



European
Global Navigation
Satellite Systems
Agency

Ref: GSA/201__/_/_____

LC # : _____

GSA/OP/06/17
"Classified Information and Communication Systems for the GSA"

Annex I.L to Invitation to Tender
'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).

Article 1 – Definitions

For the purpose of this Undertaking:

"Agency" shall refer to European GNSS Agency (hereinafter also "the GSA").

"Undertaking" shall refer to the present non-disclosure undertaking (hereinafter also "the NDU") by the Recipient.

"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 the Purpose and/or disclosed by or on behalf of the GSA to the Recipient.

"Contract" shall refer to the legal commitment envisaged to be entered into between the Agency and the tenderer as a result of the Procurement Procedure.

"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).

"Procurement Procedure" shall refer to procurement process with reference GSA/OP/06/17 – ""Classified Information and Communication Systems for the GSA"



"Purpose" shall refer to the Recipient's activities for preparing the tender subject to the Procurement Procedure and, in case of award, the Recipient's activities related to the provision of services/ supplies / works subject to the corresponding Contract.

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

2.2 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 Without prejudice to section 2.4, 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 the provisions of this Undertaking and fulfil the conditions of the tender specifications of the Procurement Procedure before releasing to such persons the Proprietary Information. The Recipient shall assume full responsibility towards GSA for any breach of the present undertakings by the Receiving Persons.

2.4. If the Proprietary Information is Classified, 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 with obligations not less stringent that provided in this Undertaking.

2.5 Handling of Classified Proprietary Information shall, in addition to the terms and conditions of this Undertaking, comply with the applicable security rules¹. Without prejudice to any other requirements applicable for the handling of Classified Proprietary Information, the Recipient shall ensure that any Receiving Person, before granted access and any handling of Classified Proprietary Information at the level of RESTREINT UE/EU RESTRICTED subject to this NDU, shall be handed out, required to carefully read and sign two copies of the attached Instruction Sheet as documentation of his/her acknowledgements to follow the obligations applicable to him/her described therein. One signed copy of the Instruction Sheet shall immediately be submitted to the following person of the Agency:

Function	Head of Legal and Procurement Department
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¹ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information.



Company name	European GNSS Agency
Official address in full	Janovského 438/2 170 00 Prague Czech Republic
Email address	tenders@gsa.europa.eu

For Receiving Person's within its organisation, the Recipient shall ensure that the infrastructure and organisational measures are provided for the Receiving Person to comply with the requirements laid out in the Instructions Sheet.

NOTE: Tenderers are requested to efficiently reduce individual submissions of Instruction Sheets during the tender process by carefully determining the persons required to access Classified Proprietary Information during the tender and – as far as already possible to anticipate – during the implementation of the Contract in case of award, and submitting such signed Instruction Sheets together with the signed NDU.

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 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 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.

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 – Communication of the Proprietary Information and regarding the Undertaking

3.1 The GSA shall send the Proprietary Information to the following person that is Recipient's Security

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Recipient's initials



point of contact (Local Security Officer):

Title and full name	
Function	
Company name	
Official address in full	
Telephone number	
Fax number	
Email address	

3.2 The GSA shall send any communication regarding the Undertaking 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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3.3 The Recipient shall send any communication regarding the Undertaking to the following:

Title and full name	Head of Legal and Procurement Department
Company name	European GNSS Agency
Official address in full	Janovskeho 438/2 17000 Prague Czech Republic
Email address	tenders@gsa.europa.eu

Article 4 – 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; or
- f) was disclosed and/or used without restriction pursuant to written authorisation from the GSA.

Article 5 – Duration of this Undertaking and protection of the Proprietary Information

5.1 The effective date of this Undertaking shall be the date on which it is signed. This Undertaking shall remain in force for 10 (ten) 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.



5.2 Upon the expiration of this Undertaking, the Recipient shall, always at its own costs, return to the GSA headquarters to the address indicated in Article 2.5 all the Proprietary Information and any copies made of them or, if the GSA so instructs the Recipient, destroy all the Proprietary Information and any copies of it. The destruction shall be certified in writing by the Recipient and sent to the GSA to legal@gsa.europa.eu without requiring the GSA's further request.

