

CONDITIONAL STAGE PAYMENT CONTRACT- GSA/OP/05/19
'Development of an advanced interference detection and robustness capabilities system'

The European GNSS Agency (hereinafter referred to as the 'GSA', the 'Agency' or 'Contracting Authority'), represented by Mr Carlo des Dorides, Executive Director of the GSA,

on the one part, and

[full official name]

[official legal form]

[statutory registration number]

[full official address]

[VAT registration number]

(hereinafter referred to as the 'Contractor'), represented by *[forename, surname and function,]*

on the other part,

Contents

1. Definitions	4
2. Subject Matter	7
3. Contract Stages	7
4. Entry into force and duration	7
5. Milestones	8
6. Prices and cost reimbursement	9
7. Payment arrangements	9
8. Exploitation of the results of the Contract	12
9. Performance of the Contract	15
10. Liability	18
11. Conflict of interests	19
12. Confidentiality	19
13. Processing of personal data	20
14. Subcontracting	22
15. Amendments	22
16. Assignment	23
17. Force majeure	23
18. Liquidated damages and Reduction of Price	24
19. Warranty	25
20. Suspension of the performance of the Contract	27
21. Termination of the Contract	27
22. Recovery	29
23. Checks and audits	30
24. Applicable law and settlement of disputes	31
25. Means of communication	31

HAVE AGREED

to this **Conditional Stage Payment Contract** and the following annexes:

- | | |
|------------------|--|
| Annex I | Tender specifications and the annexes thereto (reference No GSA/OP/05/19 V.1 of XX/XX/2019); |
| Annex II | Contractor's tender (reference No [complete] of [insert date]); |
| Annex III | Service Level Agreement |
| Annex IV | List of Pre-Existing Rights (Background Intellectual Property Rights) |
| Annex V | Template Declaration for Foreground Intellectual Property Rights |
| Annex VI | Template Deliverable/supply acceptance sheet |
| Annex VII | Security Aspect Letter |

which form an integral part of this Conditional Stage Payment Contract (hereinafter referred to as the 'Contract').

In case of any discrepancies with respect to the wording of this Contract, the following rules shall apply:

- the terms set out in the core text of the Contract shall take precedence over those in the Annexes;
- the terms set out in the Tender Specifications, shall take precedence over those in the Contractor's Tender;
- the terms set out in the Service Level Agreement, shall take precedence over those in the Contractor's Tender.

Subject to the above, the several instruments forming part of the Contact are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Agency, subject to Article 24.2, should it dispute any such instruction.

1. DEFINITIONS

Acceptance Review (AR)	Shall mean the acceptance review as referred to in Section 2.5 of the Tender Specifications.
Acceptance Sheet	Shall mean the deliverables/supply acceptance sheet executed in line with the template attached hereto as Annex VI.
Affiliate/Affiliated	Shall mean any legal entity which is directly or indirectly controlling, controlled by or under common control of the Contractor provided that (i) such entity shall be considered an Affiliate only for the time during which such control exists and (ii) for the purpose of this definition “control” shall be constituted in case any of the following applies to either the legal entity or the Contractor in relation to each other: (a) holding, whether directly or indirectly, a majority of the voting rights, (b) holding, whether directly or indirectly, more than 50% (fifty per cent) of the share capital, (c) having the right to appoint or remove a majority of the members of the board of directors or other management body, (d) having, by agreement, the right to exercise a majority of the voting rights.
Applicable Documents	Shall mean the documents listed as applicable documents in Section 2.9 of the Tender Specifications.
Background IPR	shall mean IPR developed or obtained by the Contractor and/or Contractor Parties prior to the execution of the Contract or IPR developed or obtained by the Contractor and/or Contractor Parties, outside the frame of the Contract, that is needed by the Contractor to complete the tasks under the Contract; a “need” in the aforementioned sense is considered, if, without the relevant rights of access and/or use, the exploitation of the Results would be technically or legally impossible, impaired or incomplete.
Close-out Review (CR)	Shall mean the close-out review as referred to in Section 2.5 of the Tender Specifications.
Critical Design Review (CDR)	Shall mean the critical design review as referred to in Section 2.5 of the Tender Specifications.
Contract	Shall mean the present Contract and its Annexes, which constitute an integral and substantial part thereof.
Contract Stage	Shall mean Contract Stage 1 and Contract Stage 2, or any of them, as the context requires.
Contract Stage Commencement	Shall mean Contract Stage 1 Kick-Off and Contract Stage 2 Kick-Off, or any of them, as the context requires.
Contract Stage 1	Shall have the meaning ascribed to it in Article 2.
Contract Stage 1 Kick-Off	Shall mean the date when the kick-off meeting for Contract Stage 1 (KOM 1) took place and the Parties formally approved the commencement of Contract Stage 1.
Contract Stage 2	Shall have the meaning ascribed to it in Article 2.
Contract Stage 2 Kick-Off	Shall mean the date when the kick-off meeting for Contract Stage 2 (KOM 2) took place and the Parties formally approved the commencement of Contract Stage 2.

Contractor Parties	Shall mean subcontractors at any tier and Affiliates to the Contractor and companies to which the Contractor is Affiliated.
Contractor's Tender	Shall mean the Contractor's tender attached as Annex II.
Creator	Shall mean any natural person who contributed to the production of the Result and includes personnel of the Contracting Authority or a third party.
Day(s)	Shall mean calendar day(s).
Final Review (FR)	Shall mean the final review as referred to in Section 2.5 of the Tender Specifications.
Financial Regulation	Shall mean Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, as amended or replaced.
Force Majeure	Shall mean any unforeseeable and exceptional situation or event beyond the Parties control which prevents either of them from fulfilling any of their obligations under the Contract, which was not attributable to error or negligence on their part and which proves to be inevitable in spite of exercising reasonable due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.
Foreground IPR	Shall mean all IPR stemming from the execution of the Contract by the Contractor and/or Contractor Parties. The definition comprises all phases and stages of development and includes also rights relating to modifications of and add-ons to the subject-matter of Foreground IPR, as well as modifications of and add-ons to the subject-matter of Background IPR made by the Contractor and his sub-contractor(s) in the frame of this Contract.
GNSS Regulation	Shall mean Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems, as amended or replaced time to time.
GSA	Shall have the meaning ascribed to it in Parties part.
Intellectual Property Rights (IPR)	Shall have the broadest meaning foreseen under law and, in particular, in accordance with Article 2 of the 1967 WIPO Convention, and shall include the rights related to: <ul style="list-style-type: none"> – literary, artistic and scientific works, – performances of performing artists, phonograms, and broadcasts, – inventions in all fields of human endeavour, – scientific discoveries, – industrial designs,



