

DRAFT INCUBATION CONTRACT

Between:

The ESA BIC Estonia, operated by Tartu Science Park Foundation,,
(hereinafter called the “Incubator”),
located at: Riia 181A, 51014 Tartu, Republic of Estonia,

Through the ESA Business Incubation Centre at Estonia,
(hereinafter called "ESA BIC Estonia"),

Represented by Mr Andrus Kurvits its Member of the Management board

of the one part,

And:

.....,

.....,

Whose Registered Office is at:

.....,

.....

Whose Trade Register Number in is:,.....,

(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:

Contract End Date:

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 Centre's (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 to implement and manage the ESA BIC Estonia through ESA contract.
6. WHEREAS the ESA BIC Estonia. is partly funded by the European Space Agency.
7. WHEREAS ESA BIC Estonia. is one of partners of and provides a loan scheme.
8. 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.
9. WHEREAS, as part of the assistance offered to the Incubatee, the [incubator] and the Incubatee will sign a rental agreement of even date with this Contract for the provision of office accommodation and related equipment and services to the Incubatee (see Appendix II).

ARTICLE 1 - CONTRACTUAL BASELINE

1.1. Definitions

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

“Activity” means 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.

“Incubator” means a company providing business development support and office accommodation to start-up companies.

“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 the Incubator 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.

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

“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 5.3.

“Intellectual Property Rights” shall mean all rights in copyright, patents, know-how, Confidential Information, database rights, rights in trade-marks 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.

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

“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 Tenancy Agreement;
- 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 the Incubator 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 the Incubator 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 ESA BIC ESTONIA with draft versions of the Final Report and the Executive Summary. ESA BIC ESTONIA 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 ESA BIC ESTONIA. Templates are provided in Appendix III herein.

(b) The Final Report and the Executive Summary shall be delivered by the Incubatee to ESA BIC ESTONIA in 3 (2 paper copies and 1 electronic copy) and 6 copies (5 paper copies and 1 electronic copy) respectively.

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 the Agency through

2.2.1 Software

- a. In the event that the Incubatee develops software under the incubation programme, the Agency shall receive via ESA BIC ESTONIA from the

Incubatee a copy of the software in source code form, it being understood that the Agency shall keep the source code under confidentiality provisions, for purposes of auditing only.

- b. The Incubatee shall deliver such software at the end of the Contract Term or upon the cancellation of this 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 ESA BIC ESTONIA, 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 following 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 Incubator is entitled to request the Incubatee to loan the hardware to the incubator and/or the Agency for the purposes of displaying it in an exhibition or for the Incubator and/or the Agency's 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. ALTERNATIVELY: A dummy.
- 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 Incubator and/or the Agency upon request of the Incubator or the Agency.

ARTICLE 3 – ESA BIC ESTONIA. UNDERTAKINGS

3.1 Technical Support

- (a) For the purposes of this Contract the Incubator will provide the Incubatee with the following technical support necessary for and directly related to the Activity of Incubatee (referred to as "Technical Support").

a maximum of 80 hrs during the contract term.

- (b) The Technical Support shall be provided for the duration of the Contract Term, unless a shorter period is agreed between the Parties.
- (c) Any information in documentary or other physical form provided to the Incubatee as part of the Technical Support shall remain the property of the Incubator and shall be returned to the Incubator at the end of the Contract Term or upon the cancellation of this Contract.

- d) For all matters relating to the technical support the responsible technical officer is nominated in Clause 9.3 a).

3.2 Equipment

It is not foreseen the Incubator will loan the Incubatee any equipment.

In the event that during negotiation between the Incubatee and the technical expertise entity concerning the technical development the loan of any equipment is envisaged, all conditions will then be defined in the related meeting minutes.

3.2 Software

It is not foreseen the Agency and/or the incubator will loan the Incubatee any equipment.

In the event that during negotiation between the Incubatee and the technical expertise entity concerning the technical development 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 the incubator when entering into agreements with Third Parties to obtain specific advice/product relevant to the Activity ("Third Party Services"). The Incubator 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 in Estonia unless the product/service is not available in such territory and within the boundaries stated on Article 7.1 (Financial Contribution) hereto.

