

MEMORANDUM OF UNDERSTANDING AND NON-DISCLOSURE AGREEMENT

This agreement is concluded between:

1. **UNIVERZITA KOMENSKÉHO V BRATISLAVE**, having its registered office in Šafárikovo námestie 6, 814 99 Bratislava, Slovakia,
2. **VYOMA GmbH**, having its registered office in Eckhardstrasse 8, 64289 Darmstadt, Germany,
3. **THERE, s.r.o.** , having its registered office in Staré grunty 6347/18, 841 04 Bratislava – mestská časť Karlova Ves, Slovakia,
4. **TILA s.r.o.**, having its registered office in Kulíškova 17, 821 08 Bratislava, Slovakia,
5. **ASA Astrosysteme GbmH**, having its registered office in Galgenau 19, 4214 Neumarkt i. M., Austria,
6. **Dipl.-Ing. Christian Unfried**, having its registered office in Friedrichstrasse 2/13, 1010 Vienna, Austria,
7. **Stichting Nationaal Lucht- en Ruimtevaartlaboratorium**, having its registered office in Anthony Fokkerweg 2, 1059 CM, Amsterdam, Netherlands,
8. **Universidad de la Rioja**, having its registered office in Ave de la Paz 93-103, 26006 Logrono, La Rioja, Spain,
9. **Aboa Space Research Oy**, having its registered office in Tierankatu 4B, FI- 20540 Turku, Finland,
10. **Aviosonic Space Tech srls**, having its registered office in Piazzale Baiamonti 3, 20154 Milan, Italy
11. **Centrum Badań Kosmicznych Polskiej Akademii Nauk**, having its registered office in Bartycka 18A, 00-716, Warszawa, Poland

individually referred to as a „**Party**“ or collectively as the „**Parties**“.

WHEREAS

The Parties initiated contacts between themselves with the intention to submit a proposal (hereinafter referred to as the “**Proposal**”) for a collaborative project in response to the call: Space Situational Awareness (SSA) and early warning capabilities, call ID: EDIDP-SSAEW-SSAS-2020 under the European Defence Industrial Development Programme;

The Parties have agreed to name this collaborative project as *Space Objects Identifications and Characterization*, acronym: SOIC (hereinafter referred to as the „**Project**“);

The Parties, provided that the Proposal has a positive evaluation, wish to prepare with the European Commission the signature of a Grant Agreement, and to negotiate between them a Consortium Agreement;

The Parties acknowledge that a Party may at any time wish to stop its involvement in the preparation of the Proposal and the preparation and negotiation of a Grant Agreement and Consortium Agreement and no longer sign or accede to the Grant Agreement and Consortium Agreement;

For the purpose of the submission of the Proposal and the preparation and negotiation of a Grant Agreement and Consortium Agreement, the Parties intend to disclose information to each other, which that they wish to keep confidential.

THE PARTIES AGREE AS FOLLOWS:

1. Proposal preparation

1.1 The Parties wish to prepare and submit together a Proposal for a collaborative project in response to the call Space Situational Awareness (SSA) and early warning capabilities, call ID: EDIDP-SSAEW-SSAS-2020, whose deadline is on the 1st December 2020, under the European Defence Industrial Development Programme;

1.2 The Parties agree that each Party shall not prepare and submit any additional proposal under the same call identified in clause 1.1. of this Memorandum of Understanding and Non-disclosure Agreement (hereinafter referred to as „**MoU & NDA**“);

1.3 The Parties designate UNIVERZITA KOMENSKÉHO V BRATISLAVE as the Coordinator of the project (hereinafter referred to as the „**Coordinator**“) to represent the Parties towards the European Commission and to submit the Proposal in due time.

1.4 With the purpose to prepare and submit the Proposal in due time, the Parties agree:

- i) to meet or correspond as necessary to prepare and decide the details of the Proposal;
- ii) that each Party shall use its best endeavors to prepare all the documents, data and information necessary for the preparation of the Proposal and to provide

them to the Coordinator in due time. In particular, each Party shall provide the Coordinator with its participant identification code (PIC).

1.5 The Coordinator agrees not to modify, without previous consent, any document, data or information supplied by the other Parties.

