[BIC-0001]
DRAFT INCUBATION CONTRACT

[Project acronym – project name]

Between:

I3P - Società per la gestione dell'Incubatore di Imprese Innovative del Politecnico di Torino - S.c.p.a., (hereinafter called the “Incubator"), located at: Corso Castelfidardo 30/a – 10129 Turin

acting at request of the European Space Agency and managing ESA BIC Turin

Represented by Mr. Giuseppe Scellato, its Chairman

of the one part,

and:

…….....,
(hereinafter called “……..."),

Whose Registered Office is at:
……,
……,
……,

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

(hereinafter called the “**Incubatee**")

Represented by [Name and function to be specified] Mr/Ms……., its ……,

of the other part,

(together, hereinafter referred to as the “Parties” or individually as a “Party”)

Commencement Date of the Incubation: ……
Planned Incubation End Date: ……..

the following has been agreed:

P R E A M B L E

1. WHEREAS as part of the commercialisation initiative the Agency has set up

the ESA Business Incubation Centres' (ESA BICs) initiative to enable start-up companies (Incubatees) to receive comprehensive commercial and technical assistance in order to set up their business using space technology or systems for general 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").

2. WHEREAS the Agency has selected to implement and manage the ESA BIC Turin through ESA contract.

3. WHEREAS the ESA BIC Turin is partly funded by the European Space Agency.

4. WHEREAS the Incubatee wishes to participate in the ESA BIC Turin and benefit from the assistance which may be offered to it through the provisions of this Contract.

[OPTION Indicate rental or service as appropriate – or please remove this section in case there is no rental or service agreement to be signed

5. WHEREAS, as part of the assistance offered to the Incubatee, the Incubator and the Incubatee will sign a rental/service agreement of same date with this Contract for the provision of [office accommodation and related equipment and services] to the Incubatee (see Appendix 2). END OPTION]

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 programme, including the preparation of the Mid Term Report, the Final 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.

“Agency’s Own Requirements” shall mean the activities and programmes undertaken by the Agency in the field of space research and technology and space applications in accordance with Article V 1(a) and (b) of the European Space Agency Convention.

“Alumni” shall mean a company which has successfully completed an incubation at ESA BIC.

“Annual Performance Report” shall have the meaning set out in Appendix 1, section 4.1.5

“Business Plan” shall have the meaning set out in Appendix 1, section 4.1.4

“Incubator” means a company providing business development support and office accommodation to Incubatees.

“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.

“Contract” shall mean an agreement established in writing between the Incubator and the Incubatee regulating the Activity.

“Contract End Date” shall mean the date on which this Contract shall come to an end, as set out in Article 5 and when the final payment to the Incubatee has been made under the conditions outlined in Article 6.

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

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

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

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

“Equipment” shall have the meaning set out in Article 3.4.

“I3P Scpa” shall mean the business incubator contracted by ESA to manage ESA BIC Turin.

“ESA BIC location logo” shall mean the logo provided by ESA to be used by ESA BIC country/location and based on https://brand.esa.int/assets/esa-space-solutions-logo-applications/.

“ESA BIC Turin Partner” (Incubator’s Partners) shall mean an entity that is working together with the ESA BIC to support the activities described under the Agency’s Statement of Work.

“Executive Summary” shall have the meaning set out in Appendix 1, section 4.1.3

“Final Report” shall mean the document presenting all the Activity undertaken by the Incubatee during the Contract Term, as further defined in Appendix 1, section 4.1.2.

“Force Majeure” shall mean an event which is, unforeseeable, unavoidable and external at the time of Contract signature, occurs beyond the control of the affected Party and renders the performance of the Contract impossible for the affected Party, including but not limited to: Acts of God, Governmental Administrative Acts or omissions, consequences of natural disasters, epidemics, war hostilities, terrorist attacks.

“Incentive” shall mean a cash contribution to the Incubatee paid by the Incubator out which 50% is nominally provided by the European Space Agency (“**ESA**”) and 50% by a local co-funding partner. There shall be no requirement for the Incubatee to pay back the received incentive to the Incubator as long as corresponding expenses support the objectives of the incubation and deliverables are provided in accordance with the Contract. The Agency’s part of the incentive is considered as payment for procurement according to the conditions set out in this Contract

“Incubatee” shall mean 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”) and which signed an incubation contract with I3P Scpa.

“Intellectual Property Rights” shall mean all Registered Intellectual Property Rights, and all unregistered intellectual property rights granted by law without the need for registration with an authority or office including all rights in information, data, blueprints, plans, diagrams, models, formulae and

specifications together with all copyright, unregistered trademarks, design rights, data base rights, topography rights, know-how and trade secrets or equivalent rights or rights of action 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.