ARTICLE 5 - CONTRACT TERM

This Contract shall enter into force upon signature by the legal representatives 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 Addendum 2 and Addendum 3.

ARTICLE 7 – FINANCIAL CONTRIBUTION AND PAYMENT

7.1. Financial Contribution

7.1.1 The total financial contribution to the Activity **amounts up to:**

50.000 EUR (Fifty Thousand EURO) for IPR & product development

7.1.2 For the purpose of this Contract the above mentioned total 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 incubate shall deliver a cost report, detailing all costs incurred, with all invoices attached.

7.1.2.2 The incubatee shall prove all expenses from the funding solely with third parties' invoices used for IPR and product development following the provisions on Article 4 here above. The incubatee is not authorized to use the above stated 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, Tartu Science Park shall make the following payments to the Incubatee:

7.3.1 Progress Payments

(a) The Incubator shall 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 the incubator, 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 the Incubator reserves the right to require the return of the 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 Cost Report;

- b) receipt by Tartu Science Park of all relevant invoice(s) from the Incubatee with a clear indication of all the invoices paid with 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 shall make the following payments:

MILESTONE DESCRIPTION	SCHEDULE DATES	ESA AMOUNT IN EURO	REGIONAL CONTRIBUTIONS
PROGRESS I: Upon signature of the incubation contract by both parties of this contract		10.000	10.000
PROGRESS II: Upon successful MTR, acceptance by ESA BIC ESTONIA TO of MTR report, business plan and all related deliverables		10.000	10.000
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		5.000	5.000

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. in EUR to the account specified by the Incubatee, see Article 7.1.1. hereabove. 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 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 originates from Republic Of Estonia and that is provided under this Contract to the Incubatee by state falls under the terms of the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union 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 ESA BIC ESTONIA representatives are:

(a) For technical and administrative matters:

Mr Sven Lilla
Address: Narva mnt. 20, Tartu, Estonia
Tel.: +372 5345 4149
Email: sven.lilla@teaduspark.ee
Or a person duly authorized by him

(b) For contractual matters:

Mr Andrus Kurvits
Address: Narva mnt. 20, Tartu, Estonia
Tel.: +372 512 6584,
Email: andrus@esabic.ee
Or a person duly authorized by him

(c) For ESA BIC Estonia's technical support (Article 3 here above) matters:

Mr Sven Lilla
Address: Narva mnt. 20, Tartu, Estonia
Tel.: +372 5345 4149
Email: sven.lilla@teaduspark.ee

Or a person duly authorized by him

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

(a) For technical matters:

E-mail:

Tel.:

Fax :

(b) For contractual and administrative matters:

[..]

E-mail:

Tel.:

Fax :

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 BIC MANAGEMENT COMPANY, ESA, ESA BIC ESTONIAS or any aspect of ESA BIC ESTONIA activities, or permit any Third Party to do so, without the prior written consent of BIC MANAGEMENT COMPANY.

10.1.2 BIC MANAGEMENT COMPANY 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 / websites 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 BIC ESTONIAS or ESA BIC ESTONIA or any other logo or trademark which may be owned or used by the Agency or BIC MANAGEMENT COMPANY for any purpose whatsoever, unless stated in this Article.

10.2.2 The Incubatee may place the logo attached hereto in Appendix 4 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, as long as it is linked to www.esa-bic.com and stated as a partner of the company, but not on its products or any other material which it produces:

"[name of the techno-starter] is participating in the ESA Business Incubation Centre xxxx" is referred to as the Text Line. Usage of the ESA BIC ESTONIA location Logo and Text Line by the Incubatee shall be subject to the following conditions:

- (a) the Incubatee shall submit to BIC MANAGEMENT COMPANY's contractual representative or his duly authorised representative for prior written approval all promotional material and publicity documents, on which the Text Line is to appear or is intended to be used, which approval may be withheld or withdrawn from any material or documents at any time at the BIC MANAGEMENT COMPANY's discretion;
- (b) the prior approval of the BIC MANAGEMENT COMPANY for the use of the logo and/or Text Line 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 BIC MANAGEMENT COMPANY 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 Logo and/or 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 the BIC MANAGEMENT COMPANY's contractual representative or his duly authorised representative; and
- (e) no use of the Logo neither 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 BIC xxxxx; and
 - c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

10.2.3 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 Logo and Text Line on its material, products and documentation. The Incubatee shall provide the BIC xxxxxx's contractual representative or his duly authorised representative with information and documents to evidence such use.

