

### Section III: Incubation Contract

Between:

**The ESA BIC Estonia, operated by Tartu Science Park Foundation,**

Riia 181A, 51014 Tartu, Republic of Estonia,

Company registration number: 90001121, hereinafter called "ESA BIC Estonia" or "Tartu Science Park", Represented by Mr Raimond Tamm, Member of Board at the Tartu Science Park,

Of the one part,

and

Name of the Incubatee,

Company registry code .....,

hereinafter called the "Incubatee",

Represented by .....(Name and function to be specified Mr/Ms....., its Director).

Of the other part,

**(together, hereinafter referred to as the "Parties" or individually as a "Party")**

**Commencement Date:** DD.MM.YYYY

**Contract End Date:** DD.MM.YYYY

The following has been agreed:

## **P R E A M B L E**

1. WHEREAS the European Space Agency (the Agency) is an intergovernmental organisation established by the Convention approved by the Conference of plenipotentiaries of its Member States on 30 May 1975 and which entered into force on 30 October 1980.
2. WHEREAS Article II of the Convention assigns to the Agency the task to promote cooperation in space research and technology and their space applications and to elaborate and implement activities and programmes in the space field.
3. WHEREAS the Agency manages a technology transfer initiative to encourage the utilisation of space technology for general non-space industrial, scientific and commercial uses.
4. WHEREAS as part of the technology transfer initiative the Agency has set up the ESA Business Incubation Centres (ESA BICs) initiative to enable start-up companies (incubatees) to receive comprehensive commercial and technical assistance in order to set up their business using space technology for such general non-space industrial, scientific and commercial uses.
5. WHEREAS the Agency has chosen Tartu Science Park to implement and manage the ESA BIC Estonia through an ESA Contract.
6. WHEREAS the ESA BIC Estonia business and administrative support partners are Tartu Science Park and Tallinn Science Park Tehnopol.
7. WHEREAS the ESA BIC Estonia is partly funded by the European Space Agency, The City of Tartu and The City of Tallinn.
8. WHEREAS the University of Tartu, Tartu Observatory, Tallinn University of Technology are ESA BIC Estonia partners and provide technical know-how for the start-up's support.
9. WHEREAS Fund Kredex is one of the partners of ESA BIC Estonia provides a loan scheme.
10. WHEREAS the Incubatee wishes to participate in the ESA BIC Estonia and benefit from the assistance which may be offered to it through the provisions of this Contract.
11. WHEREAS, as part of the assistance offered to the Incubatee, ESA BIC Estonia and the Incubatee will sign a tenancy agreement covering the same period as this Contract for the provision of office accommodation and related equipment and services to the Incubatee.

## ARTICLE 1 - CONTRACTUAL BASELINE

### 1.1 Definitions

For the purpose of this Contract the following words shall have the meanings assigned to them.

Tartu Science Park, is the oldest science park in the Baltics and the innovation engine of the southern part of Estonia. For more than 25 years, business innovation supporting activities have been provided in the region by networking universities, the public and private sector. Tartu Science Park is the local partner to ESA for ESA BIC Estonia and the leader of the consortium, which is tasked with the execution of the ESA BIC Estonia.

“Activity” shall mean all the activities that the Incubatee will undertake under this Contract in relation to its participation in the ESA BIC Estonia, including the preparation of the Mid Term Report, the Executive Summary, the Annual Performance Report and the Business Plan and all other obligations and deliverables to be made by the Incubatee under this Contract.

“Annual Performance Report” shall have the meaning set out in Appendix 1, section 5.6.

“Business Plan” shall have the meaning set out in Appendix 1, section 5.5.

“CCN” shall mean a Contract Change Notice.

“Change Review Board” shall be a board consisting of a contractual and a technical representative of each Party established to discuss and agree upon the approval or rejection of a change proposal, and final CCN.

“Commencement Date” shall mean the date that this Contract shall come into force, as set out in Article 5.

“Confidential Information” shall have the meaning set out in Article 11.2.

“Contract” shall mean an agreement between Tartu Science Park and the Incubatee regulating the Activity.

“Contract End Date” shall mean the date that this Contract shall come to an end, as set out in Article 5.

“Contract Term” shall be the period between the Commencement Date and the Contract End Date.

“Conversion Proposal” shall mean a proposal detailing all costs incurred in relation to the Activity, to be submitted by the Incubatee to Regional Incubator and ESA-BIC Estonia.

“Cost Report” shall mean a report detailing all costs incurred in relation to the Activity, to be submitted by the Incubatee to Tartu Science Park.

“Declaration of State Aid” shall have the meaning set out in Article 8.1

“Deliverables” shall have the meaning set out in Article 2.

“Disclosing Party” shall mean the Party disclosing Confidential Information.

“Equipment” shall have the meaning set out in Article 3.2.

“ESA BIC Estonia” shall have the meaning set out in the Preamble.

“Executive Summary” shall have the meaning set out in Appendix 1, section 5.4.

“Final Report” shall mean the complete statement of the work undertaken by the Incubatee during the Contract Term, as further defined in Appendix 1, section 5.4.

“Incubatee” shall mean a Start-Up project or a SME Company that has a space-connected business idea with the aim to commercialize in the ESA BIC Estonia Incubation-program.

“Incubator-Support” shall have the meaning set out in Article 3.1.

“Intellectual Property Rights” or “IPR” shall mean all rights in copyright, patents, knowhow, Confidential Information, database rights, rights in trademarks and designs (whether registered or unregistered), applications for registration of any of the foregoing and the right to apply for registration, and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.

“Mid Term” shall mean the midpoint date between the Commencement Date and the Contract End Date.

“Mid Term Report” shall have the meaning set out in Article 2.1.1.

“Mid Term Review” shall have the meaning set out in Appendix 1, section 4.2.

“Receiving Party” shall mean the Party receiving Confidential Information.

“Regional Incubator” shall mean an entity providing organized business development support and where applicable office accommodation to start-up companies. In this Contract represented any of the Estonian incubators; Tartu Science Park in Tartu and Tallinn Science Park Tehnopol in Tallinn.