“Participating States” shall mean a Member or non-Member State participating in a given European Space Agency programme according to Article V.1 (a) and (b) of the European Space Agency Convention.

“Participating State’s Own Public Requirements” shall mean a public programme in the field of space research and technology and their space applications fully funded or funded to a substantial extent by the Participating State.

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

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

“Registered Intellectual Property Rights” shall mean all rights granted by law through registration with an authority or office (whether actually registered or in the form of applications) including all registered patents, utility models, designs, topography rights, domain names and trade-marks or equivalent rights and rights of action anywhere in the world.

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

“Third Party” shall mean a natural or legal person other than the Parties to this Contract.

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

ARTICLE 1 - SUBJECT OF THE CONTRACT, APPLICABLE DOCUMENTS

1.1 Subject of the Contract

During the Contract Term, the Incubatee undertakes to perform the Activity "[TITLE]" and the Incubator undertakes to provide technical support, business support, IPR/Legal advice, and up to the maximum Incentive Amount identified under Article 6.1.1 (hereinafter also referred to as the "**Incubator's Support**") .

1.2 Applicable documents

The Activity and the Incubator's support shall be performed in accordance with the following applicable documents listed hereunder in order of precedence, in case of conflict:

a) This Incubation Contract including the Mid-Term Reportand the Final Report templates;
b) The Standard Requirements for Management, Reporting, Meetings and Deliverables as set out in Appendix 1 hereto;
c) [OPTION: The Rental/Service Agreement attached herewith as Appendix 2 END OPTION];
d) The Minutes of the negotiation meeting held on the ....., reference .....; not attached hereto but known to both Parties;
e) The Incubatee's Application ref……, dated ……, version …….., not attached hereto but known to both Parties.

The latest updated version of the Mid-Term Report, Business Plan and the Final Report templates will be made available by the Incubator to the Incubatee. The Parties agree that any change regarding these templates will not require a Contract Change Notice.

ARTICLE 2 – ACTIVITY OF THE INCUBATEE; DELIVERY

The Incubatee undertakes to deliver the items mentioned below (the "Deliverables"). These shall be sent to the Incubator's Technical Officer mentioned in Article 8 a) of the Contract, unless otherwise specified, in accordance with the following provisions:

2.1 **Documentation**

The Incubatee shall deliver as part of the Activity the documents specified in this section in electronic searchable, indexed and not encrypted PDF and original (WORD) format.

See also Appendix I, Section 4, for further requirements related to deliverables.

2.1.1 Mid Term Report

At least two (2) weeks in advance of the Mid Term Review meeting, the Incubatee shall deliver the "Mid Term Report". This report shall describe the work carried out so far by the Incubatee under the Contract.

The key content of the Mid Term Report shall be presented by the Incubatee to the Incubator at the Mid Term Review.

2.1.2 Final Report and Executive Summary

At least one (1) month prior to the Incubation End Date, the Incubatee shall deliver the draft versions of the Final Report and the Executive Summary using the Final Report template applicable to this Contract.

The Incubator shall review the draft version of the Final Report and the Executive Summary and provide comments to the Incubatee at latest two (2) weeks before the Incubation End Date.

The Executive Summary shall not contain any Proprietary Information. It may be used by the Incubator and the Agency for promotional purposes.

The key content of the Final Report and the Executive Summary shall be presented by the Incubatee to the Incubator at the Final Review.

The final versions of the Final Report and the Executive Summary shall be delivered by the Incubatee at the latest at the Incubation End Date.

2.1.3 Business Plan

The Business Plan shall be delivered at least one (1) month prior to the Incubation End Date.

The key content of the Business Plan shall be presented at the Final Review.

2.2 **Other Deliverables**

As part of the Incentive Scheme, the Incubatee shall deliver to the Incubator, not later than at the Contract End Date or upon termination of this Contract, a proof of the developed product or service. The Incubator may then deliver to or share this with the European Space Agency.

The Incubator and the Agency will use these deliverables for communication, dissemination and publicity purposes, and for verifying correct use of the incentive.

2.2.1 Software

The Incubatee shall deliver a copy of the software or a demonstrator, if any of the above has been developed under the Contract. This may be a sample version of the application. If this is not feasible, and subject to approval by the Incubator, a video with a live demonstration of the software and its functionalities shall be delivered.