1.6 The Coordinator shall keep the Parties informed of the progress of the Proposal's preparation and at any Party's request, it shall make available a copy of all letters, e-mails or any other documents concerning the Proposal that were sent to the European Commission or received from it before the submission of the Proposal.

2. Grant Preparation with the European Commission

2.1 Provided that the Proposal has a positive evaluation and that the Parties are invited to prepare the Grant Agreement by the European Commission, the Parties wish to collaborate with the purpose to conclude a Grant Agreement with the European Commission.

2.2 The Parties agree that the Coordinator shall be responsible for conducting the preparation foreseen under clause 2.1 of this MoU & NDA.

2.3 The Coordinator shall keep the Parties informed of the progress of the grant preparation and, at any Party's request, it shall make available a copy of all letters, emails or any other documents that were sent to the European Commission or received from it for the purpose, before the signature of the Grant Agreement. The Coordinator shall, in any case, send to the other Parties a copy of the invitation to prepare the grant.

2.4 Upon request of the Coordinator, the Parties shall, if possible, attend the meetings with the European Commission.

2.5 The Parties agree to assist the Coordinator in the preparation and to provide it with the necessary documents, data and information in order to allow the signature of the Grant Agreement in due time.

2.6 Adjustments shall be negotiated in good faith by the Parties. Any adaptation or modification concerning the work packages shall be adapted by the Coordinator only with the prior written agreement of the Party concerned.

3. Negotiations of the Consortium Agreement

3.1 Provided that the Proposal has a positive evaluation and that the Parties are invited to sign the Grant Agreement with the European Commission, the Parties wish to collaborate with the purpose to conclude a Consortium Agreement before the signature of the Grant Agreement. The conclusion of a such agreement is dependent on mutual consent and must be reduced to written form. For the avoidance of doubt: a Party may at any time wish to stop its involvement in the preparation and negotiation of a Grant

Agreement and Consortium Agreement and no longer sign or accede to the Grant Agreement and Consortium Agreement.

3.2 The Parties agree the Coordinator shall be responsible for conducting the negotiations foreseen under clause 3.1 of this MoU & NDA.

3.3 The Parties agree that the negotiation of the Consortium Agreement will be based on the following principles:

- The DESCAs model will be adapted to the specific needs of the Consortium.
- The Consortium Agreement must comply with the Grant Agreement.
- The consortium members provide input/feed-back during the drafting of the Consortium Agreement.

4. Confidentiality Agreement

4.1 For the purpose of this agreement „Confidential Information“ shall mean any and all information, which is supplied or disclosed, directly or indirectly, in writing or in any other means, by each Party to the other including, but not limited to any documents, drawings, sketches, designs, materials, samples, prototypes, data, know-how, and which at the time of its disclosure or supply is identified as confidential by an appropriate stamp, legend or other notice in writing.

4.2 For the purpose of this agreement „the Recipient“ shall mean the Party receiving the Confidential Information disclosed by the other Party. “The Discloser” shall mean the Party disclosing the Confidential Information.

4.3 Each Party intends to disclose Confidential Information to the other Party in the framework of the call Space Situational Awareness (SSA) and early warning capabilities, under the European Defence Industrial Development Programme for

- i) the preparation and submission of a Proposal, and
- ii) preparation, negotiation and conclusion of a Grant Agreement and Consortium Agreement
(hereinafter referred to as the „**Purpose**“).

Nothing in this agreement shall be regarded as compelling a Party to disclose any Confidential Information.

4.4 The Recipient shall:

- i. undertake to keep the Confidential Information confidential and not to disclose it nor to permit the disclosure of it to any third party, except in accordance with this clause 4.4. and clause 4.7. of this agreement, and not to make it available to

the public or accessible in any way, except with the prior written consent of the Party disclosing it;