“Statement of Non-Co-incubation” shall mean the statement from the Incubatee that his company shall not be incubated in or receive support of any kind from any other incubator whatsoever for the duration of the Contract Term.

“Technical Support” shall have the meaning set out in Article 3.1.

“Third Party” shall mean any person or entity other than the Agency and the Parties to this Contract or their personnel.

“Third Party Services” shall have the meaning set out in Article 4.

## **1.2 Contractual baseline**

The Incubatee shall perform the Activity in accordance with the following applicable documents listed hereunder in order of precedence:

1.2.1 This Incubation Contract;

1.2.2 The Agency’s Standard Requirements for Management, Reporting, Meetings and Deliverables as set out in Appendix 1;

1.2.3 The Rental Contract of the Regional Incubator;

1.2.4 The Minutes of the negotiation meeting held on the ....., not attached hereto but known to both parties;

1.2.5 The Incubatee’s Business Activity Proposal, Ref. ...., dated....., Version ....., not attached hereto but known to both Parties.

## **ARTICLE 2 – ACTIVITY OF THE INCUBATEE**

The Incubatee undertakes to deliver the items mentioned below (the “Deliverables”), as part of the Activity in accordance with the following provisions:

### **2.1 Documentation**

#### **2.1.1 Mid Term Report**

At Mid Term, the Incubatee shall provide to ESA BIC Estonia representatives, described in Article 9.3(a) and (b), a report detailing the technical and commercial work carried out by the Incubatee as part of the Activity during the first half of the Contract Term (“Mid Term Report”). Templates are provided in Appendix 2 herein.

#### **2.1.2 Business Plan**

The Business Plan shall be provided to ESA BIC Estonia’s technical representative stated in Article 9.3(a) in 2 copies, not later than the Contract End Date.

#### **2.1.3 Final Report and Executive Summary**

- a) At least two months prior to the Contract End Date, the Incubatee shall provide Tartu Science Park with draft versions of the Final Report and the Executive Summary. Tartu Science Park shall have one month to review the draft documents and provide comments on each to the Incubatee. The Incubatee shall then have the remaining month in which to produce the final version of the Final Report and the Executive Summary and submit them to Tartu Science Park.
- b) The Final Report and the Executive Summary shall be delivered by the Incubatee to Tartu Science Park in 3 copies (2 paper copies and 1 electronic copy) and 6 copies (5 paper copies and 1 electronic copy) respectively.

2.1.4 Progress Reports shall be delivered by the Incubatee every three (3) months as described in Appendix 1; section 3.2.

### **2.2 Other Deliverables**

As part of the Incentive Scheme, it is expected from the Incubatee to deliver proof of the developed product or service. It is to be delivered to ESA BIC Estonia through the “Regional Incubator” representatives.

#### **2.2.1 Software**

- a) In the event that the Incubatee develops software during the Contract Term and as part of its Activity the Incubatee shall deliver software to the Agency for purpose of auditing only via Tartu Science Park in a form to be agreed with Tartu Science Park. The Agency shall keep the source code under confidentiality provisions.
- b) The Incubatee shall deliver such software at the end of the Contract Term or upon the cancellation of the incubation contract, unless otherwise agreed in writing by the Parties.
- c) In the event it is not feasible to deliver the source code to the Agency via Tartu Science Park, the Incubatee shall deliver a complete demonstration including hosting server (functional prototype level).
- d) In the event the Agency or its Member States require the use of the software for its own

requirements, the Incubatee shall be asked to expressly authorize such use, the terms and conditions of such use to be agreed beforehand and shall be subject to the provisions stated in Article 12 here below.

#### 2.2.2 Hardware

- a) In the event that the Incubatee develops any hardware during the Contract Term and as part of its Activity, the Agency is entitled to request the Incubatee to loan the hardware to the Agency for the purposes of displaying it in an exhibition or for promotional purposes for a period of five (5) years from the end of the Contract Term or from the cancellation of this Contract, unless otherwise agreed in writing by the Parties.
- b) Any photographs and visual presentations (i.e. an automatic slide show and/or video trailer) of any hardware developed by the Incubatee during the Contract Term and as part of its Activity shall be delivered to Tartu Science Park and/or the Agency at the end of the Contract Term or upon the cancellation of this Contract, unless otherwise agreed in writing by the Parties.

## **ARTICLE 3 – ESA BIC Estonia UNDERTAKINGS**

### **3.1 Technical and Business Support**

#### **3.1.1 Technical Support**

- a) For the purposes of this Contract ESA BIC Estonia will provide the Incubatee the following Technical Support necessary for and directly related to the Activity of the Incubatee (referred to as “Technical Support”),  
  
a maximum of 80 hours during the Contract Term.
- b) The Technical Support must be clarified in detail with the Technical Partner.
- c) The Technical Support shall be provided for the duration of the Contract Term, unless a shorter period is agreed between the Parties.
- d) Any information in documentary or other physical form provided to the Incubatee as part of the Technical Support shall remain property of the lending institution and shall be returned to this institution at the end of the Contract Term or upon the cancellation of this Contract.
- e) For all matters relating to the technical support the responsible technical officer is nominated in Clause 9.3 (a).

#### **3.1.2 Business Support**

- a) For the purposes of this Contract ESA BIC Estonia will provide the Incubatee the following Business Support necessary for and directly related to the Activity of the Incubatee (referred to as “Business Support”),  
  
a maximum of 100 hours during the Contract Term.
- b) The Business Support must be clarified in detail with the Regional Incubator.

### **3.2 Marketing promotion**

- a) Tartu Science Park will use its name and reputation and through an extensive network of local and international contacts and partners will disseminate information about the ESA BIC Estonia and its incubatees. Tartu Science Park will also regularly attend thematic international events, where it will include the ESA BIC Estonia and its incubatees in its overall promotion and marketing strategy.
- b) ESA BIC Estonia will integrate the incubatee to its marketing strategy and identified promotion materials.
- c) ESA BIC Estonia will promote the incubatee through its marketing channels and networks based on a mutually agreed marketing strategy.