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

Article 6 – Applicable law; Dispute

6.1 This Undertaking shall be governed and construed in accordance with the laws of the European Union complemented when necessary by the law of Belgium.

6.2 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 7 – Final provisions

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.

In witness thereof, 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	
Signature	
Position	
Date	

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



I n s t r u c t i o n S h e e t **for the Handling of Information Classified** **at the level of RESTREINT UE/EU RESTRICTED** **Attachment to Annex I.L - NDU**

Article 1 – Definitions

For the purpose of this Undertaking:

“Agency” shall refer to European GNSS Agency (hereinafter also “the GSA”).

“NDU” shall refer to the non-disclosure undertaking by the Recipient of which this Instruction Sheet is an attachment.

“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 the Purpose and/or disclosed by or on behalf of the GSA to the Recipient.

“Contract” shall refer to the legal commitment envisaged to be entered into between the Agency and the tenderer as a result of the Procurement Procedure.

“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).

“Recipient” shall refer to the entity having signed the NDU to which this Instruction Sheet is attached.

“Receiving Person” shall refer to the person signing this Instruction Sheet.

“RESTREINT UE/EU RESTRICTED” shall refer to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the European Union or of one or more of the Member States – hereinafter also referred to as “RUE”.

“Procurement Procedure” shall refer to procurement process with reference GSA/OP/06/17 – “Classified Information and Communication Systems for the GSA”.

“Purpose” shall refer to the Recipient’s activities for preparing the tender subject to the Procurement Procedure and, in case of award, the Recipient’s activities related to the provision of services/ supplies / works subject to the corresponding Contract.



Article 2 - Access and release

2.1 Within the limitation of section 2.2 and 2.3 below, the Receiving Person shall make RUE he/she received subject to the NDU only accessible to persons who have a need to know in connection with the execution of the Purpose ("Need-to-Know" Principle) and only having signed a copy of this Instruction Sheet in two originals, one of which shall be submitted to the Agency at the following address:

Function	Head of Legal and Procurement Department
Company name	European GNSS Agency
Official address in full	Janovského 438/2 170 00 Prague Czech Republic
Email address	legal@gsa.europa.eu

2.2 The Receiving Person shall not disclose RUE he/she received subject to the NDU to third parties who have proved to be unsuited for the handling of such Classified Proprietary Information or who have violated the security obligations subject to this Instruction Sheet or any other obligations applicable for the handling of RUE.

2.3 The Receiving Party agrees that the Agency may, from time to time, request written confirmation that he/she complies with the rules contained in this Instruction Sheet.

Article 3 - Processing Guidelines

3.1 Marking and Handling/Storage

The Receiving Person shall mark, handle and store documents and material classified RUE he/she received subject to the NDU as follows:

3.1.1 Documents shall be marked using black or blue stamp imprint with the classification level "RESTREINT UE/EU RESTRICTED " at the top of each written page and of all equally classified annexes. International or foreign Classified Information shall be stamped with the equivalent EU classification level. In the case of books, brochures etc., the marking on the front cover and the title page shall be sufficient. If each page of a foreign book or brochure is marked with the foreign classification level, the equivalent marking of the front cover or the title page shall be sufficient.

3.1.2 Material classified RUE (e.g. equipment or components) or data storage media (e.g. floppy disks, compact disks, microchips, microfiches) shall also be marked visibly on the material itself or - if this is not possible - on the containers holding the material.

3.1.3 The "Need – to Know" Principle must be observed at all work steps. This is valid especially also for reprography, if the reprography devices use data storage media.

3.1.4 RUE Classified Proprietary Information shall be stored in locked rooms or containers (cabinets, desks etc.). Outside such rooms or containers, such material shall not be stored or handled in a manner that could result in unauthorised access or an insight into the classified information.



3.1.5 Handling of RUE Classified Proprietary Information in private locations (Telecommuting Jobs) is an exception to the rules laid out in this Instruction Sheet. This is only permitted upon written approval from the Agency.