- ii. notify the disclosing Party, whenever becoming aware, of any disclosure of Confidential Information of such Party, made by third parties, which were not authorized under this MoU & NDA;
- iii. not disclose any Proprietary Information to any third party other than:
 - (i) to such Party's auditors, legal advisors, parent corporation or subsidiaries, provided that each Party agrees to treat the Confidential Information as confidential in accordance with this MoU & NDA and provided that each Party require such third parties to sign an NDA with equivalent confidentiality obligations to those in the present agreement before disclosing any Proprietary Information to them, or;
 - (ii) to the extent required by applicable law, court or administrative order or governmental ruling or regulation, provided that each Party shall cooperate with the other Party and use reasonable efforts to limit the disclosure to the extent legally permissible, and shall provide the other Party with reasonable advance written notice to permit the other Party to seek a protective order or other appropriate remedy; and
- iv. undertake to use the Confidential Information solely for the Purpose of this agreement and not to make any other use, whether commercial or non-commercial, without prior written consent of the Party disclosing it.

4.5 The obligations specified in clause 4.4. above shall not apply in the following cases, as is shown by competent evidence:

- i. the Confidential Information was known to the Recipient prior to the time of its receipt pursuant to this agreement otherwise than as a result of the Recipient's breach of any legal obligation; or
- ii. the Confidential Information is in the public domain at the time of disclosure by the Party to the Recipient or thereafter enters the public domain without any breach of the terms of this agreement; or
- iii. the Confidential Information becomes known to the Recipient through disclosure by sources, other than the party disclosing it, having the legal right to disclose such Confidential Information; or
- iv. the Recipient proves the Confidential Information has been developed independently by its employees, who had no access to any of the Confidential Information disclosed by the Party disclosing it to the Recipient, or
- v. the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order.

4.6 The Recipient shall limit and control any copies and reproductions of the Confidential Information. The Recipient shall return all records or copies of the Confidential Information at the request of the other Party and at the latest on termination of this agreement. This shall not apply to Confidential Information or copies thereof which must be stored by the Recipient according to mandatory law, provided that such Confidentiality Information or copies thereof shall be subject to an indefinite confidentiality obligation.

4.7 The Recipient undertakes to disclose the Confidential Information only to its employees who:

- i. reasonably need to receive the Confidential Information for the Purpose of the present agreement; and
- ii. have been informed by the Recipient of the confidential nature of the Confidential Information and of the terms of the present agreement; and
- iii. have been advised of and agree to be bound by equivalent obligations to those in the present agreement.

4.8 All Confidential Information shall remain the exclusive property of each Party as well as all patent, copyright, trade secret, trade mark and other intellectual property rights therein. The Parties agree that this agreement and the disclosure of the Confidential Information do not grant or imply any license, interest of right to the Recipient to any intellectual property right of the other Party. In case of termination of this MoU & NDA, each Party shall return to the other all such information together with any copies thereof or, alternatively and at the request of the disclosing Party, the Recipient shall destroy all such Confidential Information, including copies thereof and furnish to the other Party a written certification of destruction.

4.9 Notwithstanding the end or termination of by one of the Parties of this MoU & NDA, each Party shall not be relieved from its obligations with respect to the Confidential Information received hereunder. Each Party represents and warrants to the other that it will comply with all applicable laws related to the export, re-export, transfer or release of technical data hereunder. Without limiting the generality of the foregoing, each Party further represents and warrants that:

- i) Each Party shall ensure that no technical data subject to the jurisdiction of the United States Export Administration Regulations ("EAR") or the International Traffic In Arms Regulations ("ITAR") shall be (a) exported, transferred, or released from the United States or by United States persons or (b) re-exported, transferred, or released from countries other than the United States without first complying with all requirements of the EAR or ITAR, including the requirement for obtaining an export license, if applicable;

- ii) Each Party will comply with all similar requirements under the laws of any other country that has jurisdiction over the export, re-export, transfer or release of technical data under this MoU & NDA, if applicable; and
- iii) The Party disclosing technical data shall timely notify the Recipient such data of the existence of any export control restrictions and requirements and, if a license is required, shall ensure that the appropriate license is in effect, of which a copy will be provided to the Recipient before release of such technical data. The Recipient agrees to furnish all reasonable cooperation in completing applications as may be necessary to obtain such licenses.