### **3.3 Network introduction**

- a) ESA BIC Estonia will introduce the incubatee to the relevant official networks (ESA BIC network, partners, investors, potential customers) within its reach and with regard to the needs of the incubatee.

### **3.4 Equipment**

a) It is not foreseen that ESA BIC Estonia or any of its partners will loan the Incubatee any equipment. In the event that during negotiation between the Incubatee and the technical support entity the loan of any equipment is envisaged, all conditions will then be defined in the related meeting minutes.

### **3.5 Software**

a) It is not foreseen that ESA BIC Estonia or any of its partners will loan the Incubatee any software. In the event that during negotiation between the Incubatee and the technical support entity the loan of any software is envisaged, all conditions will then be defined in the related meeting minutes.



#### **ARTICLE 4 - SERVICES TO BE PROVIDED BY THIRD PARTIES**

The Incubatee shall notify Tartu Science Park prior to entering into agreements with Third Parties to obtain specific advice/product relevant to the Activity ("Third Party Services"). Tartu Science Park shall bear no responsibility for such advice or product.

For the purposes of this Article it is hereby understood that the incentive funding shall be spent within the region of the incubation cities of Estonia (Tartu and Tallinn) unless the product/service is not available in such territory and within the boundaries stated on Article 7.1 (Financial Contribution) hereto. Exceptions must be approved by Tartu Science Park and the Agency.

#### **ARTICLE 5 - CONTRACT TERM**

This Contract shall enter into force upon signature by the legal representatives (or in the case of Tartu Science Park by the duly authorized representative) of both Parties ("Commencement Date") and shall continue in force until ("Contract End Date"), unless it is cancelled or otherwise terminated in accordance with Article 16. In no case shall the Contract Term exceed the duration of 2 (two) years.

#### **ARTICLE 6 – MEETINGS AND REPORTING REQUIREMENTS**

Full details of reporting and meeting requirements are set out in Appendix 1 sections, 3 and 4 respectively.

#### **ARTICLE 7 – FINANCIAL CONTRIBUTION AND PAYMENT**

##### **7.1 Financial Contribution**

7.1.1 The total financial contribution to the Activity amounts to: 50,000 EURO (Fifty Thousand) for product development and IPR (funded by the Agency and the Tartu and Tallinn Cities).

7.1.2 For the purpose of this Contract the above mentioned financial contribution is stated to be a ceiling, which amount shall not be exceeded, and for which the Incubatee shall perform the Activity in full.

7.1.2.1 At the end of the Contract Term the incubatee shall deliver a cost report, detailing all costs incurred, with all invoices attached.

7.1.2.2 The Incubatee shall provide copies of invoices to show all expenses at the end of every month were incurred solely with third parties used for IPR and product development.

7.1.2.3 The Incubatee is not authorized to use the stated ESA funding for reimbursement of his own hours spent in the project.

7.1.3 The above amount does not include any taxes and duties.

## 7.2 Payment Terms

All payments shall be made according to the provisions of this Article 7.

## 7.3 Categories of Payment

Relative to the financial contribution set out under Article 7.1, ESA BIC Estonia shall make the following payments to the Incubatee:

### 7.3.1 Advance and Progress Payments

- a) Tartu Science Park authorise progress payments in connection with this Contract.
- b) Progress payments are not final payments and shall be deducted from the sums due to the Incubatee under this Contract.
- c) Except with the specific agreement of Tartu Science Park, the Incubatee shall not divert to uses not provided for in this Contract any material or services in respect of which advances or progress payments have been made. In the event of any violation of this provision Tartu Science Park reserves the right to require the return of the advances or progress payments without prejudice to its rights under Article 16.

## 7.4 Final Settlement

7.4.1 The Incubatee shall be allowed to claim final settlement when all the Incubatee's obligations under this Contract have been fulfilled.

7.4.2 Final settlement to the Incubatee is due by ESA BIC Estonia upon:

- a) receipt by Tartu Science Park of the Final Report, including Cost Report;
- b) receipt by Tartu Science Park of all the invoice(s) from the Incubatee with a clear indication of the funding provided under this contract, and;
- c) certification by Tartu Science Park of the satisfactory completion of the Activity under this Contract.

7.4.3 Unless otherwise provided for in this Contract, a period of one (1) month shall be granted to Tartu Science Park for the execution of the final payment.

7.4.4 Tartu Science Park will make the following payments:

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT IN EURO
PROGRESS I: Upon signature of the Incubation Contract by the Incubatee	MM-YYYY	20.000 EUR
PROGRESS II: Upon successful MTR, acceptance by Tartu Science Park of MTR report, business plan and all related deliverables	MM-YYYY	20.000 EUR

FINAL: upon acceptance by Tartu Science Park of all Deliverables under the contract, including Final Report, business plan, the hardware and/or software and upon acceptance by Tartu Science Park of the Incubatee's Cost Report	MM-YYYY	10.000 EUR
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## 7.5 Invoices, place and payments

7.5.1 The Incubatee is required to submit invoices for all payments due under this Contract.

7.5.2 Payments shall be made by Tartu Science Park or in case of financial contribution from the City of Tallinn by the Regional Partner in Tallinn, in EUR to the account specified by the Incubatee. Such information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). Payments shall be considered as effected on time if the Tartu Science Park orders of payment reach its bank within the payment period stipulated in Article 7.4.3 above.

7.5.3 Any special charges related to the execution of payments will be borne by the Incubatee.

## ARTICLE 8 – DE-MINIMIS AID

8.1 Any aid granted to the Incubatee that is provided under this Contract to the Incubatee may fall under the terms of EC Regulation 1998/2006 of 15th of December 2006 on the application of Articles 87 and 88 of the EC Treaty to 'de minimis aid'.

8.2 The Incubatee shall notify Estonian authorities in writing of how much state aid it has received during the three (3) years prior to the Commencement Date from any administrative body, insofar as no approval for such state aid was previously obtained from the Commission of the European Communities ("Declaration of State Aid").

8.2 The Incubatee agrees to reimburse any state aid that the Incubatee has received under this Contract if it is later established that the payment was issued in violation of EC Regulation 1998/2006 of 15th of December 2006 on the application of Article 87 and 88 of the EC Treaty to de minimis aid.