	<p>– trademarks, service marks, and commercial names and designations, – protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. For the sake of clarity, the definition of IPR includes but is not limited to rights related to all work results, written analysis, documentation, reports, organisation and project plans, drafts, drawings, schedules, calculations, as well as any software, in both source code and object code, data bases and data base works and interfaces.</p>
Key Performance Indicator(s) (KPI(s))	Shall mean the indicators detailed in the SLA.
Liquidated Damages	Shall mean the amount the GSA shall be entitled to receive from the Contractor as compensation for a specific breach by the latter of its obligations under this Contract, as defined herein.
Party/Parties	Shall mean either the GSA or the Contractor, as the case may be, or both of them.
Service	Shall mean the IT infrastructure of a worldwide advanced interference detection and robustness capability Software as a Service (SaaS) accessible from the Internet, further defined in the Tender Specifications, and as designed and developed during the Contract.
Service Fee	Shall mean the price to be paid, at each Service Performance Review and at Final Review for the performance of Task 8 as defined in the Tender Specifications
Service Level Agreement (SLA)	Shall mean the document in Annex III.
Service Requirements Review (SRR)	Shall mean service requirements review as referred to in Section 2.5 of the Tender Specifications.
Results	Shall mean any tangible or intangible output, such as data, source code, software, hardware, knowledge and information whatever their form or nature, whether or not they can be protected, stemming from the execution of the Contract which are generated by the Contractor and the Contractor Parties under the Contract, as well as any attached rights, and including Foreground IPR. Where IPR is concerned, this definition comprises all phases and stages of development and includes also rights relating to modifications of and add-ons to the subject-matter of Results, as well as modifications of and add-ons to the subject-matter of Background IPR made by the Contractor and the Contractor Parties in the frame of this Contract.
Service Performance Review (SPR)	Shall mean the review of compliance of the Service with the KPIs organised by the Contractor on a 6-month basis, as detailed in the SLA.
Service Performance Report	Shall mean the report on the activities and performances (KPIs reporting) of the Contractor for a 6-month period to be delivered during Task 8, as detailed in the Tender Specifications.

SLA Report	Shall mean the report on the activities and performances (KPIs reporting) of the Contractor for a monthly period to be delivered during Task 8, as detailed in the SLA.
Tender Specifications (TS)	Shall mean the tender specifications attached as Annex I.
Underperformance	Shall mean a failure by the Contractor at any time during Task 8 to meet the relevant KPIs, or fail to report on the KPIs, as defined and specified in the SLA.

2. SUBJECT MATTER

The subject matter of the Contract is (i) to analyse and report the applicable national regulations on interference reporting in the EU Member States and update the GSA's RF Threats Database ('Contract Stage 1') and (ii) to design, develop and test the IT infrastructure of a worldwide advanced interference detection and robustness capability Software as a Service (SaaS) accessible from the Internet ('Contract Stage 2') as described in the Tender Specifications.

3. CONTRACT STAGES

- 3.1** The subject matter of the Contract shall be delivered in two Contract Stages, as described in Article 2, in the Tender Specifications and in Contractor's Tender.
- 3.2** Contract Stage 1 shall be a fixed stage as provided for in Article 23 of the GNSS Regulation, which is accompanied by a budgetary commitment and results in a firm commitment to provide the activities defined for this stage under Section 2.4 of the Tender Specifications. Contract Stage 2 is conditional and its activation and subsequent entry into force shall be subject to introduction of a self-standing budgetary commitment and to the conditions precedent described under Article 0 and subject to Article 24.3.
- 3.3** The Contractor shall not be entitled to claim any compensation, indemnification or tide over/non-execution allowance for the purpose of Article 23 of the GNSS Regulation, as a result of the non-activation and entry into force of Contract Stage 2 in application of Article 0.

4. ENTRY INTO FORCE AND DURATION

- 4.1** The Contract shall enter into force on the date on which it is signed by the last Party.
- 4.2** Under no circumstances may performance start before the date on which the Contract enters into force.
- 4.3** The Contract shall expire upon the occurrence of any of the following eventualities:
- a) upon written notification of the GSA that the conditions precedent under Article 4.5 have not been met;
 - b) automatically upon successful completion of Contract Stage 2, provided that such successful completion occurs no later than 48 (forty eight) months after Contract Stage 1 Kick-Off.
- 4.4** The time period for execution of the tasks included under each Contract Stage shall start from the Contract Stage Commencement and shall last until the earlier of:



- a) successful completion of the Contract Stage, it being understood that the Contract Stage shall be considered successfully completed if all tasks subject to it have been performed and all deliverables subject to it, as described in the Tender Specifications, have been provided to and accepted by the GSA; or
- b) the expiry of :
 - 3 (three) months after Contract Stage 1 Kick-Off, and
 - 45 (forty-five) months after Contract Stage 2 Kick-Off.

The period of execution of the tasks may be further extended only with the express written agreement of the Parties before the expiration of such period for a maximum duration of 6 months.

Under no circumstances may performance of tasks subject to the Contract commence before:

- a) the date on which the Contract enters into force, as far as Contract Stage 1 is concerned;
- b) the GSA's authorisation of the execution of Contract Stage 2 pursuant to Article 4.5, as far as Contract Stage 2 is concerned.

4.5 The GSA shall authorise the execution of Contract Stage 2 in writing via registered letter or equivalent sent to the Contractor, provided that the following cumulative conditions are met and subject to the provisions under article 24.2:

- a) Contract Stage 1 has been successfully completed;
- b) The analysis delivered under Task 1 of the Tender Specifications has confirmed, in the opinion of the Agency acting reasonably, that a unique IT infrastructure can be designed to report interferences while implementing the technical requirements listed in section 2.4 of the Tender Specifications;
- c) the European Union Member States participating in the Working Group OPS have not forbidden the monitoring and analysis of interferences on their territory.

The notification shall set the date of the Contract Stage 2 Kick-Off which shall not be earlier than two weeks after the date of the notification.

4.6 The GSA may exercise Option 1 (BIPR licence, in accordance with Article 8.5), giving a 2-month notice to the Contractor, until expiration of the Contract through registered letter or equivalent.

5. MILESTONES

5.1 The execution of the tasks of each Contract Stage shall comply with the tasks and milestone plan presented in the Tender Specifications.

5.2 The milestone plan can be updated monthly by written communication by the GSA to the Contractor provided that the total duration of the Contract and the maximum total price to be paid remains unchanged.

5.3 The Contractor shall have five (5) working days from the date on which it receives a communication from the GSA to comment on the updated milestone plan. In case no communication from the Contractor is received by the GSA within this timeframe, the milestone plan shall be considered formally updated and applicable.

6. PRICES AND COST REIMBURSEMENT

6.1 The maximum total amount to be paid under the Contract shall be XXXXX EUR covering all tasks to be executed. This amount includes:

- 6.1.1 a firm and fixed price for Contract Stage 1 amounting to XXXXX EUR;
- 6.1.2 a firm and fixed price for Contract Stage 2 amounting to XXXXX EUR;
- 6.1.3 A firm and fixed price for Option 1 – BIPR licence amounting to XXXXX EUR.

6.2 The above mentioned prices shall include all costs and expenses. No further amount shall be paid to the Contractor.

Costs and expenses are: effort for all the tasks (including drawing up quotations and reports) necessary for their performance, including all costs (management of the project, coordination, quality control, support resources, missions with associated travel expenses (if any), subcontracting, procurement, manufacturing, assembly, quality control, documentation, storage, transportation, etc.), all overheads (management of the firm, secretarial services, social security, wages, etc.), all costs necessary for the performance of the tasks described, incurred directly and indirectly by the Contractor in performance of the tasks that will be entrusted to it.

