

GSA/NP/03/11- "P3RS-2"

Procurement of Galileo PRS pre-operational receivers

ANNEX A to Tender Information Package

NON-DISLCOSURE AGREEMENT



NON-DISCLOSURE AGREEMENT

Concerning the release and use of proprietary information in the frame of procurement procedure GSA/NP/03/11 – “P3RS-2” (Procurement of Galileo PRS pre-operational receivers)

By and between,

The European GNSS Agency, hereinafter referred to as the "GSA", set up by Council Regulation (EC) No 912/2010 of 9 November 2010 located at:

56, Rue de la Loi  
B-1049 Brussels  
Belgium

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]

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GSA Initial



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

#### PREAMBLE

WHEREAS, the GSA has launched a procurement process for the development and purchase of Galileo PRS pre-operational receivers, including engineering, standardisation, security and logistics support applying the negotiated procedure;

WHEREAS, in order to assess the required effort for the tasks of the contract listed in the Contract Notice and Tender Information Package, the Recipient needs to have access to the Proprietary Information;

WHEREAS, the Proprietary Information is classified up to CONFIDENTIEL 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 shall have to comply with the requirements of Decision No 1104/2011/EU of the European Parliament and of the Council of 25 October 2011 on the rules for access to the Public Regulated Service provided by the Global Navigation Satellite System established under the Galileo programme and

WHEREAS, any non-compliance of the Recipient with the requirements of Decision No 1104/2011/EU of the European Parliament and of the Council of 25 October 2011 and its implementing rules at any stage of the procurement process or during the execution of the Contract awarded, regardless of fault, shall result in the Recipient's immediate exclusion from the procurement or, as the case may be, shall constitute a cause for immediate termination of the Contract;

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.

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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 each and/or all documents listed in the annex to this Agreement.

"Classified" shall refer to the national or EU security classification of information (such as TRES SECRET EU/EU TOP SECRET, SECRET UE, CONFIDENTIEL UE and RESTREINT UE).

"Purpose" shall refer to the Recipient's participation or involvement (including its request to participate) in procurement procedure GSA/NP/03/11.

"Completion of the Purpose" shall mean two months following the deadline for submission of requests to participate for GSA/NP/03/11 if the Recipient has not submitted a request to participate; two months from the date of sending of the refusal letter for the request to participate if the Recipient's request was unsuccessful; and two months following the publication of the award notice for GSA/NP/03/11 if the Recipient has submitted a bid; up to contract expiry or termination if the Recipient enters into the Contract contemplated by this procurement procedure with the GSA.

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

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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.

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.

3.1.3 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.

3.1.4 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.

3.1.5 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.

3.1.6 In the event that the Recipient becomes aware of any unauthorised use of the Proprietary Information or of any unauthorised copy of the

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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);
- 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.

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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 any competent jurisdiction, 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 10 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

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

Title and full name	
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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	Ms Triinu Volmer
Company name	GSA
Official address in full	Rue de la Loi 56 B-1049 Brussels Belgium
Fax number	+32 (0)2 292 07 41
Email address	<a href="mailto:tenders@gsa.europa.eu">tenders@gsa.europa.eu</a>

8.4 In accordance with Article 5 above, the Recipient shall return the Proprietary Information to the following person:

Title and full name	Mr Olivier Crop
Function	Local Security Officer
Company name	GSA
Official address in full	Rue de la Loi 56 B-1049 Brussels Belgium
Email address	<a href="mailto:tenders@gsa.europa.eu">tenders@gsa.europa.eu</a>

Article 9 – Waiver, disclaimer and liability

9.1 No failure or delay by the GSA in exercising any of its rights under this

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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.

#### 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 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.

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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,

<p>On behalf of _____ [Recipient name]</p> <p>Read and agreed,</p> <p>On [date] _____, in [place] _____</p> <p>Signature:</p>  <p>_____ [Name of authorized representative], _____ [Function of authorised representative], authorised representative of _____ [Recipient name] for the signature of this Agreement</p>	<p>On behalf of the GSA</p> <p>Read and agreed,</p> <p>On _____, in Brussels</p> <p>Signature:</p>  <p>Mr Carlo des Dorides, Executive Director of the GSA for the signature of this Agreement</p>
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## ANNEX I LIST OF PROPRIETARY INFORMATION

This list of Proprietary Information can subsequently be modified for the purpose of this procurement procedure by registered letter by the GSA.

Title	Issue	Classification	Owner
Programme Security Instruction concerning European GNSS Programmes, European GNSS PSI	2.0, Rev. 1, 21/02/2011	UNCLASSIFIED	European Commission
Security classification guide of the GALILEOSAT programme	2.1, 12 June 2008	RESTREINT UE	European Commission
Program Security Instruction concerning the GALILEOSAT PROGRAMME, SHORT TITLE: GALILEOSAT PSI	6.0, 21 May 2010	UNCLASSIFIED	European Commission
European GNSS COMSEC Security Instructions, GNSS-SB-WG-PCI	1.0, 20 September 2011	RESTREINT UE	European Commission
GSA (2011)/524612, P3RS-2 Receiver Accreditation Strategy	0.3, 3 November 2011	RESTREINT UE	GSA
Towards a User Segment Classification Guide, GSASS-T12-DEL-LOG-0112	1.1, 29 July 2010	RESTREINT UE	GSA

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