## ARTICLE 9 – PARTIES REPRESENTATIVES AND COMMUNICATIONS

9.1 All correspondence affecting the terms and conditions of this Contract and concerning its execution shall be made or confirmed in writing. All communications or correspondence between the Parties shall be in English.

9.2 All correspondence for either Party shall be sent to both representatives of each Party stated in Articles 9.3 and 9.4, i.e. depending on the subject, addressed to one representative with a copy to the other.

9.3 For the purpose of this Contract the ESA BIC Estonia representatives are:

- a) For technical and business matters: Mr Andrus Kurvits  
Address: Narva mnt. 3, Tartu, Estonia  
Tel.: +372 512 6584

Email: [andrus@esabic.ee](mailto:andrus@esabic.ee)  
[Or a person duly authorized by him](#)

- b) For administrative and contractual matters: Raimond Tamm  
Address: Narva mnt. 3, Tartu, Estonia  
Tel.: +372 515 4738,  
Email: [raimond.tamm@teaduspark.ee](mailto:raimond.tamm@teaduspark.ee)  
[Or a person duly authorized by him](#)

9.4 For the purpose of this Contract the Incubatee's representatives are:

- a) For business and technical matters: Mr/Mrs  
Tel.:  
E-mail:  
or a person duly authorized by him/her  
(b) For contractual and administrative matters: Mr/Mrs  
Tel.:  
E-mail:  
Or a person duly authorized by him/her

## **ARTICLE 10 - PUBLICITY AND VISUAL IDENTITY OF INCUBATEES**

### **10.1 Publicity**

10.1.1 The Incubatee shall not produce or disseminate any form of communication material, press releases or other publicity documents, including the Incubatee's advertising and news bulletins, which are intended by the Incubatee for the press, internet/web-sites or television, which refer to *Tartu Science Park, ESA, ESA BICs, ESA BIC Estonia, ESA BIC Estonia's partners* or any aspect of ESA BIC Estonia activities, or permit any Third Party to do so, without the prior written consent of Estonia's contractual representative or his duly authorised representative.

10.1.2 Tartu Science Park shall not produce or disseminate any form of communication material, press releases or other publicity documents which are intended by ESA BIC Estonia for the press, internet/web-sites or television, which refer to the Incubatee or any aspect of the Incubatee's activities, or permit any Third Party to do so, without the prior written consent of the Incubatee's contractual representative or his duly authorised representative.

### **10.2 Visual Identity of the Incubatee**

10.2.1 The Incubatee shall not use the official emblem of ESA, ESA BICs or ESA BIC Estonia or any other logo or trademark which may be owned or used by the Agency or Tartu Science Park for any purpose whatsoever without approval.

10.2.2 The Incubatee may place the logo attached in appendix 3 and the following text line, in full and without amendment, on its promotional material and publicity documents, including exhibition and conference material and its internet site, and also on its products (including prototypes) and other material which it produces:

*"[Name of the Incubatee] participates in the ESA Business Incubation Centre Estonia"*, Referred to as the "Text Line"

### **10.3. Use of the Text Line and Logo by the Incubatee shall be subject to the following conditions:**

- (a) the Incubatee shall submit to Tartu Science Park's contractual representative or his duly authorised representative for prior written approval all promotional material, publicity documents, products and other materials, or samples of them, on which the Text Line is to appear or is intended to be used, which approval may be withheld or withdrawn from any material, products or documents at any time at Tartu Science Park's discretion;
- (b) the prior approval of Tartu Science Park for the use of the Text Line and logo shall not constitute an endorsement or approval of the Incubatee's Activity, products or services, or of their quality, technology or suitability for a particular use, neither shall it constitute verification by Tartu Science Park of the compatibility of materials produced by the Incubatee with applicable law and regulations, and the Incubatee shall refrain from using any statements which could suggest otherwise;

- (c) any use of the Text Line on amended or revised promotional material and publicity documents shall be subject to the same approval process as the original material and documents;
- (d) the Text Line may be translated into a different language other than English, subject to the approval of Tartu Science Park's contractual representative or his duly authorised representative;
- (e) no use of the Text Line shall be made in connection with material, products or documents that:
  - a. constitute an infringement of law and/or legal provisions;
  - b. undermine the reputation and dignity of the Agency or Tartu Science Park;
  - c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

10.3.1 The Incubatee shall keep appropriate records of the extent of its use of the Logo and Text Line, stating in particular the nature and time of use of the Text Line on its material, products and documentation. The Incubatee shall provide at Tartu Science Park's contractual representative or his duly authorised representative request, with information, samples and documents to evidence its such use.

10.3.2 The use by the Incubatee of the Logo and Text Line shall terminate upon the cancellation or expiry of this Contract as described in Article 16.

10.3.3 Incubatees which successfully conclude the ESA BIC programme ("Alumni") shall be allowed to use the following Text Line, in its marketing material, including exhibition and conference material (not on products nor materials) and its internet site, as long as it is linked to <https://spacesolutions.esa.int> and stated as a partner of the company.

"[name of the start-up] is an Alumnus of ESA Business Incubation Centre Estonia [graduation year]" is referred to as the Text Line.

10.3.4 Alumni using the text line have the obligation to report its use on a yearly basis to the Agency for as long as the text line is used. The Agency may withdraw the right to use the text line at any time for any reason.

10.3.5 The Agency has set-up and registered the "ESA Space Solutions" trademark to be used by incubatees on their products. To use this trademark, the incubatee has to enter into a licensing agreement with the Agency and pay a fee. Details can be found on <http://www.esa.int/spacesolutionslogo>.

## **ARTICLE 11 – CONFIDENTIALITY**

**11.1** Each Party shall observe complete discretion with regard to all matters related to the activities of the other Party and each Party will ensure compliance by its employees and agents with the obligations of confidentiality set out in this Article 11 and assumed by that Party in relation to the other Party.