In the event the Agency or any of its Participating States require to use the software developed under this Contract for its/their Own Requirements, the

Incubatee shall provide the appropriate licence. The terms and conditions of such licence shall be agreed beforehand between the Agency or its Participating States and the Incubatee. For the sake of understanding, the relevant provisions of Article 12 below shall apply.

2.2.2 Hardware

a) The Incubatee shall deliver a product/a prototype of the hardware, or alternatively a demonstrator, if any of the above has been developed under the Contract.

If this is not feasible, e.g. because of high production costs or the characteristics of the hardware, and is subject to approval by the Incubator, the Incubatee may instead deliver a mock-up or a video with live demonstration of the hardware in action, developed under this Contract. The Incubatee shall, however, keep the prototype for the specific use described under 2.2.2 b).

b) The Incubator and/or the Agency via the Incubator shall have the right to loan any hardware developed by the Incubatee under this Contract, for the purposes of displaying it in an exhibition or for the Incubator and/or the Agency's promotional purposes. This right shall expire five (5) years from the end of the Contract Term or from termination of this Contract, unless otherwise agreed in writing by the Parties.

2.2.3 Photographs, Video demonstrations

Not later than at the Final Review, the Incubatee shall deliver photographs and video demonstrations of the work performed under this Contract to the Incubator.

Such photographs and video demonstrations shall not contain any Proprietary Information and may be used by the Incubator and the Agency for promotion only.

2.2.4 Incubation Deliverables List

The Incubatee shall agree with the Incubator on an Incubation Deliverables List that should be added as an Appendix to this agreement.

Not later than at the Final Review, the Incubatee shall deliver all items specified in the Incubation Deliverables List to the Incubator.

ARTICLE 3 –ESA BIC TURIN UNDERTAKINGS

The ESA BIC Turin undertakings under this Contract include technical support, business support and IPR/Legal advice at no additional cost to the Incubatee and at the Incubatee's request, according to the following terms:

3.1 Technical Support

(a) A minimum of 20 hours of technical support necessary for, and directly related to the Activity (referred to as "**Technical Support**") shall be offered to the Incubatee.

(b) Any information in documentary or other physical form provided to the Incubatee as part of the Technical Support shall remain the property of the Incubator and shall be returned to the Incubator at the end of the Contract Term or upon the termination of this Contract.

(c) For all matters relating to the Technical Support the responsible person is the representative for technical matters, nominated in Article 8.3 a) below.

3.2 Business Coaching

A minimum of 50 hours of business coaching necessary for, and directly related to the Activity shall be offered to the Incubatee.

3.3 IPR/Legal advice

A minimum of 10 hrs of IPR or legal advice necessary and directly related to the Activity shall be offered to the Incubatee.

3.4 Equipment

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

3.5 Software

It is not foreseen that the Incubator or the Agency via the Incubator will licence the Incubatee any software.

ARTICLE 4 - SERVICES TO BE PROVIDED BY THIRD PARTIES

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

For the purposes of this Article it is hereby understood that the Incentive Scheme funding identified in Article 6.1 shall be spent in Italy unless the product/service is not available in such territory or only available at significantly higher price.

Spending of the Incentive Amount outside Italy requires prior approval by the Incubator.

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 the Contract End Date, unless it is terminated in accordance with Article 16. The Contract Term should not exceed the duration of two (2) years.

ARTICLE 6 – FINANCIAL CONTRIBUTION AND PAYMENT

6.1. Financial Contribution

6.1.1 The maximum financial contribution payable by the Incubator to the Incubatee during performance of the Activity **amounts to**:

60,000 EUR (Eighty Thousand EURO) and is hereinafter also referred to as the "Incentive Amount".

The type price of the Incentive Amount is a ceiling price.

50% of the Incentive Amount, provided by Local Partner, can only be used by the Incubatee for expenses with third parties as reported below:

a) Expenses incurred for product/service development (proved by invoices and payment receipts)

b) Expenses incurred for the strengthening of intellectual property (maximum 10,000 euros, proved by invoices and payment receipts)

c) Expenses incurred for company creation (maximum of 5,000 euros, proved by invoices and payment receipts)

d) General expenses (equal to 20% of the total reported) without the obligation to produce special documentation.

6.1.2 At the time of Mid-Term Review and Final Review, the Incubatee shall deliver a cost report, detailing all costs actually incurred.

At the end of the Contract term, costs incurred by the Incubatee will be reimbursed provided that:

a) Expenditures follow what has been specified in the expenditure plan provided in the Application referenced in Article 1.2 above, or as subsequently agreed upon with the Incubator, and

b) Deliverables are provided to the Incubator as described in this Contract.

