

DRAFT INCUBATION CONTRACT

Between:

SBIC Noordwijk B.V., (hereinafter called the “SBIC”),
located at:

Kapteynstraat 1 Suite 140, 2201 BB Noordwijk, The Netherlands

Through the ESA Business Incubation Centre Noordwijk at
Kapteynstraat 1 Suite 140, 2201 BB Noordwijk, The Netherlands (hereinafter called
"ESA BIC Noordwijk"),

Represented by Mr Leinweber, its COO,

of the one part,

And: COMPANY NAME

Whose Registered Office is at: Kapteynstraat 1 Suite 140, 2201 BB Noordwijk

Whose Trade Register Number in The Netherlands is: REGISTRATION NUMBER

(hereinafter called the “Incubatee”)

Represented by NAME and FUNCTION,

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 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 SBIC Noordwijk to implement and manage the ESA BIC Noordwijk through ESA contract.
6. WHEREAS the ESA BIC Noordwijk is partly funded by the European Space Agency and the Dutch Ministry of Economic Affairs through the Netherlands Space Office (NSO).
7. WHEREAS the Incubatee wishes to participate in the ESA BIC Noordwijk and benefit from the assistance which may be offered to it through the provisions of this Contract.
8. WHEREAS, as part of the requirements, the SBIC Noordwijk 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.

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 Noordwijk, 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 Addendum 1, section 5.6.

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

“SBIC” means Space Business Innovation Centre Noordwijk 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 10.2.

“Contract” shall mean an agreement between SBIC 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 SBIC.

“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 Noordwijk” shall have the meaning set out in the Preamble.

“Executive Summary” shall have the meaning set out in Addendum 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 Addendum 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 2.1.2.

“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 Addendum 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

2.1.1 100 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 Noordwijk
- 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]

2.1.2 Mid Term Report

At Mid Term, the Incubatee shall provide to ESA BIC Noordwijk representatives, described in Article 8.3(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 by the SBIC’s representatives, described in Article 8.3(a) and (b).

2.1.3 Business Plan

The Business Plan shall be provided to ESA BIC Noordwijk technical representative stated in Article 8.3(a), not later than the Contract End Date.

2.1.4 Final Report and Executive Summary

- (a) At least two months prior to the Contract End Date, the Incubatee shall provide ESA BIC Noordwijk with draft versions of the Final Report and the Executive Summary. ESA BIC Noordwijk. 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 SBIC. Templates are provided by the SBIC's representatives, described in Article 8.3(a) and (b).

(b) The Final Report and the Executive Summary shall be delivered by the Incubatee to ESA BIC Noordwijk in 1 electronic copy).

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 SBIC.

2.2.1 Software

- a. In the event that the Incubatee develops software under the incubation programme, the Agency shall receive via ESA BIC Noordwijk 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 Noordwijk, 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 11 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, SBIC is entitled to request the Incubatee to loan the hardware to SBIC and/or the Agency for the purposes of displaying it in an exhibition or for the SBIC 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 SBIC and/or the Agency upon request of SBIC or the Agency.

ARTICLE 3 –ESA BIC NOORDWIJK UNDERTAKINGS

3.1 Technical Support

- (a) For the purposes of this Contract the Agency will provide the Incubatee with the following technical support necessary for and directly related to the Activity of Incubatee (referred to as “Technical Support”), with 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 Agency and shall be returned to the Agency 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 8.3 d).

3.2 Equipment

It is not foreseen the Agency 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 SBIC 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 ESA BIC Noordwijk representatives when entering into agreements with Third Parties to obtain specific advice/product relevant to the Activity (“Third Party Services”). SBIC 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 the Netherlands 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 15. 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 1, 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 and max. 10% (5.000 EURO) on marketing studies, materials, events and conference tickets.

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, product development, marketing studies, materials, events and conference tickets 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, Travel and/or accommodation cost , Management fee and/or salary to employees, Rent of office accommodation and/or Office Software

7.1.2.3 Only invoices addressed to the company address at SBIC Noordwijk and dated after the signing date of the incubation contract and before the Final Review can be accepted.

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

7.2 Payment Terms

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

7.2.2 Payment from the incentive can only be done in case there are no outstanding invoices for the office accommodation

7.3 Categories of Payment

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

7.3.1 Progress Payments

(a) SBIC may 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 SBIC, 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 SBIC reserves the right to require the return of the progress payments without prejudice to its rights under Article 15.

