</td>
<td>Signature:</td>
</tr>
<tr>
<td>____ [insert name], ____ [insert function]</td>
<td>Mr Rodrigo da Costa, Executive Director, authorised representative of EUSPA for the signature of this Agreement</td>
</tr>
<tr>
<td>____ [insert name], ____ [insert function]</td>
<td>authorised representative of ______ [insert company] for the signature of this Agreement</td>
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¹ Signatory has to enclose the document proving his/her due empowerment to sign on behalf of Recipient.
Appendix B  Non-disclosure Undertaking

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).

EUSPA

Janovskeho 438/2

170 00 Prague 7

Holesovice, Czech Republic

www.EUSPA.europa.eu
Article 1 – Definitions

For the purpose of this Undertaking:

"Proprietary Information" shall refer to Appendix C, D, E and F of Market Consultation EUSPA/MC/29/22 and 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 Market Consultation EUSPA/MC/xx/22 on EGNOS V2 Maintenance and Evolution Services - Life Extension Maintenance Services “LIFEX” and any follow-up exchange related to it disclosed by or on behalf of the EUSPA to the Recipient, pursuant to this Undertaking.

"Purpose" shall refer Market Consultation EUSPA/MC/29/22 on EGNOS V2 Maintenance and Evolution Services - Life Extension Maintenance Services “LIFEX” and any follow-up exchange related to it.

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 EUSPA gives its prior written authorisation. In any case, 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 EUSPA 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 Market Consultation before releasing to such persons the Proprietary Information. The Recipient shall assume full responsibility towards EUSPA for any breach of the present Undertaking by the Receiving Persons.

2.4 Nothing contained in this Undertaking shall be construed as granting any right, title or interest in the Proprietary Information including any intellectual property rights. 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.

2.5 The Proprietary Information is provided "as is". The Recipient acknowledges that EUSPA 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.

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

2.7 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 EUSPA thereof.

2.8 Should the Recipient breach any of its obligations under this Undertaking, and without prejudice to the right of EUSPA to seek damages, EUSPA 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 EUSPA 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 EUSPA;

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 EUSPA;

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 EUSPA a written notice of the above request and shall reasonably cooperate with EUSPA in order to avoid or limit such disclosure;

f) was disclosed and/or used without restriction pursuant to written authorisation from EUSPA;

g) is used by the Recipient to defend its rights 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.

4.2 Upon the expiration of this Undertaking, the Recipient shall destroy all the Proprietary Information and any copies of it. The destruction shall be certified in writing by the Recipient and sent to EUSPA to legal@EUSPA.europa.eu.
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 above, destroy such Proprietary Information and any copies made of them.

Article 5 – Applicable law; Disputes

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 EUSPA 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:

<table>
<thead>
<tr>
<th>Recipient</th>
<th>EUSPA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proprietary Information</strong></td>
<td></td>
</tr>
<tr>
<td>Mr/Ms</td>
<td>Matthieu Forté</td>
</tr>
<tr>
<td>Function/title</td>
<td>European Union Agency for the Space Programme</td>
</tr>
<tr>
<td>Company name</td>
<td>EGNOS Department</td>
</tr>
<tr>
<td>Address</td>
<td>Janovského 438/2</td>
</tr>
<tr>
<td>Address</td>
<td>17000 Prague 7 – Holesovice</td>
</tr>
<tr>
<td>Tel:</td>
<td>Czech Republic</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:Matthieu.forte@EUSPA.europa.eu">Matthieu.forte@EUSPA.europa.eu</a></td>
</tr>
<tr>
<td><strong>Undertaking related communications</strong></td>
<td></td>
</tr>
<tr>
<td>Mr/Ms</td>
<td>Gaspard Fontaine</td>
</tr>
<tr>
<td>Function/title</td>
<td>European Union Agency for the Space Programme</td>
</tr>
<tr>
<td>Company name</td>
<td>Legal and Procurement Department</td>
</tr>
<tr>
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</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:tenders@EUSPA.europa.eu">tenders@EUSPA.europa.eu</a> <a href="mailto:tenders@EUSPA.europa.eu">tenders@EUSPA.europa.eu</a></td>
</tr>
</tbody>
</table>
Email: 

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

<table>
<thead>
<tr>
<th>Signature of representative of the Recipient duly empowered(^4) to sign the Undertaking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Position</td>
</tr>
<tr>
<td>Date</td>
</tr>
</tbody>
</table>

\(^4\) The signatory has to enclose the document proving his/her due empowerment to sign on behalf of the Recipient.