3.2 Transmission

3.2.1 The Receiving Person may transmit RUE Classified Proprietary Information only by couriers or postal services in a single closed envelope or a container. The envelope or container do not bear a classification marking.

3.2.2 The Receiving Person may transmit RUE Classified Proprietary Information to foreign countries by commercial courier services as a standard letter or parcel, or as air or sea freight, unless the Agency has explicitly excluded this type of delivery or laid down other modalities for delivery to foreign countries, taking into account any intergovernmental agreements and special Programme or Project Security Instructions (PSI's).

3.3 Destruction/Return

3.3.1 Upon the expiration of the NDU, the Receiving Person shall, as may be required by the Recipient upon instruction of the Agency, support it in its obligation to either return to the Agency as indicated in Article 2.1 or destroy any RUE Classified Proprietary Information he/she received or reproduced subject to the NDU, as the Agency may instruct the Recipient. The Receiving Person shall certify any destruction in writing towards the Recipient to send the GSA to legal@gsa.europa.eu without requiring the GSA's further request.

3.3.2 In case the Receiving Person is instructed by the Recipient on the Agency's request or by the Agency to destroy RUE Classified Proprietary Information he/she received or reproduced subject to the NDU, he/she shall ensure the destruction in such a manner that its content is no longer recognisable and cannot be rendered recognisable again.

3.4 Loss, unauthorised disclosure, discovery of Classified Information or failure to comply with the Instruction Sheet

The Receiving Person shall immediately upon his/her notice of loss of, unauthorised disclosure or discovery of RUE Classified Proprietary Information subject to the NDU or non-compliance with this Instruction Sheet notify the Agency via email to legal@gsa.europa.eu. The Receiving Person shall further take all necessary steps to control possible damage and support the Agency in investigation of the incident.

3.5 Visits

Visits to or from foreign countries which involve access to RUE Classified Proprietary Information subject to the NDU or of equivalent classification levels shall usually be agreed upon directly between the dispatching facility and the facility to be visited. No specific formal procedures have to be observed.



Article 4 - Use of Information Technology (IT)

4.1 Processing

4.1.1 If the Receiving Person processes or stores RUE Classified Proprietary Information using information technology, he/she shall ensure appropriate IT measures and/or other physical and organisational measures for its protection (in accordance with Article 2 sections 2.1 and 2.2).

4.1.2 Before the Receiving Person may process or store RUE Classified Proprietary Information he/she must ensure that the terminal or the internal network are not directly linked to the Internet (without protection e.g. by means of a firewall) unless further measures pursuant to Article 4 section 4.1.3 have been taken.

4.1.3 The following measures, in particular, shall be considered when processing RUE Classified Proprietary Information:

- compile lists of all persons who are authorised to have access,
- use of identification and authentication mechanisms (e.g. login, password),
- create appropriate IT security instructions (in relation to individual workplaces or companies).

The use of wireless keyboards and wireless networks when handling RUE Classified Proprietary Information with IT shall generally be prohibited unless accredited by the competent National Security Authority.

4.1.4 If Receiving Person uses portable IT systems (e.g. notebooks or handhelds) for the processing or storage of RUE Classified Proprietary Information, the used storage media shall generally be accredited by the competent National Security Authority.

4.1.5 Portable data storage media (e.g. floppy disks, CD's, removable hard disks) that contain unencrypted RUE Classified Proprietary Information, shall be marked accordingly and stored in accordance with Article 3 section 3.1.4.

4.1.6 Data storage media shall be erased by means of software products that provide for at least double overwriting. Products recommended by the competent National Security Authority should be used.

4.1.7 Information technology and data storage media shall be checked for viruses (in particular Trojan horses or worms) before they are used for processing RUE Classified Proprietary Information. These checks shall be repeated at regular intervals.

4.1.8 Private information technology devices (e.g. laptops), software and data storage media must not be used for processing RUE Classified Proprietary Information. Private software or private data storage media must not be used on information systems that are used for processing RUE Classified Proprietary Information.