If the Incubatee's costs actually incurred under the Contract are lower than the Incentive Amount identified in Article 6.1.1. above, then the Incentive Amount shall be reduced accordingly and the amount paid in excess shall be returned.

6.1.3 The Incentive Amount does not include any taxes and/or duties.

6.1.4 Exclusions

The Incentive Amount cannot be used to:

- cover entrepreneurs (applicants/founders) own wages;
- pay for office rental costs or Incubator's service fees;
- pay for return on capital, interests, losses, debts or similar.

6.2 Payment Terms

(a) Payments shall be made within thirty (30) calendar days of receipt by the Incubator of the documents listed and fulfilment of the requirements as specified in the Payment Plan in Article 6.3 below.

(b) Progress payments shall not be considered as final payments. Progress payments will be deducted from the total price under this Contract.

(c) The Incubatee shall use the Incentive Scheme only for the purposes specified in this Contract, unless a deviation has been specifically and formally agreed with the Incubator. In the event of any violation of this provision the Incubator reserves the right to require the return of the progress payments without prejudice to its rights under Article 16.

6.3 Requirements for invoices being regarded as due:

Progress Payment

The Incubatee is allowed to claim the Progress Payment after provision of documentation evidencing the actual achievement of the milestone(s) as defined in the Payment Plan specified hereunder.

Final Settlement

(a) The Incubatee is allowed to claim the Final Settlement after fulfilment of all its obligations due under this Contract.

(b) The Final Settlement to the Incubatee is due upon:

1. receipt and acceptance by the Incubator of the Cost Report; and
2. confirmation by the Incubator of the satisfactory completion of the Activity and acceptance by the Incubator of all related deliverables due under the Contract.

6.4 The Incubator shall make the following payments:

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT IN EURO
PROGRESS I:	…….	Max 20,000 EUR

Upon successful 1st Progress Meeting, submission of all applicable deliverables and Incubatee's registration in relevant ESA systems.		(15,000 euros covered by ESA funds and up to 5,000 euros covered by the Local Partner)
PROGRESS II: Upon successful Mid Term Review and acceptance by the Incubator of the MTR report and all related deliverables.	…….	MAX 20,000 EUR (5,000 euros covered by ESA funds and up to 15,000 euros covered by the Local Partner)
FINAL SETTLEMENT: Upon successful Final Review, acceptance by the Incubator of all deliverables due under the Contract and fulfilment of all contractual obligations by the Incubatee under the Contract.	…….	MAX 20,000 EUR (10,000 euros covered by ESA funds and up to 10,000 euros covered by the Local Partner)
TOTAL		**Maximum 60,000 EUR**

6.5 Payment implementation conditions

6.5.1 The payments shall be made by the Incubator in EURO to the following bank account of the Incubatee: ……., or to such other bank account as may be specified by the Incubatee at a later date. Such information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). Payments shall be considered as effected by the Incubator on time if the Incubator's orders of payment reach its bank within the payment period stipulated in Article 6.2.a) above.

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

ARTICLE 7 – DE MINIMIS AID

Any aid granted to the Incubatee that originates from Regione Piemonte and that is provided under this contract to the Incubatee by I3P falls under the terms of the Commission Regulation (EU) No 651/2014 of 17 June 2014 (Article 22) as amended.

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 of the Party with a copy to the other one.

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

(a) For technical and administrative matters:

Mr. Leo Italiano
Corso Castelfidardo 30/a 10129 Torino
Tel.: +39 0110905146
Email: l.italiano@esabic-turin.it

(b) For contractual matters:

Mrs. Paola Mogliotti
Corso Castelfidardo 30/a 10129 Torino
Tel.: +39 0110905162
Email: mogliotti@i3p.it

(c) For the Incubator's technical support matters (Article 3 above):

Mr. Leo Italiano
Corso Castelfidardo 30/a 10129 Torino
Tel.: +39 0110905146
Email: l.italiano@esabic-turin.it

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

(a) For technical matters:

Mr/Mr……..

Address: ……
……
……

Tel.: +……
Email: ……

(b) For contractual and administrative matters:

Mr/Mr……..

Address: ……
……
……

Tel.: +……
Email: ……

ARTICLE 9 - PUBLICITY AND VISUAL IDENTITY OF INCUBATEES

9.1 Publicity

9.1.1 The Incubatee may produce and/or disseminate communication materials, 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 the Incubator, ESA, ESA BIC Turin or any aspect of ESA BIC Turin activities, or permit any Third Party to do so, with a prior written consent of the Incubator.