6.3 Prices submitted by the Contractor in its tender (Annex II) shall be fixed and not subject to revision during the term of the Contract. The Contractor shall further be bound to perform the tasks and submit the deliverables in line with the prices per task according to the tab “Financial Offer” of Annex I.G as submitted by the Contractor as part of its tender (Annex II), unless the GSA requests relevant alterations to such work tasks, in which case the Contractor may request equitable adjustments to the price details to be agreed on with the GSA.

7. PAYMENT ARRANGEMENTS

7.1 Interim payment request

7.1.1 The Contractor shall submit a request for an interim payment in line with the following payment plan:

[XXX – to be included based on section 2.10.3 of the TS and the awarded tender proposal]

7.1.2 The request for interim payment shall be accompanied by:

- a) invoice for the payment including reference to the Contract, Contract Stage and the task to which it refers;
- b) Acceptance Sheet for the deliverables specified for the payment milestone approved by the GSA according to Article 8.11 of the Contract;
- c) all documents of proof (activity reports, minutes of meeting acknowledging successful milestone review and any other deliverables) documenting the provision of the underlying tasks or supplies in compliance with the contractual requirements as laid down in the Tender Specifications;

7.1.3 Any Underperformance related adjustments or deductions from the Service Fee shall be made in accordance with Article 17.

7.2 Balance payment request

7.2.1 The Contractor shall, within 60 Days of the Day upon which it becomes due, submit a request for payment of the balance for any services or supplies which have not yet been invoiced for interim payment, accompanied by:

- a) invoice for the payment including reference to the Contract, Contract Stage and the task to which it refers;
- b) Acceptance Sheet for the deliverables specified for the payment milestone approved by the GSA according to Article 8.11 of the Contract;
- c) all documents of proof (activity reports, minutes of meeting acknowledging successful milestone review and any other deliverables) documenting the provision of the underlying tasks or supplies in compliance with the contractual requirements as laid down in the Tender Specifications.

7.2.2 Any Underperformance related adjustments or deductions from the Service Fee shall be made in accordance with Article 17.

7.2.3 Payment of the balance may take the form of recovery.

7.3 Payments effected

7.3.1 If no progress report or other document for approval is required as a condition for payment, the payment shall be made within 30 (thirty) Days of the receipt of the complete request for payment.

7.3.2 If a progress report or other document shall be approved as a condition for payment, the GSA shall make the payment within 60 (sixty) Days from receipt of the complete request for payment, provided the report is approved by the GSA. The Contractor shall have 30 (thirty) Days in which to submit additional information or corrections, a new progress report or other documents if it is required by the GSA.

7.3.3 Any payments against invoice made under this Contract are payments for performance of tasks and do not represent and shall not be understood as salary payments or replacement of such. Payment of salaries for staff performing the tasks shall remain the sole responsibility of the Contractor.

7.4 Currency and bank transfers

7.4.1 The Contract shall be in euro.

7.4.2 Payments shall be made to the Contractor's bank account denominated in Euro, identified as follows:

Name of bank: [XXX]

Full address of branch: [XXX]

Exact designation of account holder: [XXX]

Full account number including [bank] codes: [XXX]

IBAN code: [XXX]

7.4.3 Conversion between the euro and another currency, if applicable, shall be made according to the daily euro exchange rate published in the Official Journal of the European Union or, failing that, at the monthly accounting exchange rate established by the European

Commission and published on its website, applicable on the Day on which the payment order is issued by the Contracting Authority.

7.4.4 The costs of the transfer shall be borne in the following way:

- a) costs of dispatch charged by the bank of the Contracting Authority shall be borne by the Contracting Authority,
- b) cost of receipt charged by the bank of the Contractor shall be borne by the Contractor,
- c) costs for repeated transfer caused by one of the Parties shall be borne by the Party causing repetition of the transfer.

7.5 Date of payment

Payments shall be deemed to be effected on the date when they are debited to the Contracting Authority's account.

7.6 Invoices and Value Added Tax

7.6.1 Invoices shall contain the Contractor's identification, the amount, the currency and the date, as well as the Contract reference. Invoices shall be sent electronically to the following email address: finance@gsa.europa.eu.

7.6.2 Invoices shall indicate the place of taxation of the Contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

7.6.3 The Contracting Authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

7.6.4 The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the Contract are exempt from taxes and duties, including VAT exemption.

7.7 Suspension of the time allowed for payment

7.7.1 The Contracting Authority may suspend the payment periods specified in Article 7.3 at any time by notifying the Contractor that its invoice cannot be processed, either because it does not comply with the provisions of the Contract, or because the appropriate documents have not been produced.

7.7.2 The Contracting Authority shall inform the Contractor in writing as soon as possible of any such suspension, giving the reasons for it.

7.7.3 Suspension shall take effect on the date the notification is sent by the Contracting Authority. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor may request the Contracting Authority to justify the continued suspension.

7.7.4 Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the

Contracting Authority reserves the right to terminate the Contract in accordance with Article 21.1(d).

7.8 Interest on late payment

7.8.1 On expiry of the payment periods specified in Article 7.3, and without prejudice to Article 7.7, the Contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first Day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

7.8.2 The suspension of the payment period in accordance with Article 7.7 may not be considered as a late payment.

7.8.3 Interest on late payment shall cover the period running from the Day following the due date for payment up to and including the date of actual payment as defined in Article 7.5.

7.8.4 However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the Contractor only upon request submitted within two (2) months of receiving late payment.

8. EXPLOITATION OF THE RESULTS OF THE CONTRACT

8.1 Foreground IPR

8.1.1 Ownership of all Results shall be exclusively and without restrictions vested in the European Union, represented by the European Commission, immediately upon their delivery and acceptance by the GSA, with such delivery and acceptance being deemed to constitute an effective assignment of rights from the Contractor to the Union. In the case of Foreground IPR, effective assignment of rights from the Contractor to the European Union is deemed to be constituted from the moment of its generation. Documentation or software generated by the Contractor or the Contractor Parties under the Contract shall be immediately marked "*EU Proprietary information. Unauthorised distribution, dissemination or disclosure not allowed*".

8.1.2 The European Union acquires the following exclusive rights:

- a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the Results by any means (mechanical, digital or other) and in any form, in whole or in part;
- b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the Results in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- c) distribution: the exclusive right to authorise or prohibit any form of distribution of Results or copies of the Results to the public, by sale or otherwise;
- d) rental: the exclusive right to authorise or prohibit rental or lending of the Results or of copies of the Results;
- e) adaptation: the exclusive right to authorise or prohibit any modification of the Results;
- f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the Results, and any other alteration of the Results, subject to the respect of moral rights of authors, where applicable;



- g) where the Results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- h) where the Results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- i) where the Results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- j) where the Results are or include know-how: the right to use such know-how as is necessary to make use of the Results to the full extent provided for by this Contract, and the right to make it available to Contractors or sub-contractors acting on behalf of the Contracting Authority, subject to their signing of adequate confidentiality undertakings where necessary;
- k) where the Results are documents:
 - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, 'reuse' and 'document' have the meaning given to it by this Decision;
 - (ii) the right to store and archive the Results in line with the document management rules applicable to the Contracting Authority, including digitisation or converting the format for preservation or new use purposes;
- l) where the Results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this article:
 - (i) end-user rights, for all uses by the European Union or by sub-contractors which result from this Contract and from the intention of the Parties;
 - (ii) the rights to decompile or disassemble the software;
- m) to the extent that the Contractor may invoke moral rights, the right for the Contracting Authority, except where otherwise provided in this Contract, to publish the Results with or without mentioning the Creator(s)' name(s), and the right to decide when and whether the Results may be disclosed and published.