4.1.9 On fixed data media containing RUE Classified Proprietary Information in an unencrypted form, the RUE Classified Proprietary Information shall be deleted before the data media, for the purpose of



maintenance and repair work on IT system components, leave the perimeter of persons authorised to have access. If deletion is not possible, the data media shall be removed and retained or the company entrusted with the maintenance/repair work shall sign this Instruction Sheet as required under Article 2, section 2.1.

4.2. Transmission

4.2.1 In the case of electronic transmission via telecommunications or other technical communications links (including online services such as WWW, FTP, TELNET, e-mail etc.), unless otherwise agreed with the GSA, RUE Classified Proprietary Information shall be encrypted by means of an encryption system that is licensed by the German Bundesamt für Sicherheit in der Informationstechnik (BSI).

Notwithstanding this provision, as an exception, unencrypted transmission shall be admissible in the following cases:

- a) Within fixed networks for telephone conversations, video conferences and fax and telex transmission provided that encryption is not possible for the required type of transmission between the sender and the recipient and the Agency has not explicitly required encryption when awarding the Contract. Before starting transmission, the sending facility must ensure that it is connected with the correct recipient.
- b) Within a self-contained network (LAN) provided that it is used exclusively on a locally contiguous company-owned premises and that the transmission facilities are protected from immediate access by unauthorised persons.

4.2.2 In the case of cross-border electronic transmission, the encryption methods shall be agreed upon by the competent National Security Authorities of the countries involved. If specific security provisions for transmission have been agreed upon for a programme/project, these must be observed.

4.3. Measures to ensure the confidentiality of RUE Classified Proprietary Information information technology (IT) is used

The following measures aim to ensure the confidentiality of electronically stored classified information. It is not their main objective to guarantee the integrity and availability of data. Three different initial situations can be identified:

4.3.1 Stand-alone PC or networks with self-contained user groups that are not linked to other networks

- The operating system shall allow for a differentiated user profile and access protection up to data level for individual data files in order to guarantee the "Need-to-Know" principle.
- A login and a password must be existent. The password shall comprise of at least 6 digits, alphanumeric (special characters), with lower and capital letters. The BIOS shall also be protected by a password. The booting of the IT system must be possible only from the hard disk.



- If possible, a RAM disk should be available for the temporary data files (user aid). An updated antivirus software must be used.
- In the case of networks, a separate partition for the storage of RUE Classified Proprietary Information should be installed on the server.

4.3.2. Self-contained networks with e-mail connection to users outside these networks

In addition to the provisions laid down in Article 4 section 4.3.1 the following requirements must be fulfilled

- a server-based network must be existent with the server located in an access controlled area
- a firewall must be existent either on the server or as a separate IT system (or an additional mail server, if available); also, located in an access controlled area.
- a packet filter must be used; an applications gateway is possible as an option.
- any further IP - address other than the server IP must be concealed from the outside (DNS server).
- RUE Classified Proprietary Information shall be transmitted in encrypted form only with products that are approved by the competent National Security Authority. Encryption keys must not be stored on hard disks.

4.3.3. Stand-alone PC's or self-contained networks with e-mail and Internet access

In addition to the provisions laid down in Article 4 sections 4.3.1 and 4.3.2 these must

- provide a firewall and an application gateway.
- apply the provisions of the competent National Security Authority for password rules, if any.
- keep RUE Classified Proprietary Information on the server within an either separate partition or in a specially protected data sector; the thereby given protection mechanisms shall be applied accordingly.

Depending on the scope, a separate VPN e.g. for a user group or a project may be required.



I, the undersigned, without prejudice to further applicable requirements on the handling of Classified Proprietary Information, hereby affirm that I have read, understood and will follow the requirements laid in the above Instruction Sheet on the Handling of Information Classified at the level of RESTREINT UE/EU RESTRICTED subject to the tendering process and implementation of the contract GSA/OP/06/17 – “Classified Information and Communication Systems for the GSA.”

The requirements described under the Instruction Sheet which relate to organisational matters are mandatory to me within the scope of my competences in my organisation or with my employer.

Name	
Signature	
Position	
Date	