9.1.2 The Incubator may produce and/or disseminate communication materials, press releases or other publicity documents which are intended by ESA BIC Turin 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, with a prior written consent of the Incubatee's contractual representative or its duly authorised representative.

9.2 Visual Identity of the Incubatee

9.2.1 The Incubatee should place the ESA BIC location logo and if so desired the following text line, in full and without amendment (hereinafter referred to as the "**Text Line**"), on its promotional materials and publicity documents, including exhibition and conference materials and its internet site. The logo shall be linked to [indicate the website of ESA BIC country/location] and it shall be clearly stated that the Incubatee is incubated under an ESA BIC programme.

"[name of the Incubatee] is participating in the ESA Business Incubation Centre Turin]" is referred to as the Text Line to be used in connection with the ESA BIC location logo.

Use of the ESA BIC location logo and Text Line by the Incubatee shall also be subject to the following additional conditions:

(a) the Incubatee shall submit to the Incubator for prior written approval all promotional materials 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 discretion of the Incubator, the approval should not be unreasonably denied;

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

(c) any use of the ESA BIC location 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 Incubator; and

(e) no use of the ESA BIC location 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, ESA BICs or ESA BIC Turin, I3P Spca; and
   c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

9.2.2 The Incubatee shall keep appropriate records of the extent of its use of the ESA BIC location logo and Text Line, stating in particular the nature of use of the ESA BIC location logo and Text Line on its material, products and documentation. The Incubatee shall provide the Incubator with information and documents to evidence such use.

9.2.3 The use by the Incubatee of the ESA BIC location logo and Text Line shall terminate upon the termination or expiry of this Contract as described in Article 16, unless otherwise specified in writing by the Incubator and the Agency and according to the provisions contained in this Contract.

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

9.2.5 Alumni should use the following Text Line, together with the ESA BIC location logo.

Possible uses include their marketing materials, exhibition and conference materials (including their internet site), as long as the logo is linked to www.esabic-turin.it.
Alumni identify themselves as "Alumnus" under ESA BIC program.
The Agency may withdraw the right to use the Text Line at any time for any justified reason.

"[name of the Incubatee] is an Alumnus of ESA Business Incubation Centre Turin.)" is referred to as the Alumni Text Line together with the ESA BIC location Logo.

9.2.6 Alumni using the Alumni Text Line have the obligation to report its use on a yearly basis to the Incubator.

ARTICLE 10 – GENERAL CONDITIONS OF EXECUTION

The Incubatee shall, in accordance with the Agency's Policy on the Prevention, Detection and Investigation of Fraud, to the extent allowed by applicable national law, cooperate with the Agency's investigation team in any investigation of fraud initiated by the Agency and inform its personnel of their obligation to cooperate accordingly.

The Agency's Policy on the Prevention, Detection and Investigation of Fraud is available at: https://esastar-publication.sso.esa.int/supportingDocumentation

The Contractor is required to adhere at all times to the Open Call requirements as outlined in its Application submitted to ESA BIC [country/location], referenced in Article 1.2 above.

ARTICLE 11 - CONFIDENTIALITY

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

11.2 Neither Party shall disclose any documentation, information or materials obtained from the other Party, whether marked or un-marked ("Proprietary 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 the present Article, documentation shall include any final documentation deliverable under this Contract with the exception of the Executive Summary.

11.3 Each Party may disclose Proprietary Information on a strictly "need to know" basis to:
- its employees;
- its professional agents;
- ESA BIC Turin partners
as long as they have signed an engagement of confidentiality.

11.4 The Incubatee agrees that the Agency may use, copy or disseminate general information related to the Incubatee's company (e.g. name, address, etc.) and its Activity for the Agency's Own Requirements, unless such information is marked as "Proprietary Information", in which case the provisions under Article 11.2 shall apply,

11.5 On the Contract End Date, or upon an earlier termination of this Contract in accordance with Article 16, the Receiving Party shall promptly return to the Disclosing Party or otherwise certify the destruction of all Proprietary Information, with exception of the Deliverables provided by the Incubatee to the Incubator.

11.6 The obligations in this Article shall not apply to Proprietary 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 Proprietary Information directly or indirectly from the Disclosing Party when under a duty of confidentiality;
- which, at the time of circulation is already known by the Receiving Party (as evidence in writing) and is not hindered by any obligation not to circulate; or
- which is required to be circulated by governmental or judicial order or applicable law.