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 SBIC upon:

- a) receipt by SBIC of the Cost Report;
- b) receipt by SBIC 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 SBIC 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 SBIC for the execution of the final payment.

7.4.4 SBIC shall make the following payments:

MILESTONE DESCRIPTION	SCHEDULE DATES	ESA AMOUNT IN EURO	DELIVERABLES
KICK OFF	MM-YYYY		Signed minutes of Kick Off meeting
100 DAY MEETING	MM-YYYY	10.000	Introduction interview and introduction on slack If applicable, signed IP license agreement Outcome meetings with partners ESA BIC Noordwijk Company website Profile website ESA Space Solutions Registration company in Noordwijk Minutes 100 days meeting
MID TERM REVIEW	MM-YYYY	20.000	Mid Term Report One pager Output workpackages #
FINAL: Upon acceptance by SBIC of all Deliverables under the contract, including Final Report, business plan, the hardware and/or software and upon acceptance by SBIC of the Incubatee's Cost Report	MM-YYYY	20.000	[Software / mock-up / hardware prototype] Final Report Business Plan Profile website NL Space Output workpackages #

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 SBIC 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 SBIC 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 - PARTIES REPRESENTATIVES AND COMMUNICATIONS

8.1 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.

8.2 All correspondence for either Party shall be sent to both representatives of each Party stated in Articles 8.3 and 8.4, i.e. depending on the subject, addressed to one representative with a copy to the other.

8.3 For the purpose of this Contract ESA BIC Noordwijk representatives are:

(a) For Application and Business matters:

Mr. M. Leinweber
E-mail: mleinweber@sbicnoordwijk.nl
Tel.: +31 624 303 503

SBIC Noordwijk, Kapteynstraat 1 Suite 140, 2201 BB Noordwijk, The Netherlands

or a person duly authorised by him, with copy to Mrs. R. van der Poel

(b) For legal and financial matters:

Mr. M. M. den Os
E-mail: m.denos@sbicnoordwijk.nl
Tel.: +31 71 20 20 307

SBIC Noordwijk, Kapteynstraat 1 Suite 140, 2201 BB Noordwijk, The Netherlands

or a person duly authorised by him, with copy to Mr. M. Leinweber

(c) For day-to-day contractual and administrative matters with the exception of payments:

Mrs. R. van der Poel
E-mail: r.vanderpoel@sbicnoordwijk.nl
Tel.: +31 71 20 20 307
SBIC Noordwijk, Kapteynstraat 1 Suite 140, 2201 BB Noordwijk, The Netherlands

(d) For ESA's technical support (Article 3 here above) matters:

Mr. M. Edwards (ESA)
E-mail: Matthew.Edwards@esa.int
Tel.: +31 71 565 4062

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

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

(a) For technical matters:

NAME
Phone: +31 (0)6 - ## ### ###
Email: EMAIL

SBIC Noordwijk, Kapteynstraat 1 Suite 140, 2201 BB Noordwijk, The Netherlands

(b) For contractual and administrative matters:

NAME
Phone: +31 (0)6 - ## ### ###
Email: EMAIL

SBIC Noordwijk, Kapteynstraat 1 Suite 140, 2201 BB Noordwijk, The Netherlands

(c) For day-to-day matters with the exception of payments:

NAME
Phone: +31 (0)6 - ## ### ###
Email: EMAIL

SBIC Noordwijk, Kapteynstraat 1 Suite 140, 2201 BB Noordwijk, The Netherlands

ARTICLE 9 - PUBLICITY AND VISUAL IDENTITY OF INCUBATEES

9.1 Publicity

9.1.1 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 SBIC, ESA, ESA BIC Noordwijk or any aspect of ESA BIC Noordwijk activities, or permit any Third Party to do so, without the prior written consent of SBIC.

9.1.2 SBIC shall not produce or disseminate any form of communication material, press releases or other publicity documents which are intended by ESA BIC Noordwijk 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.

9.2 Visual Identity of the Incubatee

9.2.1 The Incubatee shall not use the official emblem of ESA or ESA BIC Noordwijk or any other logo or trademark which may be owned or used by the Agency or SBIC for any purpose whatsoever, unless stated in this Article.