8.1.3 The Contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the European Union on all parts of the Results. When delivering the Results, the Contractor shall warrant that they are free of rights or claims from Creators and third parties, for any use envisaged by the Contracting Authority. This does not concern the moral rights of natural persons.

8.1.4 In the Results the Contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.

8.1.5 By delivering the Results the Contractor warrants that the Creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the Contractor to the Contracting Authority.

- 8.1.6 The Contractor shall obtain the consent of Creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.
- 8.1.7 The Contractor shall use the template in Annex V of the Contract to declare any Foreground IPR and bring such declaration to the GSA's attention without delay.
- 8.1.8 The Contractor and the Contractor Parties shall obtain a non-transferable, non-sublicensable, unrestricted, free of charge, non-exclusive right to use the Results, including Foreground IPR; such license shall be granted exclusively for the purpose of implementation of the Contract and shall expire upon the expiry of the Contract. This is without prejudice that the license may be revoked with immediate effect following the GSA's or the European Commission's written notice should the Contractor fail to comply with its obligations under this Contract. The GSA shall not provide the Contractor with any representation or warranties in respect of the use of the Results or Foreground IPR and the Contractor shall have no claim whatsoever against the European Union, the GSA or its institutional assignees arising out of the use of the Results or Foreground IPR.

8.2 Background IPR

- 8.2.1 All Background IPR shall be declared by the Contractor in Annex IV of the Contract at the time of submission of the tender. Should the Contractor become aware of the need, in the sense defined in Background IPR definition, to use Background IPR not yet referred to in Annex IV after entering into the Contract, the Contractor shall immediately notify the Contracting Authority and provide information in the scope required by Annex IV. The Contractor shall not be authorised to use such Background IPR, unless approved by the Contracting Authority in writing. In particular, the Contracting Authority may refuse the addition of a new Background IPR would it not be in line with Article 8.4 and 8.5.
- 8.2.2 Upon request by the Contracting Authority, the Contractor shall provide evidence of ownership of or rights to use all the listed Background IPR and rights of third parties except for the rights owned by the GSA.
- 8.2.3 Provision of evidence does not release the Contractor from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed. The Contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final Results.
- 8.2.4 When the Contractor retains Background IPR on parts of the Results, reference shall be inserted to that effect when the result is used as set out in Article 8.1 with the following disclaimer: © - year – European GNSS Agency. All rights reserved. Certain parts are licensed under conditions to the GSA.
- 8.3** The Contractor shall take all necessary measures for establishing the ownership requirement under Article 8.1, including, where inventions are concerned, patentability requirements, and for this purpose shall transfer all Results to the European Union in a format allowing the unfettered use of the Results. This shall include the obligation of the Contractor to guarantee that all items, in both tangible and intangible form, stemming from this Contract, include all necessary licences for the unfettered use of the Results.
- 8.4** The Contractor, without prejudice to any limitations resulting from Article 8.6, shall provide or, in case of Background IPR owned by a third party, shall ensure that the third-party provides to the European Union, the GSA, its institutional assignees or institutional licensees a cost-free, perpetual and transferable licence to access and use the Background IPR for the

use of Results for institutional purposes with the right to sublicense. Where Commercial Off-The-Shelf (COTS) products are concerned and the standard licence terms of the third-party vendor apply, such licence shall grant to the European Union/GSA the right and licence to use such COTS products for the purpose of this Contract, excluding any rights of sub-licence. In the frame of this Contract, institutional purposes shall mean any purpose related to promotion, demonstration, dissemination, testing, standardisation, operation, and service provision of European GNSS Programmes. The licence for the Background IPRs shall not include the right to grant sublicenses on the Background IPR for any non-institutional or commercial exploitation purposes.

- 8.5** In case of exercise of Option 1 by the GSA, the Contractor shall grant, for the entire duration of the IPR protection, the European Union (represented by the European Commission and the GSA) a licence for access and use of Background IPR, whenever this use is required for the commercial exploitation of the Results with the right to sublicense. For the avoidance of doubt, employing a third-party on a commercial basis to maintain, operate or otherwise administer the Results shall be treated as commercial exploitation of the Results, such third party being entitled to a sublicense on the BIPR.
- 8.6** The Contractor shall hold the European Union, its assignees and licensees, free and harmless of any claims for infringement of third party rights in connection with the use of Background IPR within the licensed scope according to Article 8.5.
- 8.7** Should access to Background IPR involve a security concern, or a non-disclosure agreement which was entered prior to starting the implementation of the relevant part of the Contract, the Parties shall put a specific non-disclosure agreement in place to cover the confidentiality of this Background IPR. In case of security concerns, such non-disclosure agreement shall involve the relevant National Security Authority to agree on the policy of use, terms and conditions for the management of the sensitive Background IPR. The Contractor shall apply all efforts towards solving security concerns in a way as not to unduly prevent the said access.

9. PERFORMANCE OF THE CONTRACT

- 9.1** The Contractor shall perform the Contract to the highest professional standards and shall at all times fully comply with the minimum requirements as laid down in Section 3.3 of the Tender Specifications and maintain throughout the contract compliance with the participation conditions and exclusion/selection criteria.
- 9.2** The Contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to it are to be executed.
- 9.3** Without prejudice to Article 11 any reference made to the Contractor's personnel in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- 9.4** The Contractor must ensure that the personnel performing the Contract possesses the professional qualifications and experience required for the execution of the tasks assigned to it.
- 9.5** The Contractor shall neither represent the Contracting Authority nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to the European public service.

- 9.6** The Contractor shall be solely responsible for the personnel who executes the tasks assigned to the Contractor.

The Contractor shall stipulate the following employment or service relationships with its personnel:

- a) personnel executing the tasks assigned to the Contractor may not be given orders directly by the Contracting Authority;
 - b) the Contracting Authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the Contracting Authority any right arising from the contractual relationship between the Contracting Authority and the Contractor.
- 9.7** In the event of disruption resulting from the action of one of the Contractor's personnel working on the Contracting Authority's premises or in the event that the expertise of one of the Contractor's personnel fails to correspond to the profile required by the Contract, the Contractor shall replace him/her without delay. The Contracting Authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of personnel.
- 9.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the Contractor shall immediately and on its own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under this Contract. In such an event the Contractor shall give priority to solving the problem rather than determining liability.
- 9.9** Should the Contractor fail to perform its obligations under the Contract the Contracting Authority may - without prejudice to its right to terminate the Contract or reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the Contracting Authority may claim compensation or impose liquidated damages in accordance with Article 18.