11.7 The contents of this Contract are Proprietary Information.

11.8 The obligations set out in this Article shall survive the termination or expiry of this Contract.

ARTICLE 12 – INTELLECTUAL PROPERTY

12.1 **Ownership of Intellectual Property Rights**

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

12.2 **Use of Intellectual Property Rights by the Agency**

12.2.1 The Agency has the right to use non-Proprietary Information included in the deliverables under the Contract, for communication, dissemination and publicity purposes, on a royalty-free, non-exclusive and irrevocable licence under the following conditions:

12.2.1.1 the use is strictly for the Agency's Own Requirements, in particular making the Incubatee's deliverables containing the non-Proprietary Intellectual Property Rights available to employees and/or contractors working at the Agency, copying or reproducing them in whole or in part, in unlimited numbers,

12.2.1.2 for public dissemination, in particular, publication as hard copies and in electronic or digital format, publication on the internet including social networks, public display or presentation, communicating through press information services, or inclusion in widely accessible databases.

To this extent, the Incubatee shall identify which deliverables or part thereof contain Proprietary Information, on which the Agency shall not have any licence right.

12.2.2 The Agency has the right to sub-license to Third Parties its access and use rights to the Incubatee's non-Proprietary Intellectual Property Rights developed under the Contract as set out in Article 12.2.1 only for the information, communication and publicity activity of the Agency, if needed.

12.3 The Incubatee must ensure that it complies with its obligations under this Contract, in particular by obtaining the necessary licences and authorisations from Third Party(ies) rights, if results of the Activity are subject to any Third Party(ies) rights.

12.4 When transferring any Intellectual Property Rights, of which the Incubatee retains the ownership in accordance with Article 12.1, to an assignee, the Incubatee shall ensure that the Agency's rights, as set out in Article 12.2 of this Contract, are reassigned to the new assignee.

12.5 Transfer of Intellectual Property Rights outside the ESA Member States

The Incubatee shall inform the technical representative of the Incubator well in advance of its intention to transfer outside the Agency's Member States any Intellectual Property Rights arising from this Contract.

ARTICLE 13 – LIABILITY

13.1 Limitations of Liability

13.1.1 Neither Party can exclude/limit its liability to the other Party for:

(a) death or personal injury caused by negligence or careless conduct by a Party

or those of its employees or agents;
(b) fraud, including fraudulent misrepresentations; and
(c) liability as provided for under Articles 11 and/or 12 of this Contract.

13.1.2 Except for Article 13.1.1, the liability of the Parties under or in connection with this Contract, whether arising from negligence, breach of the Contract or any other obligation or duty, shall in no case exceed an amount equal to the total price of the Activity set forth in this Contract[1], per event or series of connected events.

13.2 Infringements of the Law

13.2.1 The Incubator or the Agency shall not be responsible if the Incubatee infringes any existing and/or future national, communal or provincial laws or decrees, rules or regulations in force in Italy or in any other country whatsoever.

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

13.3 Infringement of the Rights of Third Parties

13.3.1 The Incubatee shall indemnify the Incubator's Partners from and against all claims, proceedings, damages, costs and expenses arising from the infringement of Intellectual Property Rights of Third Parties with respect to the Activity performed under this Contract - excluding any infringement resulting from the use of documents, patterns, drawings or goods supplied by the Incubator's Partners through the Incubator - which may be made, or brought against the Incubator's Partners, or to which the Incubator's Partners may be put by reason of such infringement or alleged infringement.

13.3.2 The Incubator shall notify the Incubatee immediately of any written claim or notice of infringement of Third Party(ies)'s rights that it receives concerning this Contract.

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

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

13.4 Compensation for Damage Caused to Goods and Property

Claims shall be settled as follows.

[1] incl. all CCNs (if applicable)

13.4.1 Claims for Direct Damages

(a) The Incubatee shall indemnify the Incubator and Incubator's Partners against, and shall be liable for, direct damage to property and equipment to the extent that such damage is caused by the negligence of the Incubatee and of its employees or agents;

(b) The Incubator and the Incubator's Partners shall indemnify the Incubatee against, and shall be liable for, direct damage to the Incubatee's property and equipment to the extent that such damage is caused by the negligence of the Incubator, the Incubator's Partners or of their employees (staff) or agents.

13.4.2 Claims for Indirect or Consequential Damages

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

(b) The Parties shall in no circumstances be liable for loss of profit, whether direct or indirect.

13.5 Damages to Third Parties caused by the Incubatee

The Incubator shall in no circumstances be liable for any damage caused by the employees or agents of the Incubatee to a Third Party during the performance of the Activity under this Contract.