4.10 Any Confidential Information disclosed pursuant to this agreement shall be provided “AS IS”. The Discloser specifically disclaims any warranty, express and implied, as to the accuracy, completeness, fitness for purpose or merchantability of any part of the Confidential Information disclosed by it (or its representatives), regardless of any oral or written statement made in connection with it.

5. Intellectual Property Rights

5.1 Intellectual property rights vested in or licensed to a Party prior to or independently of the activities under this MoU & NDA shall at all times remain vested with the owning Party.

6. Miscellaneous

6.1 This Agreement shall come into force and be effective from the date of signature of the last Party and shall remain in force until the date of the entry into the force the Grant Agreement or Consortium Agreement, which will be later. Notwithstanding the aforementioned, the obligations under clause 4 of this MoU & NDA shall remain in the force for period of five (5) years after the date of expiry or termination.

6.2 All the clauses of this Agreement are intended to be legally binding.

6.3 A Party may at any time withdraw from the Project and terminate its involvement in the activities set out in this MoU & NDA. Such termination shall be done in writing to all other Parties. For the avoidance of doubt, the clauses 4 and 5 of this MoU & NDA in accordance with clause 6.2., shall continue to apply to all Parties during the term established in clause 6.1. notwithstanding any withdraw and termination.

6.4 Any dispute that might arise concerning this MoU & NDA shall be settled amicably and in good faith. If a mutual acceptable settlement is not possible, the Parties hereby submit any dispute regarding this agreement to the exclusive jurisdiction of the courts of Brussels.

6.5 This MoU & NDA shall be governed by and construed in accordance with the substantive laws of Belgium.

6.6 Each Party shall cover its own costs related to the preparation and submission of the Proposal, as well as the preparation, negotiation and conclusion of a Grant Agreement and Consortium Agreement. Each Party hereby waives any claim against any other Party for loss or damage of any kind (including damages for unjust enrichment, loss of prospective profits, and loss of opportunities or investments made) based on a failure of the Parties to reach agreement on a Proposal, Grant Agreement and/or Consortium Agreement.

6.7 Nothing in this MoU & NDA shall be construed as the intention either to form a legal entity or to create a joint and several liability between the Parties.

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding and Non-Disclosure Agreement to be duly signed by the undersigned authorized representatives in separate signature pages and to be executed as of the date stated above.

UNIVERZITA KOMENSKÉHO V BRATISLAVE

Name of legal representative: prof. JUDr. Marek Števček, PhD.

Title: Rector

Date:

Signature:

VYOMA GmbH

Name of legal representative: Srinivas J. Setty

Title: Managing Director

Date:

Signature:



THERE, s. r. o.

Name of legal representative:

Title:

Date:

Signature:

TILA s. r. o.

Name of legal representative:

Title:

Date:

Signature:

ASA Astrosysteme GbmH

Name of legal representative:

Title: -

Date:

Signature

MoU & NDA EDIDP-SSAEW-SSAS-2020 / SOIC
(Coordinator: UNIVERZITA KOMENSKÉHO V BRATISLAVE)

Dipl.-Ing. Christian Unfried

Name of legal representative:

Title: Founder and Owner

Date:

Signature:

NLR – Royal Netherlands Aerospace Centre

Name of legal representative:

Title: General Director

Date

Signature:

Universidad de la Rioja

Name of legal representative:

Title:

Date:

Signature:

Aboa Space Research Oy

Name of legal representative:

Title: CEO

Date:

Signature:

Aviosonic Space Tech srls

Name of legal representative:

Title: Chief Executive Officer

Date:

Signature:

Centrum Badań Kosmicznych Polskiej Akademii Nauk

Oświadczenie Woli na podstawie art. 5 ustawy o języku polskim

Declaration of Intent pursuant to Article 5 of the Act on Polish Language

Centrum Badań Kosmicznych Polskiej Akademii Nauk, niniejszym zawiera niniejszą Umowę stosownie do postanowień w niej opisanych. Angielskojęzyczna wersja językowa niniejszego oświadczenia jest wersją wiodącą.

Centrum Badań Kosmicznych Polskiej Akademii Nauk, hereby concludes this Agreement on terms and conditions as stated herein. The English language version of this declaration shall be the governing one.

Name of legal representative:

Title: Director

Date:

Signature:

