

## Call for Proposals for ESA/ESTEC establishment

Responsible Contracts Officer: Mr. J. Delgado Meana (RES-PTE)

**SUBJECT:** Permanent Open Call for Proposals for ESA Business Incubation, ESTEC establishment

**REF:** RES-PTE/FM/al/383.2009

Dear Madam, Dear Sir,

As part of its endeavour to encourage the transfer and commercialisation of space technologies, the European Space Agency<sup>1</sup> (the Agency) has set up business incubators located in its ESTEC (Noordwijk, the Netherlands), ESOC (Darmstadt, Germany) and ESRIN (Frascati, Italy) establishments. Their purpose is to enable entrepreneurs (incubatees) to receive comprehensive commercial and technical assistance in order to set up their business using space technology for general non-space industrial, scientific and commercial uses.

The Agency hereby invites you to submit a proposal for the above subject.

Please find attached hereto the following documents:

Appendix 1: Call for Proposals

- Section 1: Instruction for Business & Activity Proposals
- Section 2: Formal requirements, selection process and evaluation criteria
- Section 3: Draft Contracts

Appendix 2: Proposal Template

Your attention is drawn to the following:

Nature and purpose of this Call for Proposals:

1. The purpose of this Call for Proposals (Call) is to select projects and ideas for business incubation in the Agency's ESTEC Business Incubator.
2. The Agency offers to support projects and ideas for business incubation by providing funding, technical assistance and/or office accommodation. The modalities and the extent of the support provided are negotiated on a case-to-case basis. As a general rule the financial support granted to one project will not exceed EUR 50.000.

---

<sup>1</sup> The European Space Agency is an intergovernmental organisation constituted of the following Member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

## Call for Proposals for ESA/ESTEC establishment

3. This Call is of a permanent nature meaning that it has no closing date for the submission of proposals as long as the Agency has not indicated otherwise.
4. Applications are only considered from nationals of one of the Agency's Member States (see note 1) and Canada.
5. Start-up companies with or without legal personality as well as individuals may apply for this call.
6. In case of start-up companies with legal personality, the company – represented by its authorised representative(s) – is considered to be the Applicant.
7. In case of legal entities without legal personality, the general partner is considered to be the Applicant
8. In case the Applicant is a natural person, (s)he is considered to be over eighteen years of age and of sound mind, and therefore able to enter into a binding agreement.
9. All the above categories are hereinafter referred to as 'Applicant'.
10. This Call is not aimed at particular non-space sectors or domains but explicitly excludes activities promoting, or being related to, alcohol, tobacco, religion, politics, intolerance, violence, firearms, pornography, obscenity, gambling or illegal drugs.

### Requirements

11. Applicants are required to closely follow the instructions provided in this Call when producing and submitting their proposal (see Section 1 of Appendix 1).
12. Only those Applicants that fulfil all formal requirements (see Section 2 of Appendix 1) will be accepted for evaluation.
13. Applicants should carefully read the contractual documentation provided in Section 3 of Appendix 1. The application shall include a clear, explicit and unambiguous statement whereby the Applicant has read and understood the terms and conditions contained in the contractual documentation and accepts them. In case, exceptionally, that the Applicant wishes to propose modifications or amendments, the full text of such modifications or amendments shall be given and the reasons for their being requested be clearly explained.

### Procedure and planning

14. The evaluation of all proposals received shall take place in accordance with the Agency's rules and procedures (see Section 2 of Appendix 1). All Applicants will be informed of the outcome of their application.
15. The evaluation procedure is carried out in two phases. The first phase is managed locally by the establishment chosen by the Applicant. The second

## Call for Proposals for ESA/ESTEC establishment

phase is managed ESA-wide and handled by the ESA Evaluation Board, which is composed of members of all ESA establishments having business incubation activities.

16. The ESA Evaluation Board meets quarterly to evaluate the proposals received in the preceding three months. Proposals will be accepted for the current evaluation round in case they reach the Agency at least 15 working days before the ESA Evaluation Board meeting, the date of which is published on [www.esa.int/ttp](http://www.esa.int/ttp)
17. The period between receipt of a proposal and contract placement is in principle no longer than 6 months. *[This delay is shorter in the specific case of pre-incubation at ESRIN where it should in principle not exceed two months (see below)]*

### Miscellaneous

18. The contents of Applicant proposals shall be treated as confidential.
19. In spite of the efforts undertaken by the Agency to ensure full confidentiality, the Applicant's idea may through the application with the Agency (if not specifically protected like for example by patent rights) fall into the public domain. Therefore we strongly recommend that the Applicant discusses the protection of his/her idea with a dedicated expert in this field prior to application with the Agency.
20. As far as allowed by law, any title held by the Applicant to his/her idea shall remain vested in him/her. This application shall under no circumstances result in the acquisition of any title whatsoever to the idea.
21. No expenses incurred in either stage of the application procedure will be reimbursed to the Applicant by the Agency and/or any third party.
22. In no event shall this Call for Proposals be construed as imposing any obligation whatsoever upon the Agency to enter into negotiations with any Applicant or to enter into any other specific arrangement for business incubation in any of the Agency's establishments.
23. The Agency is committed to ensuring equal opportunities and the elimination of discrimination of any type for all applications complying with the conditions and requirements set forth in this Call.