10.2.4 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, unless specified in writing by BIC xxxxx and the Agency and the following Clauses here below.

10.2.5 Incubatees which successfully conclude the ESA BIC ESTONIA programme ("Alumni") shall be allowed to use the following Text Line, in its marketing material together with ESA BIC ESTONIA location Logo, including exhibition and conference material (not on products nor materials) and its internet site, as long as it is linked to www.esa-bic.com and stated as a partner of the company.

"[name of the techno-starter] is an Alumnus of ESA Business Incubation Centre xxxx [graduation year]" is referred to as the Text Line together with ESA BIC ESTONIA location Logo.

10.2.6 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 The Agency has set-up and registered "Space Solutions" trademark to be used by techno-starters on their products. To use this trademark, the techno-starter 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 confidence 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;
 - its professional agents;
 - ESA BIC ESTONIA 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
- 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 evidence in writing) and is not hindered by any obligation not to circulate; or

- 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 Ownership

12.1 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.

12.2 Use of Intellectual Property Rights by the Agency

12.2.1 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.

12.2 2 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 12.2.1 of this contract, are reassigned to the new assignee.

12.3 Transfer of Intellectual Property Rights outside the ESA Member States;

The Incubatee shall inform the ESA BIC ESTONIA's technical representative, as stated in Article 9.3(d), well in advance of its intention to transfer outside the Agency's Member States any Intellectual Property Rights arising from this Contract.

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 with this Contract whether arising from negligence, breach of contract or any other obligation or duty shall not exceed, an amount equivalent to 50,000 EURO (Fifty Thousand EURO), per event or series of connected events.

13.2 Infringements of the Law

13.2.1 The Incubator 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 xxxxxxxx or in any other country whatsoever.

13.2.2 The Incubatee shall indemnify the Incubator 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 ESA BIC ESTONIA Partners

13.3.1 The Incubatee shall indemnify the ESA BIC ESTONIA partners 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 through the Incubator - which may be made, or brought against the ESA BIC ESTONIA partners, or to which the ESA BIC ESTONIA partners may be put by reason of such infringement or alleged infringement.

13.3.2 The Incubator 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 the ESA BIC ESTONIA partners 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 ESA BIC ESTONIA partners against, and shall be personally responsible for, direct damage to 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) The Incubator and ESA BIC ESTONIA 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 ESA BIC ESTONIA 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

The Incubator 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 the Incubator or initiated by the Incubatee, the Incubatee shall submit a proposal for a CCN.

14.1.2 The Incubatee shall ensure -in liaison with the Incubator- that each change proposal is fully coordinated and that all reasonably foreseeable implications of the change have been considered by the Incubatee and the Incubator. The

Incubatee shall, on the request of the Incubator, 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 the Incubator, a corresponding CCN shall be prepared by the Incubator'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 by the Incubator, 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 years, subject to losing the right to use the [*ESA BIC ESTONIA logo or text 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 European Space Agency's Technical Representative, as follows:

Dr, S. Gustafsson E-mail: Stefan.Gustafsson@esa.int

ESTEC
P.O. Box 299,
2200 AG Noordwijk, NL

Tel.: + 31 71 56 53066
Fax.: + 31 71 56 56635

ARTICLE 16 – TERMINATION

16.1 Right of Termination

16.1.1 Each Party reserves the right, after full consideration of all relevant circumstances and following a formal notification, to terminate a Contract in the event of a material breach of a contract by the other party.

16.1.2 In the event of such termination, the Incubate shall keep the amounts already paid for achieved milestones, if any, and shall be entitled to claim the cost, based on properly documented evidence produced by the Incubatee and accepted by ESA BIC ESTONIA.

