

Draft Incubation Contract

Between:

Instituto Pedro Nunes – Associação para a Inovação e Desenvolvimento em Ciência e Tecnologia,
(hereinafter called "IPN"),
located at: Rua Pedro Nunes, 3030-199 Coimbra, Portugal

through the ESA Business Incubation Centre in Portugal,
Rua Pedro Nunes, 3030-199 Coimbra, Portugal
(hereinafter called "ESA BIC Portugal"),

represented by Prof. Maria Teresa Ferreira Soares Mendes, its President of the Board of Directors, and Prof. José António Raimundo Mendes da Silva, Vice-President of the Board of Directors,

of the one part,

And:

.....,
Whose Registered Office is at:

Whose Company Registration Number is:,
(hereinafter called the "Incubatee")

Represented by 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:

PREAMBLE

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 ESA BIC Portugal is partly funded by the European Space Agency and local partners.
6. WHEREAS the Agency has chosen IPN to implement and manage the ESA BIC Portugal through ESTEC contract 4000112531 and its applicable Work Orders.
7. WHEREAS UPTEC and DNA Cascais are engaged in the performance of said agreement, as incubation offices, with the role of hosting Incubatees.
8. WHEREAS the Incubatee wishes to participate in the ESA BIC Portugal 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 Incubatee and its incubation office – IPN Incubadora, DNA Cascais or UPTEC - will sign a tenancy agreement covering the same period as this Contract for the provision of office accommodation and related equipment and services to the Incubatee.

ARTICLE 1 - CONTRACTUAL BASELINE

1.1. Definitions

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

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

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

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

“CCN” shall mean a contract change notice.

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

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

“Confidential Information” shall have the meaning set out in Article 10.2.

“Contract” shall mean an agreement between the Agency and the Incubatee regulating the Activity.

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

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

“Conversion Proposal” shall mean a proposal detailing all costs incurred in relation to the Activity, to be submitted by the Incubatee to the Agency

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

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

“DNA Cascais” means DNA Cascais Agency, a private non-profit association, which under this contract provides business development support, office accommodation and financial support to start-up companies.

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

“ESA BIC” 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 trademarks and designs (whether registered or unregistered), applications for registration of any of the foregoing and the right to apply for registration, and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.

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

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

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

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

“IPN” means Instituto Pedro Nunes – Associação para a Inovação e Desenvolvimento em Ciência e Tecnologia, a private non-profit association, which under this contract provides business development support and office accommodation to start-up companies.

“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.

“UPTEC” means UPTEC – Associação de Transferência de Tecnologia da Asprela, a private non-profit association and the management entity of the Science and Technology Park of the University of Porto, which under this contract provides business development support and office accommodation to start-up companies.

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, 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 The Incubatee accepts to fully comply with the recommendations stated below arising from the Tender Evaluation Board and related to the activity of the Incubatee during the two year incubation period:

- XXX

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

2.2.1. Documentation

2.2.1.1. Mid Term Report

At Mid Term, the Incubatee shall provide to IPN's 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 in Appendix 2 herein.

2.2.1.2. Business Plan

The Business Plan shall be provided to IPN's technical representative stated in Article 8.3(a) in 2 copies, not later than the Contract End Date.

2.2.1.3. Final Report and Executive Summary

- (a) At least two months prior to the Contract End Date, the Incubatee shall provide IPN with draft versions of the Final Report and the Executive Summary. IPN 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 IPN. Templates are provided in Appendix 3 herein.

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

2.2.2. Other Deliverables

As part of the Incentive Scheme, it is expected from the Incubatee to deliver proof of the developed product or service. It is to be delivered to the Agency through IPN. Its use by the Agency is restricted to demonstration and exhibition purposes.

2.2.3. Software

- (a) In the event that the Incubatee develops software during the Contract Term as part of its Activity, the Incubatee shall deliver such software to IPN in a form to be agreed with IPN.
- (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) The incubate shall deliver a complete demonstration including hosting server (functional prototype level)

2.2.4. Hardware

- (a) In the event that the Incubatee develops any hardware during the Contract Term and as part of its Activity, the Agency is entitled to request the Incubatee to loan the hardware to the Agency for the purposes of displaying it in an exhibition or for 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.
- (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 the Agency at the end of the Contract Term or upon the cancellation of this Contract, unless otherwise agreed in writing by the Parties.

ARTICLE 3 – IPN'S UNDERTAKINGS

3.1 Technical Support

- (a) For the purposes of this Contract IPN will provide or will arrange to provide the Incubatee with technical support necessary for and directly related to the Activity of Incubatee (referred to as "Technical Support"), with a maximum of 80 hours 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 IPN and shall be returned to IPN 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 IPN will loan the Incubatee any equipment].

[OPTION: In case the activity foresees the loan of IPN's equipment, the following provisions shall apply]

3.2 Equipment

- (a) For the purposes of this Contract IPN will loan to the Incubatee the following equipment and components necessary for and directly related to the Activity of the Incubatee:

[Full details of the equipment to be provided by IPN]

(Altogether referred to as “Equipment”)

- (b) The duration of the loan of the Equipment shall be the Contract Term, unless a shorter period is agreed between the parties.

- (c) The following provisions shall apply to the loan of the Equipment:

- a. ownership of the Equipment shall remain with IPN;
- b. the Incubatee shall be responsible for the Equipment and its safekeeping and maintenance;
- c. the Incubatee shall not alienate the Equipment or use it for purposes other than those specified in this Contract;
- d. in the event of the loss, damage or destruction of the Equipment, except damage through proper use, wear and tear or caused by a representative or an employee of the respectively proprietary, the Incubatee shall be required, to replace or to repair at his own expense the lost, damaged or destroyed Equipment issued to the Incubatee, or to refund its value to the respectively proprietary;
- e. the Incubatee shall be required to keep a permanent inventory and utilisation account of the Equipment placed under the Incubatee’s control by IPN and, unless already marked by one of them, shall mark the equipment and components in an unambiguous way as being the property of IPN; and
- f. the Incubatee shall not use such Equipment in combination with other Equipment to produce a separate article.

- (d) For the purposes of Article 3.2(c), a delivery document attached to the respective Equipment provided on loan shall stipulate its price, and provide for the possible revision of that price as agreed between the Parties.

- (e) The Equipment shall be returned to IPN by the Incubatee, in the same condition as it was in when the Incubatee received it from IPN apart from normal wear and tear, at the end of the Contract Term or upon the cancellation of this Contract.

- (f) *[Further provisions depending on the type of Equipment being loaned]*

3.3 Software

[It is not foreseen IPN will loan the Incubatee any equipment.]

[OPTION: In case the activity foresees the loan of IPN’s software, the following provisions shall apply]

3.3 Software

- (a) For the purposes of this Contract IPN will provide the Incubatee with the following software necessary for and directly related to the Activity of Incubatee:

[Full details of the software to be provided by IPN]

(altogether referred to as “Software”)

- (b) The Software shall be provided for the duration of the Contract Term, unless a shorter period is agreed between the Parties.

- (c) *[Further provisions depending on the type of Software being provided.]*

ARTICLE 4 - SERVICES TO BE PROVIDED BY THIRD PARTIES

The Incubatee shall notify IPN prior to entering into agreements with Third Parties to obtain specific advice/product relevant to the Activity (“Third Party Services”). IPN 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 Portugal unless the product/service is not available in such territory and within the boundaries stated on Article 7.1 (Financial Contribution and Payment) 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 Appendix 1 sections 3 and 4 respectively.

ARTICLE 7 – FINANCIAL CONTRIBUTION AND PAYMENT

7.1 Financial Contribution

7.1.1 IPN’s total financial contribution to the Activity amounts up to:

€ 50.000,00 (fifty thousand euros) for IPR & product development:

€ 25.000,00 (twenty five thousand euros) for IPR & product development funded by ESA paid by IPN to the start-ups against milestone achievement and expenses incurred by the start-up and validated by IPN; this amount cannot be used to pay direct labour costs;

€ 25.000,00 (twenty five thousand euros) funded by a local financial partner of the incubation office and paid by the incubation office (or other designated entity) to the Incubatee following a payment authorisation issued by IPN against milestone achievement and expenses incurred by the Incubatee and validated by IPN.

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. At the end of the Contract Term the ceiling amount shall be converted into a firm fixed amount by means of a Conversion Proposal, detailing all costs incurred, to be submitted by the Incubatee to IPN.

7.1.2.1 The Incubatee shall provide copies of invoices to show all expenses were incurred solely with third parties used for IPR and product development. 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, IPN shall make the following payments to the Incubatee:

7.3.1 Progress Payments

(a) IPN 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 IPN, 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 IPN reserves the right to require the return of the advances or progress payments without prejudice to its rights under Article 16.

7.4 Final Settlement

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

7.4.2 Final settlement to the Incubatee is due by IPN upon:

- a) receipt by IPN of the Conversion Proposal;
- b) receipt by IPN of the relevant invoice(s) from the Incubatee; and
- c) certification by IPN 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 IPN or the incubation offices for the execution of the final payment.

7.4.4 IPN shall make the following payments related to the Financial Contribution part funded by ESA:

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT IN €
START:	Upon signature of the ESA BIC Portugal contract	10.000
PROGRESS: upon acceptance by IPN of the deliverables due on Mid Term Review and of copies of invoices of expenses incurred	12 months after contract signature date	10.000
FINAL: upon acceptance by IPN of all Deliverables under the contract, including the hardware and software and upon acceptance by IPN of the Incubatee's Conversion Proposal	24 months after contract signature date	5.000 or finally certified firm fixed price minus (START + Progress) payments

7.5 Invoices, place and payments

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

7.5.5 Payments shall be made in euros to the account specified by the Incubatee. Such information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). Payments shall be considered as effected on time if IPN's orders of payment reach its bank within the payment period stipulated in Article 7.4.3 above.

Incubatees coordinates for payment:

Account holder:

IBAN:

SWIFT/BIC:

7.5.6 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 the ESA BIC Portugal representatives are:

(a) For Application and Business matters (ESA BIC Incubation Director):

Carlos Cerqueira	E-mail: space@ipn.pt
Instituto Pedro Nunes	Tel: +351 239 700 900
Rua Pedro Nunes	
3030-199 Coimbra	
Portugal	

or a person duly authorised by him

(b) For legal matters:

José Ricardo Aguilar	E-mail: jraguilar@ipn.pt
Instituto Pedro Nunes	Tel: +351 239 700 963
Rua Pedro Nunes	
3030-199 Coimbra	
Portugal	

or a person duly authorised by him

(c) For day-to-day contractual and administrative matters including financial matters (ESA BIC Incubation Manager):

Carlos Cerqueira	E-mail: space@ipn.pt
Instituto Pedro Nunes	Tel: +351 239 700 900
Rua Pedro Nunes	
3030-199 Coimbra	
Portugal	

or a person duly authorised by him

(d) For IPN's coordinated technical support (Article 3 here above) matters (ESA BIC Incubation Manager):

Carlos Cerqueira	E-mail: space@ipn.pt
Instituto Pedro Nunes	Tel: +351 239 700 900
Rua Pedro Nunes	
3030-199 Coimbra	
Portugal	

or a person duly authorised by him

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

(a) For technical matters:

(b) For contractual and administrative matters:

ARTICLE 9 - PUBLICITY AND VISUAL IDENTITY OF INCUBATEES

9 Publicity

9.1 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 ESA BIC Portugal or any aspect of ESA BIC Portugal activities, or permit any Third Party to do so, without the prior written consent of IPN.

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

9.3 Visual Identity of the Incubatee

9.4 The Incubatee shall not use the official emblem of ESA, ESA BICs or ESA BIC Portugal or any other logo or trademark which may be owned or used by the Agency or IPN for any purpose whatsoever.

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

"..... participates in the ESA Business Incubation Centre Portugal",

referred to as the "Text Line".

Use of the Text Line by the Incubatee shall be subject to the following conditions:

(a) the Incubatee shall submit to IPN's contractual representative or his duly authorised representative for prior written approval all promotional material, publicity documents, products and other materials, or samples of them, on which the Text Line is to appear or is intended to be used, which approval may be withheld or withdrawn from any material, products or documents at any time at IPN's discretion;

(b) the prior approval of IPN for the use of the 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 IPN of the compatibility of materials produced by the Incubatee with applicable law and regulations, and the Incubatee shall refrain from using any statements which could suggest otherwise;

(c) any use of the Text Line on amended or revised promotional material and publicity documents shall be subject to the same approval process as the original material and documents;

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

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

9.7 The use by the Incubatee of the Text Line shall terminate upon the cancellation or expiry of this Contract as described in Article 15.

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; and
- its professional agents.

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 IPN.

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 10 shall survive the termination, cancellation or expiry of this Contract.

ARTICLE 11 – INTELLECTUAL PROPERTY

11.1 Ownership

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

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

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 11.1.1, for the performance of the Agency's programmes in the field of space research and technology and space applications and if the Incubatee is not willing or able to perform the activity for the Agency, the Agency or its Member States shall be entitled to a free of charge, transferable, non-exclusive licence to use such Intellectual Property Rights, which licence shall be limited to the territories of the Agency's Member States.

11.2.2 When transferring any Intellectual Property Rights, of which the Incubatee retains the ownership in accordance with Article 11.1.1, to an assignee the Incubatee shall ensure that the Agency's and its Member States' rights, as set out in Article 11.2.1, are reassigned to the new assignee.

11.3 Transfer of Intellectual Property Rights outside the ESA Member States

The Incubatee shall inform the Agency'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 11 and 12.

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 €50.000,00 (Fifty thousand euros), per event or series of connected events.

12.2 Infringements of the Law

12.2.1 IPN or the Agency shall not be responsible if the Incubatee infringes any existing and/or future national, laws or decrees, rules or regulations in force in Portugal or in any other country whatsoever.

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

12.3 Infringement of the Rights of Third Parties

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

12.3.2 IPN 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 IPN 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 IPN and the Agency against, and shall be personally responsible for, direct damage to IPN's or the Agency's property and equipment to the extent that such damage is caused by the negligence of the Incubatee and the Incubatee's personnel or agents.

(b) IPN 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 IPN and IPN's 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

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

13.1.2 The Incubatee shall ensure - in liaison with IPN - that each change proposal is fully coordinated and that all reasonably foreseeable implications of the change have been considered by the Incubatee and IPN. The Incubatee shall, on the request of IPN, provide additional documentary evidence of the affect 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 IPN, a corresponding CCN shall be prepared by IPN's 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, 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

On each anniversary of the end of the Contract Term, for 10 (ten) years, the Incubatee shall prepare and submit to the Incubation Manager of IPN, as well as to the Agency's Technical Representative, stated in Article 8.3(a) and 8.3(d), an Annual Performance Report.

ARTICLE 15 – TERMINATION AND CANCELLATION

15.1 Right of Termination

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

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

15.2 Cancellation Without Fault of the Incubatee

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

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

15.2.3 The amount of compensation payable under Article 15.2.2 shall be fixed on the basis of documentary evidence produced by the Incubatee and accepted by IPN. In calculating the amount of compensation payable to the Incubatee IPN shall take account of the proportion of this Contract completed and shall take into account the provisions of Article 15.2.4.

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

15.2.5 IPN shall in no circumstances be liable to pay any sum which deviates from the provisions set out on Article 7.1 and Article 4 herein or when added to the other sums paid, due or becoming due to the Incubatee under this Contract, exceeds the total contractual payments due by IPN to the Incubatee, as set out in Article 7.1.

15.3 Grounds for Cancellation by IPN

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

(a) if the Incubatee assigns or transfers this Contract in breach of Article 16;

(b) if the Incubatee becomes insolvent or if its financial position is such that within the framework of the national law of the Incubatee's incorporation, legal action leading towards bankruptcy may be taken against the Incubatee by its creditors;

(c) if the Incubatee conducts fraudulent practices in connection with this Contract, particularly concerning the nature and quality of the Activity or by giving or offering gifts or remuneration for the purpose of bribery to any person, irrespective of whether such bribes or remuneration are made on the initiative of the Incubatee or otherwise; and/or

(d) if the Incubatee has provided incorrect and/or incomplete information regarding:

(a) the Statement of Non Co-incubation;

(b) the Incubatee's legal ownership;

(c) the Incubatee's registration at the Portuguese Commercial Registry

15.4 Consequences of Cancellation

Any information, in documentary or other physical form, pertaining to the Activity carried out by the Incubatee during the Contract Term, remains the property of IPN and the Agency and shall be handed over to IPN upon the expiry or cancellation of this Contract. This shall include any information and documentation under Article 3.1(c).

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 Portugal.

- 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 Portuguese Rules of Arbitration approved by the Law nº 63/2011 of December 14th. The arbitral tribunal shall sit in Coimbra, Portugal 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 Portugal.

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 Portugal, including ESA, IPN for any studies and/or reporting that may be carried out by the Agency and/or IPN. 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 Portugal and other countries for the fulfilment of ESA’s own requirements.

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

on behalf of Instituto Pedro Nunes, Prof. Maria Teresa Ferreira Soares Mendes, its President of the Board of Directors, and Prof. José António Raimundo Mendes da Silva, Vice-President of the Board of Directors,

Name: _____ Name: _____

Signature: _____ Signature: _____

Date: _____ Date: _____

on behalf of the Incubatee:

Name: _____ Name: _____

Signature: _____ Signature: _____

Date: _____ Date: _____

APPENDIX 1 - STANDARD REQUIREMENTS FOR MANAGEMENT, REPORTING, MEETINGS AND DELIVERABLES

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

1. CONTRACTUAL BASELINE

The Incubatee is a startup company in the early stage development of its commercial enterprise, applying space technology or systems to non-space applications, including industrial, scientific and commercial uses. As a startup company the Incubatee requires business development support, technical and commercial advice and marketing expertise to be able to 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 IPN shall be addressed to IPN'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 and paper versions of the minutes of each meeting shall be issued and distributed to all participants and to IPN'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 IPN'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 IPN'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 IPN'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 IPN or the Incubatee.

4.4 Notice and Agenda for Meetings

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

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

5. DELIVERABLES

5.1 Documentation to be delivered

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

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

- 5.1.1 in electronic form on computer readable media (e.g. CD-ROM, DVD-ROM) as agreed by IPN, and in other exchange formats where relevant (e.g. HTML, PDF format); and
- 5.1.2 in two (2) paper copies.

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

5.2 Mid Term Report

The Incubatee shall document in detail the status of its technical and commercial progress in relation to the Activity in the Mid Term Report and confirm the feasibility of the Activity. 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 IPN at the Mid Term Review. The Incubatee shall submit the presentation of the Mid Term Report to IPN 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 IPN and ESA BIC Portugal 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 IPN 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 IPN 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 IPN's Investors 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 in one (1) paper copy and in electronic form. The Incubatee shall submit the Annual Performance Report to IPN and to the Agency every year for a period of ten (10) years from the end of the Contract Term.

APPENDIX 2 - AGENDA FOR MIDTERM REVIEW

1. Welcome/Introduction

2. Elevator pitch

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

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

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

Task/Work Package #								
Objectives								
Sub-tasks								
Costs								
<table border="1" style="width: 100%; border-collapse: collapse;"><thead><tr><th style="width: 50%;">Sub-tasks</th><th style="width: 50%;">Costs (€)</th></tr></thead><tbody><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td>Total (€)</td><td> </td></tr></tbody></table>	Sub-tasks	Costs (€)					Total (€)	
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								
<table border="1" style="width: 100%; border-collapse: collapse;"><thead><tr><th style="width: 50%;">Sub-tasks</th><th style="width: 50%;">Costs (€)</th></tr></thead><tbody><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td>Total (€)</td><td> </td></tr></tbody></table>	Sub-tasks	Costs (€)					Total (€)	
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						
		Status			50%			
2		Planned						
		Status	33%					
3		Planned						
		Status						
4		Planned						
		Status			150%			
5		Planned						
		Status			100%			
6		Planned						
		Status	0%					
7		Planned						
		Status	100%					
8		Planned						
		Status						
						Midterm Review		Final R

6. Cost Breakdown Overview, first phase:

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

7. Changes in expected Costs, first phase:

WP	Task Name	Expected amount at Mid Term 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

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

11. Proposal of CCN

If any

12. Q&A

APPENDIX 3: FINAL REPORT TEMPLATE

Template for Final Report (see also 5.3 of Appendix 1 of the Draft Incubation Contract). Please use this template also to structure your 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 Appendix 1 of the Draft Incubation Contract);

4. Details of the support received from IPN (5.3. (b) in Appendix 1 of the Draft Incubation 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 Draft Incubation Contract);

6. Progress report on work packages of total incubation period (5.3. (d) in Appendix 1 of the Draft Incubation 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								
<table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Sub-tasks</th> <th style="width: 50%;">Costs (€)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td>Total (€)</td> <td> </td> </tr> </tbody> </table>	Sub-tasks	Costs (€)					Total (€)	
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 Incubation Contract);

WP	Task Name	Expected amount at Final 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								

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 Draft Incubation Contract);
- II. An overview and copies of patents, patent filings and/or licences granted (5.3. (g) in Appendix 1 of the Draft Incubation Contract);
- III. Photographic documentation accordance (5.3. (h) in Appendix 1 of the Draft Incubation Contract).