9.10 Delivery of supplies

- a) Date, time and place of delivery

The Contractor shall be notified in writing by the GSA three (3) weeks prior to the Acceptance Review and Final Review with regards to the time and place of delivery of the deliverables concerned; the GSA may request the deliverable to be delivered anywhere within the European Union.

The GSA shall be notified in writing of the exact date of delivery and installation of supplies not less than 5 working days in advance.

All deliveries of supplies shall be made at the agreed place of delivery during the hours agreed between the Contracting Authority and the Contractor.

The Contractor shall bear all costs and risks involved in delivering and installing the supplies to the place of delivery.

b) Consignment note

Each delivery and/or installation of supplies shall be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor, or its carrier if applicable, giving the contract number and particulars of the supplies delivered and/or installed. One copy of the consignment note shall be countersigned by the Contracting Authority and returned to the Contractor or to its carrier.

Signature of the consignment note by the Contracting Authority, as provided for in this Article is simply an acknowledgment of the fact that the delivery and/or installation of supplies took place and in no way implies conformity of the supplies with this Contract.

Without prejudice to the above, the signature of the consignment note shall transfer the risks associated to the delivery in question from the Contractor to the GSA.

9.11 Certificate of acceptance of deliverables or supplies

Acceptance of deliverables or supplies shall be evidenced by the signature of a deliverable/supply acceptance sheet (Annex VI) to this effect by the Contracting Authority. Acceptance or rejection shall be notified by the Contracting Authority to the Contractor no later than 30 (thirty) Days after the date of delivery and installation of supplies, and no later than 45 (forty-five) Days after the date of submission of deliverables, unless otherwise specified in the Tender Specifications.

Acceptance shall be declared only where the conditions laid down in the Contract are satisfied and the deliverables or supplies conform to the Tender Specifications.

Where, for reasons attributable to the Contractor, the Contracting Authority is unable to accept the deliverables or supplies, the Contractor shall be notified in writing at the latest by the deadline for acceptance.

9.12 Conformity of the supplies delivered with the Contract

- a) The supplies delivered by the Contractor to the Contracting Authority must be in conformity in quantity, quality, price and packaging with this Contract.
- b) The supplies delivered must:
 - (i) correspond to the description given in the Tender Specifications and the Contractor's Tender;
 - (ii) be free from defects in material and workmanship at the time of Acceptance Review or Final Review by the Contracting Authority for a period of two (2) years under normal use required of them by the Contracting Authority as made known to the Contractor in this Contract and accepted by the Contractor;
 - (iii) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

9.13 Remedy



- a) The Contractor shall be liable to the Contracting Authority for any lack of contractually agreed conformity of deliverables which exists at the time they are subject to acceptance by the Contracting Authority.
- b) In case of lack of conformity or rejection of deliverables, without prejudice to Article 17 regarding liquidated damages, the Contracting Authority shall be entitled:
 - (i) either to have the deliverables brought into conformity, free of charge, by repair or replacement;
 - (ii) or to have an appropriate reduction made in the price.

Any repair or replacement of deliverables shall be completed within a reasonable time and without any significant inconvenience to the Contracting Authority, taking account of the nature of the supplies and the purpose for which they are required by the Contracting Authority.

- c) In case of lack of conformity or rejection of deliverables, the Contracting Authority shall be entitled to have additional information, corrections or other documents submitted by the Contractor within 15 (fifteen) Days from the date of receipt by the Contractor of the notification of rejection.
- d) The term 'free of charge' in paragraph (b) refers to the costs incurred to bring the deliverables or supplies into conformity, particularly the cost of postage, labour and materials.

9.14 Applicable Documents

- a) The Contractor shall perform its obligations under, and shall observe all provisions of the Applicable Documents and shall not vary or depart from any of them, unless it has been agreed so in line with Article 15.
- b) However, any additions or changes to the Applicable Documents made by the Contracting Authority in compliance with new, compulsory requirements imposed by law, shall become effective immediately, constituting an integral part of the Contract and shall not be considered and subject to the provisions under Article 15 unless those changes implies a change in the financial balance of the Contract.

10. LIABILITY

10.1 The Contractor shall be solely responsible for complying with any legal obligations incumbent on it.

10.2 The Contracting Authority shall not be held liable for any damage caused or sustained by the Contractor, including any damage caused by the Contractor to third parties during or as a consequence of performance of the Contract, except in the event of wilful misconduct or gross negligence on the part of the Contracting Authority.

10.3 The Contractor shall be held liable for any loss or damage sustained by the Contracting Authority in performance of the Contract, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding the total amount of the relevant Contract Stage price, increased by the amount of option 1, if exercised. The limitation of liability above shall not apply in case the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its personnel or sub-contractors.

10.4 The Contractor shall indemnify and hold the European Union harmless for all damages and costs incurred due to any third party claim arising out of or in connection with the performance of the Contract. In the event of any action brought by a third party against the Contracting Authority in connection with the performance of the Contract including any alleged breach of intellectual property rights, the Contractor shall assist the Contracting Authority.

10.5 The Contractor shall take out an insurance policy against risks and damage relating to the performance of the Contract if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Contracting Authority should it so request.

10.6 If the Contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the Contracting Authority for the implementation of the Contract.

11. CONFLICT OF INTERESTS

11.1 The Contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the Contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.

11.2 Any situation constituting or likely to lead to a conflict of interest during the performance of the Contract shall be notified to the Contracting Authority in writing without delay. The Contractor shall immediately take all the necessary steps to rectify the situation. The Contracting Authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.

11.3 The Contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the Contract.

11.4 The Contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The Contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the Contract including sub-contractors.

12. CONFIDENTIALITY

12.1 Unless stated otherwise in this Contract, the Contracting Authority and the Contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the Contract and identified in writing as confidential. The Contractor may only indicate as confidential such information that qualifies as trade secret of the Contractor or Contractor Parties; for the avoidance of doubt, none of the deliverables, or any part thereof, may be identified by the Contractor as confidential and the Contractor acknowledges that the Contracting Authority may disclose them to third-parties at its own discretion.

12.2 The Contractor shall:

- a) not use confidential information and documents for any purpose other than fulfilling its obligations under the Contract without prior written agreement of the Contracting Authority;
- b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the Contracting Authority.

12.3 The confidentiality obligation set out in Article 12.1 shall be binding on the Contracting Authority and the Contractor during the performance of the Contract and for five years starting from the date of the payment of the balance unless:

- a) the concerned Party agrees to release the other Party from the confidentiality obligation earlier;
- b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Party bound by that obligation;
- c) the disclosure of the confidential information is required by law.

12.4 The Contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the Contract an undertaking that they will comply with the confidentiality obligation set out in Article 12.1.

13. PROCESSING OF PERSONAL DATA

13.1 Any personal data included in the Contract must be processed in accordance with 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 data¹. Such data shall be processed by the data controller (the GSA) and the data processor (the Contractor) solely for the purposes of the performance, management and monitoring of the Contract without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

13.2 The following categories of personal data are expected to be processed by the data controller: contact details of the contractor's personnel or its contractors that may be included in deliverables, such as name and last name, gender, telephone number, email address, postal address, organisation and position within organisation. The provision of the aforementioned data is a contractual requirement.

13.3 The recipients of the personal data mentioned under Article 12.2 shall be (1) a limited number of staff of the GSA managing the Contract, (2) a limited number of staff of GSA contractors assisting GSA staff in the management of the Contract, (3) a limited number of staff of GSA contractors providing hosting services for the GSA servers. The personal data will be stored in the premises of the aforementioned recipients, all of which are located within Union territory, and will be retained for up to 7 (seven) years after the expiry of the present Contract for audit and discharge purposes.

13.4 The Contractor shall have the right to request from the data controller access to, rectification or erasure of its personal data, restriction of processing, the right to object to the processing

¹ Currently Regulation (EU) 2018/1725

and the right to data portability, provided that there grounds for the exercise of any of these rights, as per the applicable rules.

13.5 The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

13.6 If, throughout the duration of the Contract, the Contractor is required to process any personal data (acting as data processor), the Contractor shall

- i. inform in writing without delay the data controller and act only on documented instructions from the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights;
- ii. with regard to transfers of personal data to a country outside the European Union or an international organisation, act only on documented instructions from the data controller, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the data controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- iii. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- iv. without prejudice to Article 12.8, take all necessary measures to ensure the security of the processing of personal data, as may be instructed by the controller;
- v. not engage another processor or sub-processor without prior specific written authorisation of the controller;
- vi. taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in the applicable rules;
- vii. assist the controller for the fulfilment of its obligations to
 - a. ensure compliance with its obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users
 - b. notify a personal data breach to the European Data Protection Supervisor
 - c. communicate a personal data breach without undue delay to the data subject, where applicable
 - d. carry out data protection impact assessments and prior consultations as necessary
- viii. notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:
 - a. nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - b. likely consequences of the breach;
 - c. measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
- ix. maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties;
- x. delete all the personal data after the end of the provision of services relating to processing;
- xi. make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller

13.7 The Contractor shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the Contract.

13.8 The Contractor shall adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to ensure:

- a) the pseudonymisation and encryption of personal data;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;

measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

14. SUBCONTRACTING

14.1 The Contractor shall not subcontract without prior written authorisation from the Contracting Authority nor cause the Contract to be de facto performed by third parties.

14.2 Even where the Contracting Authority authorises the Contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this Contract.

14.3 The Contractor shall make sure that the subcontract does not affect rights and guarantees granted to the Contracting Authority by virtue of this Contract, notably by Article 23.

15. AMENDMENTS

15.1 Any amendment to the Contract shall be made in writing before fulfilment of any new contractual obligation(s) and before the expiry date of the relevant Contract Stage. No oral agreement shall be binding.

15.2 The amendment may not have the purpose or the effect of making changes to the Contract which might call into question the decision awarding the Contract or result in unequal treatment of tenderers.

15.3 Any cost structure (including profit, hourly rates, and overheads) which is included in any amendment or supplement shall be consistent with the one put forth in the Contractor's Tender.

15.4 Costs incurred in relation to administrative management (such as efforts for preparation of offers) of contract amendments are borne by the Contractor and shall not be reimbursed by the Contracting Authority.

15.5 If the Contracting Authority proposes an amendment to the Contract, it must formally notify the Contractor with a change request notice, setting out the proposed changes in detail. The

Contractor shall submit in writing a change request proposal as soon as practicable and in any event within 15 (fifteen) Days, providing the requested information.

15.6 If the Contractor wishes to introduce an Unsolicited Change Proposal, it must serve a Change Proposal Notice to the Contracting Authority which shall contain at least the reason for proposing the change, the technical description of the work to be done under the change, if any impact on other activities of the Contract are expected, the expected effort and the price alteration, the planning. The Contracting Authority shall evaluate the Unsolicited Change Proposal in good faith taking into account all the relevant issues and circumstances. If the Contracting Authority rejects the Unsolicited Change Proposal, it shall be obliged to give its reasons for such rejection. In such case, the Contractor shall not be liable for the consequences of such refusal insofar as it is proven that the consequences in question could have been avoided with the implementation of the Change subject to the Unsolicited Change Proposal.

16. ASSIGNMENT

16.1 The Contractor shall not assign the rights, including claims for payments, and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Contracting Authority.

16.2 In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor shall not be enforceable against the Contracting Authority and shall have no effect on it.

16.3 Should this Contract be assigned pursuant to Section 2.10.9 of the Tender Specifications, such assignment shall be in line with the mitigation plan developed by the Contractor and approved by the Contracting Authority.

17. FORCE MAJEURE

17.1 A Party faced with Force Majeure shall formally notify the other Party without delay, stating the nature, likely duration and foreseeable effects.

17.2 The Party faced with Force Majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by Force Majeure. Where the Contractor is unable to fulfil its contractual obligations owing to Force Majeure, it shall have the right to remuneration only for the tasks actually executed.

17.3 As soon as practicable following such formal notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to prevent and mitigate the effects of the Force Majeure event with a view to continuing performance of the Contract.

17.4 If either (a) no such terms are agreed on or before the date falling 30 (thirty) Days after the date of the commencement of the Force Majeure event, or (b) the Parties assess, acting reasonably at any time after the occurrence of the relevant Force Majeure event that the Force Majeure event is likely to last for a further period of at least 60 (sixty) Days, and in either such case such Force Majeure event is continuing, then either Party may terminate the Contract by giving 30 (thirty) Days' formal notice to the other Party.

17.5 The Party affected by the Force Majeure event shall notify the other Party as soon as practicable after the Force Majeure event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Contract and the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure event.

17.6 Termination of the Contract under this Article shall give neither Party the right to compensation, save for possible claims having been raised prior the Force Majeure event.

17.7 In case of dispute as to the existence of Force Majeure, Article 24.3 shall apply.

17.8 The Parties shall take all the necessary measures to limit any damage due to Force Majeure.

18. LIQUIDATED DAMAGES AND REDUCTION OF PRICE

18.1 General Principle

The Parties expressly acknowledge and agree that any sums payable under Articles 18.2, 18.3 and 18.4 are in the nature of Liquidated Damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

18.2 Liquidated Damages for the Contract Stage 1

Should the Contractor fail to perform its contractual obligations within the time limits set in the Tender Specifications for the CR milestone, then, without prejudice to the Contractor's actual or potential liability or to the Contracting Authority's right to terminate the Contract, the Contracting Authority may impose Liquidated Damages for each and every calendar day of delay according to the following formula up to an aggregated maximum of 30% of the Contract Stage 1 price:

$$0.3 \times (V/d)$$

V is the contract price for the Contract Stage 1;

d is the duration specified for the relevant milestone expressed in calendar days

18.3 Liquidated Damages for Contract Stage 2 – Tasks 2 to 7, 9 and 10

Should the Contractor fail to perform its contractual obligations within the time limits set in the Tender Specifications for the SRR, CDR, AR, HR and FR milestones, then, without prejudice to the Contractor's actual or potential liability or to the Contracting Authority's right to terminate the Contract, the Contracting Authority may impose Liquidated Damages for each and every calendar day of delay according to the following formula up to an aggregated maximum of 30% of the Tasks 2 to 7, 9 and 10 overall price, as detailed in Annex II:

$$0.3 \times (V/d)$$

V is the overall price for Tasks 2 to 7, 9 and 10 as defined in Annex II;

d is the duration specified for the relevant milestone expressed in calendar days

18.4 Liquidated Damages for Contract Stage 2 – Task 8 only

In addition, the Contracting Authority may apply Liquidated Damages in case of breach of the Service Level Agreement according to the following formula detailed therein up to an aggregated maximum of 30% of the Task 8 price, as detailed in Annex II.