**11.2** Neither Party shall disclose any documentation, information or materials obtained from the other Party, whether marked (by way of example as, “confidential” or “proprietary information”) or un-marked (“Confidential Information”), to any Third Party whatsoever without the prior written consent of the other Party in which case the other Party may require the recipient to sign a non-disclosure agreement. For the purposes of this Article 11, documentation shall include any final documentation deliverable under this Contract with the exception of the Executive Summary.

**11.3** Each Party may disclose Confidential Information on a strictly “need to know” basis to:

- its employees; and
- its professional agents; and
- the ESA BIC Estonia’s partners

**11.4** On the Contract End Date, or upon the earlier termination or cancellation of this Contract in accordance with Article 16, the Receiving Party shall promptly return to the Disclosing Party or otherwise certify the destruction of all Confidential Information, with exception of the Deliverables provided by the Incubatee to Tartu Science Park.

**11.5** The obligations in this Article 11 shall not apply to Confidential Information:

- which is in the public domain at the time of disclosure or becomes part of the public domain after disclosure otherwise than through a breach of this Contract;
- for which the Receiving Party can provide documentary evidence that it was in its lawful possession prior to disclosure to it by the Disclosing Party or which is lawfully and bona fide obtained thereafter by the Receiving Party from a Third Party who, to the knowledge or reasonable belief of the Receiving Party, did not receive the Confidential Information directly or indirectly from the Disclosing Party when under a duty of confidentiality;
- which, at the time of circulation is already known by the Receiving Party (as evidenced in writing) and is not hindered by any obligation not to circulate;
- which is required to be circulated by governmental or judicial order or applicable law.

**11.6** The contents of this Contract are Confidential Information.

**11.7** The obligations set out in this Article 11 shall survive the termination, cancellation or expiry of this Contract.

## **ARTICLE 12 – INTELLECTUAL PROPERTY**

### **12.1 Ownership**

12.1.1 The Incubatee shall own all Intellectual Property Rights arising out of the Activity performed under this Contract as may be granted by law, as far as no infringement of Third Party rights occurs.

12.1.2 All rights pertaining to any results arising out of the Activity performed under this Contract shall belong to the Incubatee.

### **12.2 Foreground IPR**

Software that is considered ESA's foreground shall not be subject to royalties.

### **12.3 Use of Intellectual Property Rights by the Agency**

If the Agency or its Member States require the use of any Intellectual Property Rights, owned by the Incubatee as described in Article 12.1, for the performance of the Agency's programmes, the Incubatee shall be invited to submit a proposal following a request for quotation issued by the Agency.

If, for any reason, the Incubatee is not able to submit a proposal within the determined tendering period, or following evaluation, said proposal is not recommended in-line with the ESA Rules and Regulations, the Agency is automatically entitled to a worldwide, irrevocable, transferable, non-exclusive licence to use on "favourable conditions" (i.e. more favourable for the Licensee than market conditions but still allowing reasonable profit for the Licensor) such Intellectual Property Rights for non-commercial purposes within its Scientific Research and Research and Development programmes, with the right to grant sub-licenses.

Notwithstanding the above provisions of this Sub-Clause, shall the Incubatee provide the Agency with conclusive evidence that granting said licence would cause it to suffer economic hardship, the Agency's authorised representatives may jointly, on a case by case basis, waive this right.

### **12.4 Transferring Intellectual Property Rights:**

When transferring any Intellectual Property Rights, of which the Incubatee retains the ownership in accordance with Article 12.1, to an assignee, the Incubatee shall ensure that the Agency's and its Member States' rights, as set out in Article 12.3 of this contract, are reassigned to the new assignee.

### **12.5 Transfer of Intellectual Property Rights outside the ESA Member States**

The Incubatee shall inform the Tartu Science Park technical representative, as stated in Article 9.3(a)(b), well in advance of its intention to transfer outside the Agency's Member States any Intellectual Property Rights arising from this Contract."

If, for reason of applicable law, the Agency is not entitled to the rights here above mentioned, the Agency shall be entitled to a free of charge, irrevocable, permanent and worldwide license to use, copy, modify and disseminate in whole or in part all the information contained in these databases/datasets with the right to grant sub-licenses."



## **ARTICLE 13 – LIABILITY**

### **13.1 Limitations of Liability**

13.1.1 Neither Party excludes its liability to the other Party for:

- a) death or personal injury caused by its negligence or that of its employees or agents;
- b) fraud, including fraudulent misrepresentations; and
- c) liability under Articles 11 and 12.

#### **13.1.2 Limitation of Liability**

Subject to Article 13.1.1, the liability of one Party towards the other under or in connection to this Contract whether arising from negligence, breach of contract or any other obligation or duty shall not exceed, an amount equivalent to €50,000 (Fifty thousand Euros), per event or series of connected events.

### **13.2 Infringements of the Law**

13.2.1 Tartu Science Park or the Agency shall not be responsible if the Incubatee infringes any existing and/or future national, communal or provincial laws or decrees, rules or regulations in force in the **Republic of Estonia** or in any other country whatsoever.

13.2.2 The Incubatee shall indemnify Tartu Science Park and the Agency from and against all claims, proceedings, damages, costs and expenses arising out of any infringement of the Incubatee's obligations under this Contract.

### **13.3 Infringement of the Rights of Third Parties**

13.3.1 The Incubatee shall indemnify the ESA BIC Estonia's partners and the Agency from and against all claims, proceedings, damages, costs and expenses arising from the infringement of Intellectual Property Rights of third parties with respect to the subject matter of this Contract - excluding any infringement resulting from the use of documents, patterns, drawings or goods supplied by the ESA BIC Estonia partners or the Agency through - which may be made, or brought against the ESA BIC Estonia's partners or the Agency, or to which ESA BIC Estonia's partners or the Agency may be put by reason of such infringement or alleged infringement.

13.3.2 Tartu Science Park shall notify the Incubatee immediately of any written claim or notice of infringement of third party rights that it receives concerning the subject matter of this Contract.

13.3.3 The Incubatee shall immediately take all necessary steps within the Incubatee's competence to prevent or end a dispute and shall assist ESA BIC Estonia's partners and the Agency to defend any such dispute, or make settlement in respect of any claim or notice of infringement or suit for infringement.