9.2.2 The Incubatee may place the logo attached hereto in Addendum 2 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 incubatee] is participating in the ESA Business Incubation Centre Noordwijk” is referred to as the Text Line. Usage of the ESA BIC Noordwijk location Logo and Text Line by the Incubatee shall be subject to the following conditions:

(a) the Incubatee shall submit to SBIC’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 SBIC’s discretion;

(b) the prior approval of the SBIC 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 SBIC 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 SBIC’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 ESA BIC Noordwijk; and
- c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

9.2.3 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 Noordwijk's contractual representative or his duly authorised representative with information and documents to evidence such use.

- 9.2.4 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 15, unless specified in writing by ESA BIC Noordwijk and the Agency and the following Clauses here below.
- 9.2.5 Incubatees which successfully conclude the ESA BIC Noordwijk programme ("Alumni") shall be allowed to use the following Text Line, in its marketing material together with ESA BIC Noordwijk Logo, including exhibition and conference material (not on products nor materials) and its internet site, as long as it is linked to www.sbicnoordwijk.nl/esa-bic and stated as alumnus of ESA BIC Noordwijk

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

- 9.2.6 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.
- 9.3 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 10 - CONFIDENTIALITY

- 10.1 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 10 and assumed by that Party in relation to the other Party.
- 10.2 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 10, documentation shall include any final documentation deliverable under this Contract with the exception of the Executive Summary.

- 10.3 Each Party may disclose Confidential Information on a strictly “need to know” basis to:
- its employees;
 - its professional agents;
 - SBIC Noordwijk Incubation partners.
- 10.4 On the Contract End Date, or upon the earlier termination or cancellation of this Contract in accordance with Article 15, 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 SBIC
- 10.5 The obligations in this Article 10 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.
- 10.6 The contents of this Contract are Confidential Information.
- 10.7 The obligations set out in this Article 11 shall survive the termination, cancellation or expiry of this Contract.

ARTICLE 11 – INTELLECTUAL PROPERTY

11 Ownership

- 11.1 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.
- 11.2 Use of Intellectual Property Rights by the Agency
- 11.2.1 If the Agency or its Member States require the use of any Intellectual Property Rights, owned by the Incubatee as described in Article 11.1, 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.

11.2 2 When transferring any Intellectual Property Rights, of which the Incubatee retains the ownership in accordance with Article 11.1, to an assignee the Incubatee shall ensure that the Agency's and its Member States' rights, as set out in Article 11.2.1 of this contract, are reassigned to the new assignee.

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

The Incubatee shall inform the ESA BIC Noordwijk's technical representative, as stated in Article 8.3(d), well in advance of its intention to transfer outside the Agency's Member States any Intellectual Property Rights arising from this Contract.

ARTICLE 12 – LIABILITY

12.1 Limitations of Liability

12.1.1 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 10 and 11.

12.1.2 Limitation of Liability

Subject to Article 12.1.1, 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.

12.2 Infringements of the Law

12.2.1 SBIC 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 Netherlands or in any other country whatsoever.

12.2.2 The Incubatee shall indemnify SBIC from and against all claims, proceedings, damages, costs and expenses arising out of any infringement of the Incubatee's obligations under this Contract.

12.3 Infringement of the Rights of Third Parties

12.3.1 The Incubatee shall indemnify the SBIC 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 SBIC or the Agency - which may be made, or brought against SBIC or the Agency, or to which SBIC or the Agency may be put by reason of such infringement or alleged infringement.

12.3.2 SBIC 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.

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

12.3.4 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.

12.4 Compensation for Damage Caused to Goods and Property

Claims in respect of damage shall be settled as follows.

12.4.1 Direct Damages

(a) The Incubatee shall indemnify SBIC and the Agency 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) SBIC and the Agency 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 SBIC, SBIC's staff, the Agency or their staff or agents.

12.4.2 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.

12.5 Damages to Third Parties by the Incubatee

SBIC 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 13 – CHANGES TO THIS CONTRACT

13.1 Introduction of a Change

13.1.1 For all changes to this Contract, whether requested by SBIC or initiated by the Incubatee, the Incubatee shall submit a proposal for a CCN.