18.5 Price Reduction due to failure to meet quality standards

If the Contractor fails to provide the Service in accordance with the Contract ('unperformed obligations') or if it fails to provide the tasks in accordance with the expected quality levels specified in the Tender Specifications ('low quality delivery'), the Contracting Authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the Contracting Authority cannot approve a result, report or deliverable after the Contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with Liquidated Damages under the conditions of Article 18.2 and/or 18.3 and/or 18.4.

18.6 Procedure

The Contracting Authority must formally notify the Contractor of its intention to apply Liquidated Damages and/or reduce payment and the corresponding calculated amount.

The Contractor has thirty (30) Days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the Day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must notify the Contractor:

- a) of the withdrawal of its intention to apply Liquidated Damages/reduce payment; or
- b) of its final decision to apply Liquidated Damages/reduce payment and the corresponding amount.

18.7 Claims and liability

Any reduction in price does not affect the Contractor's actual or potential liability or the Contracting Authority's rights elsewhere foreseen under this Contract.

19. WARRANTY

19.1 The Contractor undertakes, within this warranty obligation, to remedy at its own expense and any Defect which may appear in the deliverables during the period stated in Article 18.3.

19.2 Scope of the warranty

19.2.1 The Contractor warrants that the deliverables supplied under the Contract are in all respects in compliance with both the contractual requirements and with any statutory rule or regulation which may be in force at the time of delivery and free from any Defects which would lead to not fulfilling the applicable performance requirements covered by the Contract.



- 19.2.2 The Contractor shall remove and replace or repair the deliverable hardware at the Contractor's option. The Contractor shall correct any Defect to the deliverable software. The warranty for both hardware and software Deliverables shall include the supply and updating of appropriate documentation, as well as the cost of reinstallation and re-testing incurred by the Contractor and/or its subcontractors.
- 19.2.3 The warranty obligations shall cover the removal, replacement or repair by the contractor including all travel expenses, packing and transport charges, the supply and updating of appropriate documentation, as well as its own cost of reinstallation, re-acceptance of those parts or components which have been found to be defective within the scope of the planned use.
- 19.2.4 If the defect observed in the course of the warranty period is found to be due to a technical or design error of a systematic nature, the provision of this clause shall apply to all identical components even if these components are functioning correctly. A Defect is considered as systematic if it can be demonstrated that the Defect will be reproduced in a deliverable/or part thereof, if exposed to representative conditions as applied when the Defect was observed.
- 19.2.5 The Contractor's liability under the provisions of this chapter shall not extend to:
- i. Defects arising from the misuse of the deliverables after their acceptance;
 - ii. Defects in materials, assemblies or other supplies issued by the Agency for incorporation therein, provided always that the Contractor shall have properly exercised its duties as custodian of such items and shall have incorporated them in accordance with the requirements of the Contract;
 - iii. compensation for damage resulting from the use of items covered by the Contract after the Final Review;
 - iv. Defects resulting from modifications implemented by the Agency without the agreement of the Contractor or caused by remedial actions not approved or validated by the Contractor.
- 19.2.6 The remedies identified above constitute the sole remedy for warranty under the Contract, excluding all other warranty remedies expressed or implied by law or otherwise.

19.3 Warranty period

- 19.3.1 The warranty shall run for a period of two (2) year from the acceptance of the deliverable.
- 19.3.2 For deliverables/or part thereof replaced, the warranty period shall recommence at the date of replacement. For deliverable/or part thereof repaired or modified, the warranty period shall be prolonged automatically by a period equal to that during which the items were unavailable for their intended use.
- 19.3.3 The warranty shall survive also in case of contractual termination.

19.4 Procedure

- 19.4.1 When the Defect or failure is found, it shall be reported in writing by the Agency to the Contractor. The Contractor shall start as soon as possible, but in any case within three (3) Working Days from the date of notification, an action to solve the problem encountered.
- 19.4.2 From the date of notification of the Defect, the Contractor shall retake possession of the defective deliverables/or part thereof in order to repair or replace them as agreed between the Parties for that specific case. If the Contractor does not retake possession of the defective deliverables/or part thereof within one (1) month from

the notification, then the Contractor is deemed to have opted for replacing the defective items by new ones. In that case, the Agency shall have the right to dispose of or scrap the items at the Contractor's cost.

20. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

20.1 Suspension by the Contractor

The Contractor may suspend the performance of the Contract or any part thereof if a case of Force Majeure makes such performance impossible or excessively difficult. The Contractor shall inform the Contracting Authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the Contract.

Once the circumstances allow resuming performance, the Contractor shall inform the Contracting Authority immediately and resume performance of the Contract, unless the Contracting Authority has already terminated the Contract.

20.2 Suspension by the Contracting Authority

The Contracting Authority may suspend the performance of the Contract or any part thereof:

- a) if the Contract award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud;
- b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred;
- c) During the time period for the contractor to submit its observation on a situation of conflict of interest as described under Article 11;**Error! Reference source not found.**
- d) if a case of Force Majeure or change of law makes the objective of the Contract useless or extremely difficult to achieve;
- e) in case the breach of the Contract by the Contractor resulted in a claim for a price reduction in line with Article 18.5 and the Contractor has not adopted measures, to the full satisfaction of the Contracting Authority, to prevent unperformed obligations or low quality delivery from occurring during upcoming tasks or work packages.

Suspension shall take effect on the Day the Contractor receives formal notification, or at a later date provided in the notification. The Contracting Authority shall as soon as possible give notice to the Contractor to resume the service suspended or inform the Contractor that it is proceeding with termination of the Contract. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof in case the suspension events under this clause are attributable to him.

21. TERMINATION OF THE CONTRACT

21.1 Grounds for termination by the Contracting Authority

The Contracting Authority may terminate the Contract, in the following circumstances:

- a) if provision of the services has not actually started within fifteen (15) Days of the scheduled date and the Contracting Authority considers the new date proposed, if any, unacceptable;



- b) if the Contractor has not met the deadline for the Acceptance Review indicated in the Tender Specifications (or otherwise agreed);
- c) if the Contractor is unable, through its own fault, to obtain any permit or licence required for implementation of the Contract;
- d) if the Contractor has been notified by the Contracting Authority at least by three times that it does not implement the Contract in accordance with the Tender Specifications or is in breach of another substantial contractual obligation; for the avoidance of doubt, the notification may relate to the same breach (continuing breach), the same type of breach or different type of breaches);
- e) if the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation;
- f) if the Contractor, its Affiliate or Contractor Party is subject to any of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation.
- g) if the procedure for awarding the Contract or the implementation of the Contract prove to have been subject to substantial errors, irregularities or fraud;
- h) if the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- i) if the Contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article 11, subject to the provisions under such article;
- j) if a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of the Contract or substantially modify the conditions under which the Contract was initially awarded;
- k) in the event of Force Majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the Contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or Contractors.