13.3.4 The Parties shall notify each other of any known Intellectual Property Rights connected with the use of documents, patterns, drawings and goods supplied by one Party to the other or connected with the execution of the specifications laid down by the other Party.

### **13.4 Compensation for Damage Caused to Goods and Property**

Claims in respect of damage shall be settled as follows.

#### **13.4.1 Direct Damages**

- a) The Incubatee shall indemnify Tartu Science Park and the Agency against, and shall be personally responsible for, direct damage to Tartu Science Park's or the Agency's property and equipment to the extent that such damage is caused by the negligence of the Incubatee and the Incubatee's personnel or agents.
- b) Tartu Science Park and ESA BIC partners shall indemnify the Incubatee against, and shall be personally responsible for, direct damage to the Incubatee's property and equipment to the extent that such damage is caused by the negligence of Tartu Science Park or ESA BIC partners or their staff or agents.

#### **13.4.2 Indirect or Consequential Damages**

- a) The Parties shall in no circumstances be liable for indirect or consequential damages such as loss of use, loss of business, loss of data, loss of rights, loss of services, loss of goodwill, Third Party claims to the extent that they represent the indirect loss of a Third Party, loss of revenues or anticipated savings, or for any indirect financial loss or indirect economic loss or for any indirect or consequential loss or damage whatsoever suffered by the other Party.
- b) The Parties shall in no circumstances be liable for loss of profit, whether direct or indirect.

### **13.5 Damages to Third Parties by the Incubatee**

Tartu Science Park or the Agency shall not be liable for any damage caused by the personnel or agents of the Incubatee to a Third Party during the performance of this Contract.

## **ARTICLE 14 – CHANGES TO THIS CONTRACT**

### **14.1 Introduction of a Change**

14.1.1 For all changes to this Contract, whether requested by Tartu Science Park or initiated by the Incubatee, the Incubatee shall submit a proposal for a Contract Change Notice (CCN).

14.1.2 The Incubatee shall ensure - in liaison with Tartu Science Park - that each change proposal is fully coordinated and that all reasonably foreseeable implications of the change have been considered by the Incubatee and Tartu Science Park. The Incubatee shall, on the request of Tartu Science Park, provide additional documentary evidence of the effect of the change to both Parties.

### **14.2 Approval or Rejection of the Change Proposal**

14.2.1 Should the change proposal be approved by Tartu Science Park, a corresponding CCN shall be prepared by Tartu Science Park's contractual representatives as stated in Article 9.3(b) and submitted to both Parties for signature.

14.2.2 Should a change proposal be rejected for any reason, the Incubatee shall be informed accordingly, together with the reasons for the rejection. At the request of either Party, the change may be discussed at a Change Review Board, consisting of a contractual and a technical representative of each Party.

### **14.3 Implementation and Status of an Approved CCN**

Upon the signature of a CCN by both Parties, the CCN will have immediate effect and constitutes a binding contractual agreement between the Parties. The Incubatee shall implement the change in accordance with the implementation dates agreed in the CCN.

## **ARTICLE 15 – POST INCUBATION MANAGEMENT**

On each anniversary of the end of the Contract Term, during 10 (ten) years, subject to losing the right to use the ESA BIC logo or Test Line if non-compliant, the Incubatee shall prepare and submit an Annual Performance Report (See Appendix 1, point 5.6 – annual performance report) to the Incubation Manager of ESA BIC Estonia, as stated in Article 9.3(a) as well as to the Agency's Technical Representative, as follows:

Mr. B. Naulais (TEC-ST)  
E-mail: [Bruno.Naulais@esa.int](mailto:Bruno.Naulais@esa.int)  
Tel.: + 31 71 56 54711  
Fax.: + 31 71 56 56635  
ESA/ESTEC  
2201 AZ Noordwijk  
The Netherlands

## **ARTICLE 16 – TERMINATION AND CANCELLATION**

### **16.1 Right of Termination**

16.1.1 Each Party will have the right at any time during the Contract Term, without prejudice to its other rights or remedies, to terminate this Contract immediately, and without cause, by one (1) month's written notice to the other Party.

16.1.2 Each Party reserves the right to terminate this Contract, with immediate effect, in the event that the other Party commits a substantial breach of this Contract.

### **16.2 Cancellation without fault of the Incubatee**

16.2.1 In the event of cancellation of this Contract by Tartu Science Park without any fault of the Incubatee, the Incubatee shall, on receipt of Tartu Science Park's instructions for cancellation of this Contract, immediately take the necessary steps to implement the instructions. The period by which the Incubatee must implement such instructions shall be determined by Tartu Science Park after consultation with the Incubatee.

16.2.2 Tartu Science Park shall indemnify the Incubatee against such part of any loss of profit as is reasonably attributable to the cancellation of this Contract and against any damages resulting from the cancellation of this Contract in particular against any commitments, liabilities or expenditure which are reasonably and properly incurred by the Incubatee and are directly related to this Contract, in so far as the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Incubatee by reason of the cancellation of this Contract.

16.2.3 The amount of compensation payable under Article 16.2.2 shall be fixed on the basis of documentary evidence produced by the Incubatee and accepted by Tartu Science Park. In calculating the amount of compensation payable to the Incubatee, Tartu Science Park shall take account of the proportion of this Contract completed and shall take into account the provisions of Article 16.2.4.

16.2.4 Tartu Science Park shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Incubatee under this Contract by Tartu Science Park, exceeds the total contractual payments due by Tartu Science Park to the Incubatee, as set out in Article 7.1.