16.1.3. ESA BIC ESTONIA shall in no circumstances be liable to pay any sum which deviates from the provisions set out in Article 7.1 herein or when added to the other sums paid, due or becoming due to the Incubatee under this Contract by ESA BIC ESTONIA, exceeds the total contractual payments due by ESA BIC ESTONIA to the Incubatee, as set out in Article 7.1.

16.1.4. Article 13 of this present Contract shall not be, by the termination, affected.

16.1.5 Termination in special cases

ESA BIC ESTONIA may at any time terminate the Contract by giving written notice with immediate effect in any of the following events:

- a) if the Incubatee becomes insolvent or if his financial position is such that within the framework of his national law, legal action leading towards bankruptcy may be taken against him by his creditors;
- b) if the Incubatee resorts to fraudulent practices in connection with the Contract, especially by deceit concerning the nature, quality or quantity of the supplies, and the methods of processes of manufacture employed or by the giving or offering of gifts or remuneration for the purpose of bribery to any person in the employ of ESA BIC ESTONIA or acting on its behalf, irrespective of whether such bribes or remuneration are made on the initiative of Incubatee or otherwise.

16.1.6 In case of Force Majeure and if the Force Majeure event and its consequences continue for more than three (3) Months from the start date of the Force Majeure event, either Party may terminate the Contract by giving not less than two (2) Month notice to the other party.

16.1.7 In case of termination due to Force Majeure the amount to be paid shall be based on the Article 17.1.2. No other payments shall be due by ESA BIC ESTONIA to the Contractor.

16.2 Consequences of Termination

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 ESA BIC ESTONIA and shall be handed over to ESA BIC ESTONIA upon the expiry or termination 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.

The Incubatee shall deliver to ESA BIC ESTONIA all documentation that would have been needed for the Final Settlement had the Incubatee completed the Activity in full (see Article 8.3), and the Incubatee agrees to reimburse to ESA BIC ESTONIA any amount that would not be found acceptable for the Final settlement had the Contract not been prematurely terminated.

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 the laws of xxxxxxxx.
- 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 xxxxxx and the language of the arbitration shall be English. The enforcement of the award shall be governed by the rules of procedure in force in xxxxxx.

ARTICLE 19 - DATA PROTECTION

- 19.1 To the extent that is reasonably necessary, in connection to the Incubatee's activities under this contract, his data may be disclosed to others, including staff of ESA BIC ESTONIA and all ESA BIC ESTONIA partners, for any studies and/or reporting that may be carried out by the Agency and/or the Incubator. The Incubatee hereby consents to the recording, processing, use and disclosure of personal data related to him 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 xxxxx and other countries for the fulfilment of the above requirements.

Done and signed in three (2) original copies, one for each Party to this Contract,

on behalf of the ESA BIC ESTONIA.:

Mr/Mrs.
.....

Date : _____

on behalf of the Incubatee:

Name and Role

Date : _____

**ADDENDUM 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 in regard to the ESA BIC

1. CONTRACTUAL BASELINE

The Incubatee is a start-up 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 (“spin-off”) or using non space technology for proposing products and services for the space sector (spin-in”). As a start-up company the Incubatee requires business development support, technical and commercial advice and marketing expertise to be able to commercialise 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 shall be addressed to’s representatives nominated in Article 9.3 of this 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’s representatives, not later than ten (10) days after the meeting concerned was held.

3.2 Progress Reports

Every three (3) months, the Incubatee shall provide a progress report to’s representatives, covering the Activity. This report shall provide details of:

- action items completed during the reporting period;
- description of progress: events accomplished etc.;
- problem areas, if any, and corrective actions planned and/or taken;
- events anticipated during the next reporting period;
- further details to be provided on a case-by-case basis

3.3 Problem Notification

The Incubatee shall notify’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’s premises or by teleconference 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 or the Incubatee.

4.4 Notice and Agenda for Meetings

For all meetings the Incubatee shall ensure that proper notice to is given at least two (2) weeks in advance of when’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. PDF-format, CD-ROM, DVD-ROM) as agreed by, and in other exchange formats where relevant (e.g. HTML); and

5.1.2 in one (1) paper copy.