21.2 Grounds for termination by the Contractor

The Contractor may terminate the Contract if:

- a) it has evidence that the Contracting Authority has committed substantial errors, irregularities or fraud in the procedure for awarding the Contract or the implementation of the Contract;
- b) the Contracting Authority fails to comply with its substantial contractual obligations, in particular the obligation to provide the information needed for the Contractor to implement the Contract as provided for in the Tender Specifications.

21.3 Procedure for termination

A Party must formally notify the other Party of its intention to terminate the Contract and the grounds for termination.

The other Party has 30 Days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the Day after the time limit for submitting observations has elapsed.

If the other Party submits observations, the Party intending to terminate must formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (e), (h) to (j) of Article 21.1 and in Article 21.2, the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (f), (g) and (k) of Article 21.1, the termination takes effect on the Day following the date on which the Contractor receives notification of termination.

In addition, at the request of the Contracting Authority and regardless of the grounds for termination, the Contractor must provide all necessary assistance, including information, documents and files, to allow the Contracting Authority to complete, continue or transfer the services to a new Contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The Parties may agree to draw up a transition plan detailing the Contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The Contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the Parties will negotiate an arrangement in good faith.

21.4 Effects of termination

The Contractor is liable for damage incurred by the Contracting Authority as a result of the termination of the Contract including the cost of appointing another Contractor to provide or complete the services, unless the damage was caused by the situation specified in Article 21.1 (k) or in Article 21.2. The Contracting Authority may claim compensation for such damage.

The Contractor is not entitled to compensation for any loss resulting from the termination of the Contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article 21.2.

The Contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 Days of the date of termination, the Contractor must submit any report, deliverable or result and any invoice required for services that were provided before the date of termination.

22. RECOVERY

22.1 If an amount is to be recovered under the terms of the Contract, the Contractor shall repay the Contracting Authority the amount in question according to the terms and by the date specified in the debit note.

22.2 If the obligation to pay the amount due is not honoured by the date set by the Contracting Authority in the debit note, the amount due shall bear interest at the rate indicated in Article 7.8. Interest on late payments shall cover the period from the Day following the due date for payment up to and including the date when the Contracting Authority receives the full payment of the amount owed.

22.3 Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

22.4 If payment has not been made by the due date, the Contracting Authority may, after informing the Contractor in writing, recover the amounts due by offsetting them against any amounts owed to the Contractor by the GSA or by the European Union or by the European Atomic Energy Community or by calling in the financial guarantee, where provided for, or by taking legal action.

22.5 If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article 10. The Contracting Authority first claims the full amount to the leader of the group. If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article 22.3, the Contracting Authority may claim the full amount to any other member of the group by notifying the debit note already sent to the leader under Article 22.1.

23. CHECKS AND AUDITS

23.1 The Contracting Authority and the European Anti-Fraud Office may check or have an audit on the performance of the Contract. It may be carried out either directly by their own staff or by any other outside body authorised to do so on their behalf. Such checks and audits may be initiated during the performance of the Contract and during a period of five years which starts running from the date of expiry of the Contract. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the Contracting Authority. Audits shall be carried out on a confidential basis.

23.2 The Contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of expiry of the Contract.

23.3 The Contractor shall allow the Contracting Authority's staff and outside personnel authorised by the Contracting Authority the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

23.4 On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the Contractor, which shall have 30 Days following the date of receipt to submit observations. The final report shall be sent to the Contractor within 60 Days following the expiry of that deadline.

23.5 On the basis of the final audit findings, the Contracting Authority may recover all or part of the payments made and may take any other measures which it considers necessary.

23.6 In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the Contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

23.7 The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance under this Contract.

23.8 The Court of Auditors shall have the same rights as the Contracting Authority, notably right of access, for the purpose of checks and audits.

24. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

24.1 The Contract shall be governed by European Union law, complemented, where necessary, by the law of Belgium.

24.2 Any dispute between the Parties in relation to the interpretation, application or validity of the Contract, including, without limitation to, the fulfilment of the conditions for the activation of stage 2, as described under article 4.5, which cannot be settled amicably shall be brought before the courts of Brussels, Belgium.

24.3 Without prejudice to the above and with limited reference to disputes concerning the existence of Force Majeure according to Article 17.7, the Parties agree to refer the matter to a Technical Board composed of one representative appointed by the Contracting Authority, one representative appointed by the Contractor and a Chairman appointed by the first two members. Each representative of the Technical Board, including its chairperson shall have one vote. The decisions of the Technical Board shall be taken by consensus, whenever possible. When consensus will not be achieved, the Technical Board will decide at majority. The decisions of the Technical Board shall be final and binding on the Parties.

24.4 It is the Contractor's sole responsibility and duty, also beyond legal acts listed in the Tender Specifications, to comply and ensure full compliance with all applicable laws of any part of performance under the Contract.

25. MEANS OF COMMUNICATION

25.1 Any communication relating to the Contract or to its performance shall be made in writing and shall bear the Contract number. Any communication is deemed to have been made when it is received by the receiving Party unless otherwise provided for in this Contract.

25.2 Electronic communication shall be deemed to have been received by the Parties on the Day of dispatch of that communication provided it is sent to the addressees listed in Article 25.6. Without prejudice to the preceding, if the sending Party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other Party.

25.3 Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the Parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

25.4 Mail sent using the postal services is deemed to have been received by the Contracting Authority on the date on which it is registered by the department responsible referred to in Article 25.6.

25.5 Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.



25.6 Communications shall be sent to the following addresses:

GSA:

Project officer:

Name:

Surname:

Email: [insert]@gsa.europa.eu

Telephone number:

European GNSS Agency
Market Development Department
Janovskeho 438/2
170 00 Prague
Czech Republic

Contract officer:

European GNSS Agency
Legal and Procurement Department
Attention:
Janovskeho 438/2
170 00 Prague
Czech Republic
Email: contracts@gsa.europa.eu;

Contractor:

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

For the Contractor,

For the Contracting Authority,

Carlo Des Dorides

Executive Director

signature: _____

signature: _____

Done in _____, on _____

Done in Prague, on _____

In duplicate in English.

Annex VI
Template deliverable/supply acceptance sheet

Contract reference: GSA/OP/05/19
Contract Stage reference: Stage 1/ Stage 2

Reference of Task/Deliverable	Due date in offer (DD/MM/YY)	Real Delivery date (DD/MM/YY)	Format/Manner of delivery	Price of deliverable	Linked T&S
<i>/add or delete lines as necessary/</i>					

For the Contractor:

1) I hereby certify that the Task(s) and Deliverable(s) listed above have been completed according to the terms of the contract and submitted to the GSA	
Name	
Position	
Signature	
Date	

For the GSA:

I hereby certify that the Task(s) and Deliverable(s) listed above have been completed according to the terms of the contract, received and accepted by the GSA.	
Name	
Position	
Signature	
Date	