### **16.3 Grounds for Cancellation by Tartu Science Park**

Tartu Science Park will have the right, without prejudice to its other rights or remedies, after full consideration of all relevant circumstances, which may include consultation with the Incubatee, to cancel this Contract by giving written notice with immediate effect to the Incubatee in any of the following circumstances:

- a) if the Incubatee assigns or transfers this Contract in breach of Article 17;
- b) if the Incubatee becomes insolvent or if its financial position is such that within the framework of the national law of the Incubatee's incorporation, legal action leading towards bankruptcy may be taken against the Incubatee by its creditors;
- c) if the Incubatee conducts fraudulent practices in connection with this Contract, particularly concerning the nature and quality of the Activity or by giving or offering gifts or remuneration for the purpose of bribery to any person, irrespective of whether such bribes or remuneration are made on the initiative of the Incubatee or otherwise; and/or
- d) if the Incubatee has provided incorrect and/or incomplete information regarding:
  - the Statement of Non-Co-incubation;
  - the Incubatee's legal ownership;
  - the Incubatee's chamber of commerce registration
  - the declaration of State Aid;

### **16.4 Consequences of Cancellation**

Any information, in documentary or other physical form, pertaining to the Activity carried out by the Incubatee during the Contract Term, remains the property of Tartu Science Park and the Agency and shall be handed over to Tartu Science Park upon the expiry or cancellation of this Contract. This shall include:

- (a) any information and documentation under Article 3.1;
- (b) any equipment under Article 3.2;
- (c) any software under Article 3.3.

## **ARTICLE 17 - ASSIGNATION OF THIS CONTRACT**

The Incubatee shall not be permitted to assign its rights and/ or transfer its obligations under this Contract in whole or in part.

## **ARTICLE 18 - DISPUTE SETTLEMENT**

**18.1** This Contract shall be governed by Estonian law.

**18.2** The Parties will consult with each other promptly when events occur, or matters arise that may occasion a question of interpretation or implementation of the terms of this Contract. Any issue of interpretation or implementation of this Agreement that cannot be settled by the designated points of contact shall be referred to arbitration.

**18.3** Any dispute arising out of the interpretation or implementation of this Agreement that cannot be settled through the consultations referred to in Article 18.1. above may, at the request of either Party, be submitted to arbitration according to the Rules of Arbitration of the International Chamber of Commerce.

The arbitral tribunal shall sit in Estonian Republic and the language of the arbitration shall be Estonian. The enforcement of the award shall be governed by the rules of procedure in force in the Estonian Republic.

## **ARTICLE 19 - DATA PROTECTION**

**19.1** To the extent that is reasonably necessary, in connection to the Incubatee's activities under this contract, his/her data may be disclosed to others, including staff of ESA BIC Estonia, the Agency and all ESA BIC Estonia's partners, for any studies and/or reporting that may be carried out by the Agency and/or Tartu Science Park.

The Incubatee hereby consents to the recording, processing, use and disclosure of personal data related to him/her as set out here above (including the recording, processing, use and disclosure of his sensitive personal data to the extent required by reason of the contractor's performance of the activities under this contract) including the transmission of such data between the Republic of Estonia and other countries for the fulfilment of ESA's own requirements.

Done and signed in two (2) original copies, one for each party to this contract, on behalf of the ESA BIC Estonia.

**ON BEHALF OF ESA BIC Estonia: Date: .....**

**ON BEHALF OF THE INCUBATEE: Date: .....**

## **Appendix 1 - STANDARD REQUIREMENTS FOR MANAGEMENT, REPORTING, MEETINGS AND DELIVERABLES**

This document contains the standard requirements for management, reporting, meetings and deliverables for contracts to be placed by SBIC in regard to the ESA BIC Estonia.

### **1 - CONTRACTUAL BASELINE**

The Incubatee is a startup company in the early stage development of its commercial enterprise, applying space technology or systems to non-space applications, including industrial, scientific and commercial uses. As a startup company the Incubatee requires business development support, technical and commercial advice and marketing expertise to be able to commercialize its product or service through:

- developing its commercial focus;
- enhancing or creating its business plan;
- elaborating on its business outline proposal;
- making relevant use of Third Party advisors;
- establishing a sound financial, commercial and marketing model; and
- performing additional technical activities, functional to the above activities as required.

### **2 - MANAGEMENT**

#### **2.1 General**

The Incubatee shall implement effective and economical management for the work to be performed under this contract. The nominated representative of the Incubatee shall be responsible for the management and execution of the work to be performed.

#### **2.2 Communications**

All communications sent by the Incubatee to SBIC shall be addressed to SBIC's representatives nominated in Article 9.3 of the Incubation Contract.

### **3 - REPORTING**

#### **3.1 Minutes of Meetings**

The Incubatee is responsible for the preparation and distribution of minutes of meetings held in connection with this Contract. Electronic and paper versions of the minutes of each meeting shall be issued and distributed to all participants and to SBIC's representatives, not later than ten (10) days after the meeting concerned was held.

#### **3.2 100 Days review**

After the first 100 days in the incubation program, the Incubatee shall arrange a meeting to discuss the experience and progress. This meeting shall cover the following:

- Experiences first period at ESA BIC Estonia
- Status: workpackages, planning, budget, business support and technical support
- Outcome meetings with partners
- events anticipated during the period;

- feedback program and facilities
- updates
- marketing
- major challenges and concerns
- presentation IP strategy
- Determination final deliverables
- [further details to be provided on a case-by-case basis]

### 3.3 Problem Notification

The Incubatee shall notify SBIC's representatives of any problem likely to significantly impact the progress of the Activity.

## 4 - MEETINGS

### 4.1 Kick-off Meeting

The kick-off meeting shall take place at SBIC's premises at the beginning of the Contract Term.

### 4.2 Mid Term Review

At Mid Term a meeting shall be held ("Mid Term Review"), where the Incubatee shall present the Mid Term Report, to verify the status of the Activity and to confirm its feasibility.

### 4.3 Additional Meetings

Additional meetings may be requested either by SBIC or the Incubatee.

### 4.4 Notice and Agenda for Meetings

For all meetings the Incubatee shall ensure that proper notice to SBIC is given at least two (2) weeks in advance of when SBIC's participation is foreseen to be required. The Incubatee is responsible for ensuring the participation of the Incubatee's personnel and/or third party advisors, as needed.

For each meeting the Incubatee shall propose an agenda in electronic form and shall compile and distribute handouts of any presentation given at the meeting.

## 5 - DELIVERABLES

### 5.1 Documentation to be delivered

In addition to the documents to be delivered according to section 3 above, the documentation set out in this section 5 shall also be deliverable.