ARTICLE 14 – CHANGES TO THIS CONTRACT

14.1 Introduction of a Change

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

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

14.2 Approval or Rejection of the CCN Proposal

14.2.1 Should the CCN proposal be approved by the Incubator, a corresponding CCN shall be prepared by the Incubator's representative for contractual matters identified in Article 8.3 b), and shall be submitted to both Parties for signature.

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

14.3 Implementation and Status of an approved CCN

Upon signature of the CCN by both Parties, the CCN will have immediate effect and will constitute a binding contractual agreement between the Parties. The CCN will serve as an applicable document to this Contract.

ARTICLE 15 – POST INCUBATION REPORTING

On each anniversary of the end of the Contract Term, during 5 years, subject to losing the right to use the ESA BIC logo or Text Line if non-compliant, the Incubatee shall prepare and submit an Annual Performance Report to the representative for technical matters of the Incubator, as specified in Article 8.3a), as well as to the Agency following the provisions of Appendix 1, section 4.1.5.

ARTICLE 16 – TERMINATION

16.1 Right of Termination

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

16.1.2 In the event of such termination, the Incubatee shall keep the amounts already paid for the milestones achieved, if any, and shall be entitled to claim costs, properly evidenced and submitted by the Incubatee and accepted by the Incubator.

16.1.3 The Incubator shall in no circumstances be liable to pay any sum which deviates from the provisions set out in Article 6, and when added to the sums already paid, due or becoming due to the Incubatee under this Contract by the Incubator, exceeds the total price for the Activity set forth in this Contract[2].

16.1.4. In case of termination of the Contract, the provisions under Article 13 of this Contract shall not be affected.

16.1.5 Termination in special cases

The Incubator may at any time terminate the Contract by giving written notice with immediate effect in any of the following events:

[2] incl. all CCNs (if applicable)

a) if the Incubatee becomes insolvent or if its financial position is such that within the framework of its national law, legal action leading towards bankruptcy may be taken against it by its 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 the Incubator or acting on its behalf, irrespective of whether such bribes or remuneration are made on the initiative of the Incubatee or otherwise.

16.1.6 In case of Force Majeure and if the Force Majeure event and its consequences continue for more than two (2) months from the start date of the Force Majeure event, either Party may terminate the Contract by giving not less than one (1) month notice to the other Party.

16.1.7 In case of termination due to Force Majeure the amount to be paid shall be calculated as per Articles 16.1.2 and 16.1.3. No other payments or indemnities shall be due by the Incubator to the Incubatee.

16.2 Consequences of Termination

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

(a) any information and documentation under Article 2.1;
(b) any equipment under Article 3.4;
(c) any software under Article 2.2.1 and 3.5;
(d) any hardware under Article 2.2.2.

The Incubatee shall deliver to the Incubator all documentation that was to be delivered for the Final Settlement in case the Incubatee had completed the Activity in full (see Article 6.3).

The Incubatee agrees to reimburse to the Incubator any amount that would not have been found acceptable for the Final Settlement should the Contract have not been terminated before its envisaged Contract End Date.

ARTICLE 17 - ASSIGNATION OF THIS CONTRACT

The Incubatee shall not assign its rights and/or transfer its obligations under this Contract in whole or in part to a Third Party (“assignee”).

ARTICLE 18 - APPLICABLE LAW DISPUTE SETTLEMENT

18.1 This Contract shall be governed by the laws of Italy.

18.2 The Parties will consult with each other promptly when events occur or matters arise that may occasion a question of interpretation or implementation of the terms of this Contract.

The Parties shall use their best efforts to settle any dispute arising out of the Contract amicably.

Any issue of interpretation or implementation of this Contract that cannot be settled by the Parties' Representatives indicated in Article 8.3 shall be referred to arbitration.

18.3 Any dispute arising out of the interpretation or implementation of this Contract that cannot be settled as described in Article 18.2 above, at the request of either Party, shall be submitted to arbitration according to the Rules of Arbitration of the International Chamber of Commerce. The Arbitration Tribunal shall sit in Turin and the arbitration proceedings shall be conducted in English, unless otherwise explicitly agreed between the Parties. The enforcement of the award shall be governed by the rules of procedure in force in Italy.

ARTICLE 19 - DATA PROTECTION

To the extent that is reasonably necessary, in connection with the Incubatee's Activity under this Contract, and for legitimate purposes of processing only, the Incubatee as data subject's personal data may be disclosed to employees (staff) and agents of ESA BIC Turin, the relevant ESA BIC Turin partners and ESA partners, for any studies and/or reporting that may be carried out by the Agency and/or the Incubator.