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

13.2 Approval or Rejection of the Change Proposal

13.2.1 Should the change proposal be approved by SBIC, a corresponding CCN shall be prepared by ESA BIC Noordwijk contractual representatives as stated in Article 8.3(b) and submitted to both Parties for signature.

13.2.2 Should a change proposal be rejected for any reason by SBIC, 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.

13.3 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 14 – POST INCUBATION MANAGEMENT

Every year at the end of the Contract Term, during 10 years, subject to losing the right to use the [*ESA BIC Noordwijk logo or text line*] if non-compliant, the Incubatee shall prepare and submit an Annual Performance Report (see Addendum 1, point 5.6 annual performance report) to the Agency

ARTICLE 15 – TERMINATION

15.1 Right of Termination

15.1.1 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.

15.1.2 In the event of such termination, the Incubatee 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 Noordwijk

15.1.3. ESA BIC Noordwijk 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 Noordwijk, exceeds the total contractual payments due by ESA BIC Noordwijk to the Incubatee, as set out in Article 7.1.

15.1.4. Article 12 of this present Contract shall not be, by the termination, affected.

15.1.5 Termination in special cases

ESA BIC Noordwijk 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 Noordwijk or acting on its behalf, irrespective of whether such bribes or remuneration are made on the initiative of Incubatee or otherwise.

15.1.6 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.

- 15.1.7 In case of termination due to Force Majeure the amount to be paid shall be based on the Article 7.1. No other payments shall be due by ESA BIC Noordwijk to the Contractor.

15.2 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 Noordwijk and shall be handed over to SBIC 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 Noordwijk all documentation that would have been needed for the Final Settlement had the Incubatee completed the Activity in full, and the Incubatee agrees to reimburse to ESA BIC Noordwijk any amount that would not be found acceptable for the Final settlement had the Contract not been prematurely terminated.

ARTICLE 16 - 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 17 - DISPUTE SETTLEMENT

- 17.1 This Contract shall be governed by the laws of the Netherlands.
- 17.2 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.

- 17.3 Any dispute arising out of the interpretation or implementation of this Agreement that cannot be settled through the consultations referred to in Article 17.1 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 The Hague 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 The Hague, The Netherlands.

ARTICLE 18 - DATA PROTECTION

- 18.1 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 Noordwijk and all ESA BIC Noordwijk partners, for any studies and/or reporting that may be carried out by the Agency and/or SBIC. 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 the Netherlands and other countries for the fulfilment of the above requirements.

Done and signed in two (2) original copies, one for each Party to this Contract,
on behalf of the SBIC in Noordwijk,

Signature(s)

Represented by Martijn Leinweber

.....

Date:

.....

on behalf of the Incubatee, NAME, in Noordwijk on this day,

Signature(s)

Represented by NAME

.....

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 SBIC Noordwijk in regard to the ESA BIC Noordwijk

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 SBIC shall be addressed to SBIC’s representatives nominated in Article 8.3 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 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 Noordwijk
- ☐ 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 Bi-Monthly Meetings

Every two Months an individual meeting will be held with SBIC's CEO. The Incubatee shall discuss the progress.

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. PDF-format,) as agreed by SBIC, and in other exchange formats where relevant (e.g. HTML); and

5.1.2 in one (1) electronic copy.

The draft version of the documentation shall be sent to SBIC'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 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. Agenda and template for the Mid Term Review and Report are provided by the SBIC's representatives, described in Article 8.3(a) and (b).

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 SBIC and/or any other support entity ESA BIC Noordwijk 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 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.

5.5 The Final Report shall be presented by the Incubatee to SBIC at the Final Review. The Incubatee shall submit the presentation of the Final Report to SBIC one month in advance of the Final Review meeting. Agenda and template for the Final Review and Report are provided by the SBIC’s representatives, described in Article 8.3(a) and (b).

5.6 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.

5.7 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 SBIC and to the Agency (according to Article 14 of the contract) in electronic form on a yearly base during 10 years.

5.8 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.

5.9 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 ESA BIC's representative including a trailer/movie clip illustrating the use and application of their developed software program for the purpose of SBIC & ESA exhibitions.

5.10 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 SBIC & ESA for exhibitions.

ADDENDUM 2 – LOGO



**business
incubation
centre**

Noordwijk