All documentation Deliverables mentioned in this section 5 (including all their constituent parts) shall be delivered as follows:

5.1.1 in electronic form on computer readable media (e.g. CD-ROM, DVD-ROM) as agreed by SBIC, and in other exchange formats where relevant (e.g. HTML, PDF format); and

5.1.2 in one electronic copy.

The draft version of the documentation shall be sent to SBIC's technical officer in one (1) electronic copy for approval not later than two (2) weeks before the documentation is to be presented.

## 5.2 Mid Term Report

The Incubatee shall document in detail the status of its technical and commercial progress in relation to the Activity in the Mid Term Report and confirm the feasibility of the Activity. Templates are provided by the SBIC's representatives, described in Article 9.3(a) and (b). The Mid Term Report shall furthermore contain all invoices relevant to the Third Party Services obtained by the Incubatee in accordance with Article 4 of this Contract. The Mid Term Report shall be presented by the Incubatee to SBIC at the Mid Term Review. The Incubatee shall submit the presentation of the Mid Term Report to SBIC two (2) weeks in advance of the Mid Term Review meeting.

## 5.3 Final Report

A report shall be produced by the Incubatee at the end of the Contract Term. Templates are provided by the SBIC's representatives, described in Article 9.3(a) and (b). It shall be a complete statement of all the work undertaken by the Incubatee during the Contract Term, including the activities functional to the Business Plan ("Final Report"). It shall not refer to any other report that may have been provided by the Incubatee and shall detail the full results of the Activity to include:

- a) lessons learned;
- b) details of the support received from SBIC and ESA BIC Estonia partners;
- c) contacts established;
- d) description of technical developments;
- e) financial details;
- f) all invoices relevant to the Third Party Services obtained by the Incubatee in accordance with Article 4 of the Incubation Contract.
- g) licenses granted and patent filings and applications;
- h) photographic documentation
- i) [further of input by SBIC required on a case by case basis]

## 5.4 Executive Summary to the Final report

The Incubatee shall prepare a summary which shall concisely summarise the findings of the Incubatee in performing the Activity ("Executive Summary"). It shall be suitable for non-experts and should also be appropriate for publication, including on a web page. For this reason, it shall not contain any confidential information. The Executive Summary shall not exceed three (3) to four (4) pages of text with colored illustrations or photographs, if appropriate. It shall also be delivered to SBIC by the Incubatee in HTML format.

## 5.5 Business Plan

The Incubatee shall produce a business plan that sets out the Incubatee's expected course of action for next period of the development of the company, including a detailed listing and analysis of risks and uncertainties ("Business Plan"). The Business Plan should also examine the proposed products (including scientific and technical requirements and feasibility), the market, the industry, the management policies, the marketing policies, production needs and financial needs of the Incubatee and may be used as a prospectus for potential investors and lenders and participation in SBIC's Investors Forum at a later stage.

## 5.6 Annual Performance Report



The annual performance report shall describe the sales made and/or licenses granted by the Incubatee during the preceding twelve (12) months ("Annual Performance Report"). The Incubatee shall submit this in electronic form. The Incubatee shall submit the Annual Performance Report to SBIC and to the Agency every year for a period of ten (10) **years from the end of the Contract Term.**

## APPENDIX 2 - AGENDA FOR MIDTERM REVIEW

1. Welcome/Introduction

2. Elevator pitch

2-3 minutes without slides. *(This is good training and will introduce the company and business idea to potential new audience.)*

3. Progress status tasks/work packages, first phase.

Refer to each task in original proposal, and present the current status of the task/work package. Explain reasons to why tasks have not been completed (if any). Present any new tasks that have been added in this first phase (if any).

<b>Task/Work Package #</b>								
<b>Objectives</b>								
<b>Sub-tasks</b>								
<b>Costs</b>								
<table border="1"><thead><tr><th>Sub-tasks</th><th>Costs (€)</th></tr></thead><tbody><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td><b>Total (€)</b></td><td> </td></tr></tbody></table>	Sub-tasks	Costs (€)					<b>Total (€)</b>	
Sub-tasks	Costs (€)							
<b>Total (€)</b>								
<b>Output</b>								

4. Planning of tasks/work packages, next phase

Refer to each task in original proposal and present current status or changes, if any. Include overview of additional new tasks (if any).

<b>Task/Work Package #</b>								
<b>Objectives</b>								
<b>Sub-tasks</b>								
<b>Costs</b>								
<table border="1"><thead><tr><th>Sub-tasks</th><th>Costs (€)</th></tr></thead><tbody><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td><b>Total (€)</b></td><td> </td></tr></tbody></table>	Sub-tasks	Costs (€)					<b>Total (€)</b>	
Sub-tasks	Costs (€)							
<b>Total (€)</b>								
<b>Output</b>								

### 5. Incubation Planning Overview:

Task/WP	Task name		Month/Year	Month/Year	Month/Year	Month/Year	Month/Year	Month/Year
1		Planned						
		State	50%					
2		Planned						
		State	33%					
3		Planned						
		State						
4		Planned						
		State	150%					
5		Planned						
		State	100%					
6		Planned						
		State						
7		Planned						
		State	100%					
8		Planned						
		State						
					Midterm review		Final review	

### 6. Cost Breakdown Overview, first phase:

WP	Task Name	Business Plan Development in €	Third Party Advice in €
1			
2			
3			
4			
5			
6			
7			
8			
Total			

### 7. Changes in expected Costs, first phase:

			Expected amount at midterm review		Real Costs		Difference in €		Difference in %	
WP	Task Name		BPD	TPA	BPD	TPA	BPD	TPA	BPD	TPA
1										
2										
3										
4										
5										
6										
7										
8										
Total										
BPD+TPA										

#### 8. Overview of technical experts

- Expert hours used, this phase
- Experts hours needed, next phase

#### 9. Overview of major challenges/concerns.

#### 10. Other news/updates

Very short, f.ex

- change in team
- financial developments/ additional sources of funding/ investments (personal/subsidy)
- cooperation agreements

#### 11. Proposal of CCN

If any

#### 12. Q&A

## APPENDIX 3 - LOGO