The Incubatee hereby consents to the recording, processing, use and disclosure of its personal data as set out here above (including the recording, processing, use and disclosure of its personal data to the extent required by reason of the Incubatee's performance of the Activity under this Contract), including the transmission of such data between the Incubator and other ESA BICs for the fulfilment of the above requirements.

ARTICLE 20 – EXECUTION OF THE CONTRACT

[OPTION 1 or 2 below to be selected by the Incubatee.
N.B. Electronic signature encompasses both simple electronic signature (handwritten scanned) and the use of e-signing digital tools.]

[OPTION 1: electronic signature using digital signatures only, both Parties to sign using e-signing digital tools.]
The Parties agree that digital signature of this Contract shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Contract.
[END OPTION 1]

[OPTION 2: electronic signature. Each of the Parties can use either e-signing digital tools or simple electronic signature (handwritten scanned).]
The Parties agree that electronic signature of this Contract shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Contract.

[END OPTION 2]

In witness whereof, the Parties hereto have executed this Contract, with effect as of the signature of the Contract.

Electronically/Digitally signed by the Parties to this Contract,

In:…….	In:…….
Date: …….	Date: …….
For ESA BIC [country/location]:	For [Incubatee]:
…… Mr/Ms [name] [Title]	…… Mr/Ms [name] [Title]

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 the Incubator in regard to the ESA BIC Turin.

1. MANAGEMENT

1.1 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.

1.2 Communications

All communications sent by the Incubatee to the Incubator shall be addressed to the representatives of the Incubator nominated in Article 8.3 of this Contract.

2. REPORTING

2.1 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 the representatives of the Incubator, not later than ten (10) days after the meeting concerned was held.

2.2 Progress Reports

Every three (3) months, the Incubatee shall provide a progress report to the representatives of the Incubator, 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.

2.3 Problem Notification

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

3. MEETINGS

3.1 Kick-off Meeting

The kick-off meeting shall take place at premises of the Incubator or by teleconference at the beginning of the Contract Term.

3.2 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 validate its feasibility.

3.3 Final Review Meeting

At the end of the Incubation, a Final Review shall be held. The Incubatee shall provide a Final Report, an Executive Summary, a Business Plan, and perform a demonstration of the service/product developed.

3.4 Additional Meetings

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

3.5 Notice and Agenda for Meetings

For all meetings the Incubatee shall ensure that proper notice to the Incubator is given at least two (2) weeks in advance. 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.

4. DELIVERABLES

4.1 Documentation to be delivered

In addition to the documents to be delivered according to section 2 above, the documentation specified in this section shall also be a deliverable and shall be delivered as follows:

- in electronic form on computer readable media (e.g. PDF-format,) as agreed by the Incubator,
- and in other exchange formats where relevant (e.g. HTML).

4.1.1 Mid Term Report

The Mid Term Report shall describe in detail the status of the technical and commercial progress in relation to the Activity. An analysis of the feasibility of the Activity shall also be presented. The report shall follow the template for the Mid Term Report provided by the Incubator.

4.1.2 Final Report

The Final Report 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. 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 the Incubator and/or any other support entity, including Incubator's Partners;
c) contacts established;
d) description of technical developments, including photographs of hardware under development and test (when applicable);
e) financial details;
f) licences granted, patent filings and applications;
g) deliverables to the ESA BIC.

The report shall follow the template for the Final Report provided by the Incubator.

4.1.3 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 proprietary information.

The Executive Summary shall not exceed three (3) pages of text with coloured illustrations or photographs, if appropriate. It shall also be delivered to the Incubator by the Incubatee in HTML format.

4.1.4 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. 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.

The Business Plan shall follow the template provided by the Incubator.

4.1.5 Annual Performance Report

The Annual Performance Report shall follow the template provided by the Incubator and shall describe, among others, the sales made and/or licences granted by the Incubatee during the preceding twelve (12) months. The Incubatee shall submit the Report to the Incubator and to the Agency via esabic@esa.int e-mail address, in electronic form on each anniversary of the end of the Contract Term, during 5 years.

The Annual Performance Report for a specific year may be replaced by a similar survey conducted by either the Incubator or the Agency, when this takes place in a similar time frame.

4.1.6 Photographic, Video Documentation

Photographic and video documentation shall document (as relevant)

- progress of hardware manufacture
- test set-ups and tests carried out
- use of the product/service
- organised events where the Incubatee has been showcasing the product/service.

They shall be suitable for dissemination and publicity purposes.
Photographic and video documentation shall not contain any proprietary information.

APPENDIX 2 – RENTAL/SERVICE AGREEMENT

(if applicable)