The draft version of the documentation shall be sent to’s technical representative 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. 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 at the Mid Term Review. The Incubatee shall submit the presentation of the Mid Term Report to 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. 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 and/or any other support entity ESA BIC partners;
- (c) contacts established;
- (a) description of technical developments;
- (b) financial details;
- (c) all invoices relevant to the Third Party Services obtained by the Incubatee in accordance with Article 4 of this Contract.
- (g) licences granted and patent filings and applications;
- (h) photographic documentation
- (i) ... *[further input by 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 coloured illustrations or photographs, if appropriate. It shall also be delivered to 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 the Agency's Investment Forum at a later stage.

5.6 Annual Performance Report

The annual performance report shall describe the sales made and/or licences granted by the Incubatee during the preceding twelve (12) months (“Annual Performance Report”). The Incubatee shall submit this to and to the Agency (according to Article 15 of the contract) in one (1) paper copy and in electronic form on each anniversary of the end of the Contract Term, during 10 years.

5.7 Photographic Documentation

Photographic documentation comprises photographs of events organised by the Contractor and photographs of hardware under manufacture by the Start-ups showing major progress, as well as of tests and test set-ups. Videos presenting the functioning of hardware/test set-up and relating test activities may also be included in this category.

5.8 Software (including computer programmes)

Copy of the software developed by the Incubatee shall be a deliverable.

The Start-ups shall provide a demonstration of the software to’s representative including a trailer/movie clip illustrating the use and

application of their developed software program for the purpose of ESA exhibitions.

5.9 Hardware

A prototype or product manufactured by the start-up. In case of very high production costs, the start-up can keep the original prototype and deliver a mock-up of the prototype. Start-ups shall however keep the prototype available for lending it to ESA for exhibitions.

ADDENDUM 2 - AGENDA FOR MID-TERM 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).

Task/Work Package #

Objectives

Sub-tasks

Costs

Sub-tasks	Costs (€)
Total (€)	

Output

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).

Task/Work Package #

Objectives

Sub-tasks

Costs

Sub-tasks	Costs (€)
Total (€)	

Output

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	0%					
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:

WP	Task Name	Expected amount at Midterm Review		Real Costs		Difference in €		Difference in %	
		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

ADDENDUM 3**FINAL REPORT TEMPLATE**

*Template for Final Report (see also 5.3 of Appendix 1 of the incubation contract).
Please use this template also to structure you presentation for the Final Review.*

1. Introduction**2. Elevator pitch**

2-3 minutes Pitch (*This is good training and will introduce the company and business idea to potential new audience.*)

3. Lessons learned (5.3.a in annex 1.5 of the contract);**4. Details of the support received from (5.3.b in Appendix 1 of the contract);**

Also mention the expert's names, sections and hours used during incubation period

5. Business contacts established (5.3.c in Appendix 1 of the contract);**6. Progress report on work packages of total incubation period (5.3.d in Appendix 1 of the contract);**

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).

Task/Work Package #n**Objectives****Sub-tasks****Costs**

Sub-tasks	Costs (€)
Total (€)	

Output

7. Incubation Planning Overview (planned *and* actual):

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	0%					
7		Planned						
		State	100%					
n		Planned						
		State						
Midterm Review						Final Review		

8. Changes in expected Costs, total incubation period *(5.3.e in Appendix 1 of the contract)*:

		Expected amount at Final 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									
	<i>Total</i>								
	<i>BPD+TPA</i>								

9. Overview of major challenges/concerns.

10. Other news/updates

- changes in your team's composition
- financial developments; i.e. secured financing , launching customers, other income
- cooperation agreements

11. Way forward

12. Feedback on ESA Business Incubation support

ANNEX to the Final Report. Please attached to this report also:

- I. An overview and the copies of all invoices relevant to the Third Party Services obtained by the Incubatee *(5.3.f in Appendix 1 of the contract)*;
- II. An overview and copies of patents, patent filings and/or licences granted *(5.3.g in Appendix 1 of the contract)*;
- III. Photographic documentation accordance *(5.3.h in Appendix 1 of the contract)*.

ESA BIC.....Open Call for Proposals

Addendum 3

ESA BIC Draft Contract

Page Page 5

ADDENDUM 4 – LOGO