Any queries relevant to the submissions of proposals are to be addressed, in writing, to: [ttp@esa.int](mailto:ttp@esa.int)

Call for Proposals for ESA/ESTEC establishment

Your complete proposal and all supporting documents is to be submitted, in electronic form (.pdf and .doc) to the following email address: [ttp@esa.int](mailto:ttp@esa.int)  
In parallel, a signed paper original is to be sent to the attention of:

Mr. J. Delgado Meana (RES-PTE)  
ESTEC  
P.O. Box 299  
2200 AG Noordwijk  
The Netherlands

Yours faithfully,

F. Mazzaglia  
Head of Electrical and System Engineering Procurement Service (RES-PTE)  
Technology and Procurement Division  
European Space Agency

## **Appendix 1: Call for proposals (for business incubation)**

<b>Section I. Instructions for Business &amp; Activity Proposals .....</b>	<b>5</b>
A. Length of proposal .....	5
B. Content of proposal.....	5
1. Cover Letter .....	5
2. Requirements Checklist .....	6
3. Executive Summary .....	6
4. Business & Activity Proposal .....	6
5. Additional Information .....	10
<b>Section II. Formal Requirements, Evaluation Process and Criteria .....</b>	<b>11</b>
A. Formal requirements .....	11
B. Evaluation process .....	12
C. Evaluation criteria.....	13
<b>Section III. Draft contracts .....</b>	<b>14</b>

### **Section I. Instructions for Business & Activity Proposals**

Section I of this Call for Business & Activity Proposals is meant to inform applicants of the required length and content of their Business & Activity Proposal (proposal). Any relevant information in addition to the required information is welcomed.

#### ***A. Length of proposal***

The proposal shall not contain more than 25 pages, annexes excluded.  
The Executive Summary shall be maximum one page.

#### ***B. Content of proposal***

The proposal shall contain the following information:

##### **1. Cover Letter**

The Applicant is asked to introduce the application with a cover letter (following the template attached in Appendix 2 point 1). The cover letter must clearly state that the draft contract conditions are read, understood and accepted.

It shall also provide the name, address, fax- and telephone number of the Applicant whom all communications relating to the call for proposal shall be addressed to, as well as the names, fax- and telephone numbers of the persons who will be responsible for the day-to-day management of any resulting contract and the legal representative signing the contract.

## **2. Requirements Checklist**

The Applicant is specifically asked to fill in, sign, date and attach the Requirements Checklist (including the Declaration of State Aid and Chamber of Commerce Registration Form) after the cover letter as attached in Appendix 2 point 2.

The Applicant is welcomed to provide his comments on any aspect of the Requirements Checklist.

## **3. Executive Summary**

The Applicant is asked to produce an executive summary as attached in Appendix 2 point 3. The executive summary shall cover the following aspects, in maximum one page:

### *Business idea*

*Describe your business idea in brief, including the relationship to a space technology and/or space system.*

### *Implementation*

*Describe how you are planning on implementing your business idea.*

### *ESA investment opportunity*

*State the funding or/and the technical support requested from ESA. Describe how ESA's resources, funding and incubation can benefit your business idea and business development. Explain why ESA shall invest in your business in terms of resources, funding and incubation.*

### *Goals*

*Outline your short-term goals, meaning what your company wants to achieve during the incubation period. Outline your long-term goals, meaning where your company aims to be in 5-10 years.*

## **4. Business & Activity Proposal**

The Applicant is asked to produce a Business & Activity Proposal as attached in Appendix 2 point 4.

### *Presentation of the Applicant*

This part of the proposal shall give a presentation of the Applicant, covering the following aspects:

## Call for Proposals for ESA/ESTEC establishment

### Background and history of company

*Describe the background of the company, including official name, contact details, age of company, ownership details, company capital, grants already received and industrial organization. Provide an overview of milestones already reached.*

### Introduction of the entrepreneur

*Describe the entrepreneur/inventor by providing the background and CV, as well as his/her role in the company or current involvement with the company. Has the entrepreneur/inventor committed personal time and investments to the company?*

### Introduction of the management team

*Describe the management team by providing the background, references and CVs of the involved persons, as well as their role in the company. Have members of the management team committed personal time and investments to the company?*

### Support entities

*List other supporting entities and what type of support they provide, if any (in kind, in cash, etc).*

### Vision

*Describe the future of the company. Where do you expect to be in 5-10 years?*

### Description of business idea

This part of the proposal shall give a presentation of your business idea, covering the following aspects:

#### Business idea

*Describe your business idea, including the stage of implementation.*

#### Core related customer needs

*Identify the customer needs which your business idea will address, if any.*

#### Identified market

*Describe how your business idea will meet the customer needs.*

#### Unique selling proposition

*Describe the specific benefit your business idea offers the customers.*

### Description of the product and/or service

This part of the proposal shall give a presentation of the product or service, covering the following aspects:

#### Description of product/service and use

*Describe the product/service you company provides, and the use. Include how you convert your ideas and materials/labour into goods or services.*

## Call for Proposals for ESA/ESTEC establishment

### Space relationship

*Describe the space technology (hardware, software, process, methodology or data) or space system (satellite communication, satellite navigation or earth observation) your product/service is utilizing.*

### Non-space benefit

*Describe how applications in the non-space sector benefit from the use of your product/service.*

### In-depth description of technology

*Describe the core technology of your product/service (a “technology” is not necessarily hardware/software, but can also be a means of converting ideas, materials or labour into goods or services).*

### Stage of development of the product/service

*Describe the current status of development of the product/service.*

### Research and development

*Describe the way forward by stating the needed short- and long-term developments of the product/service.*

### Intellectual property

*If relevant, explain how you secure your own IP (e.g by the means of patents, copyrights, trademarks, trade secrets, exclusive license....)*

*Explain how you use 3<sup>rd</sup> party IP, including details on rights of use and details on ownership.*

## Market Analysis

This part of the proposal shall give a presentation of the identified market, covering the following aspects:

### The market

*Describe the market in which your business will be conducted, and state if you are familiar with working in this market.*

### The market sectors

*Describe the market sectors within the market in which your business will be conducted, and state if you are familiar with working in any of these market sectors.*

### The customer

*Describe the customer your business is targeting and state if you are familiar with working with this type of customer.*

### The geographical coverage

*State the geographical area your business will cover.*

## Call for Proposals for ESA/ESTEC establishment

### Business model

This part of the proposal shall give a presentation of your business model, covering the following aspects:

#### Supply chain

*Describe where your company is placed in the supply chain.*

#### Suppliers

*List the main suppliers for your product/service (raw materials, components, services and/or data).*

#### Production

*Describe how the production will be organized. Include by whom, where and the capacity.*

#### Distribution

*Describe the distribution network.*

### Strategy

This part of the proposal shall give a presentation of the business strategy, covering the following aspects:

#### The market approach

*Describe how you will reach your customers/clients.*

#### Marketing strategy

*Describe how you will do your marketing, and who will be doing it.*

#### Sales strategy

*Describe how you will do your sales, and who will be doing it.*

#### Pricing strategy

*Describe how you will be pricing your product/service.*

### Risk analysis

*Perform a risk analysis covering competition, your competitive advantage, barriers to market entry, and third party issues – and how you will address these risks. Also visualize this in a SWOT analysis as indicated in the proposal template (see Appendix 2 point 4.7, Fig. 1: SWOT).*

### Finance

*To the extent possible, the Applicant is asked to fill in the EXCEL spreadsheets attached in the proposal template (see Appendix 2 point 4.8, table 1: Assets & Liabilities, table 2: Profit & Loss projection). The Applicant needs to double click on the spreadsheets to activate them.*

Activity proposal

This part of the proposal shall provide a plan of activities for the period of incubation in the European Space Incubator, covering the following aspects:

**Milestone planning**

*Explain what you want to do during the incubation by listing all tasks you want to start/complete. Also visualize this in the chart attached in the proposal template (see Appendix 2, point 4.9.1, Fig 2: Milestone Planning). The Applicant needs to double click on the EXCEL spreadsheet to activate it.*

**Task description and related costs**

*For each task identified in 4.9.1, fill in the task description template (see Appendix 2, point 4.9.2) indicating the related costs and technical assistance per task.*

**Funding**

*Explain how you want to finance your tasks, describe which ones you want ESA to fund, describe the expertise needed from the Agency in terms of manpower and other sources of funding (see Appendix 2, point 4.9.3, Table 3: Funding Split, Table 4: ESA Technical Expertise Support). The Applicant needs to double click on the EXCEL spreadsheet to activate it.*

*The Applicant should note that the Agency's financial contribution is broken down as follows (see Article 7 of the Draft Incubation Contract):*

- (a) [yyyy] Euro covering work directly relevant to the Business Plan; and
- (b) [zzzz] Euro covering Third Party Services.

**Technical Support**

*Indicate the number of hours of technical support.*

**Management**

*Explain how you will organize your management, reporting, meetings and deliverables during the incubation (see draft contract in Appendix 1 section 3).*

**5. Additional Information**

Any additional information relevant to the application (such as CVs, References, Publications, Letter of Support, Patents filed, etc.) may be included in this section of the proposal.

## **Section II. Formal Requirements, Evaluation Process and Criteria**

Section II of this Call is meant to inform Applicants of the selection process and criteria.

### ***A. Formal requirements***

In order for the Applicant's proposal to be accepted by the Agency for evaluation, the requirements listed below need to be fulfilled. The ESA general application requirements are applicable to all Applicants. The specific requirements are only applicable for application for incubation in the business incubator of the Agency's ESTEC establishment in Noordwijk, the Netherlands.

### **ESA General Application Requirements**

- The Applicant's product or service is based on a transfer of space technology to, and/or utilisation of a space system in a non-space environment.
- The Applicant shall sell and deliver innovative products, processes or services (advice is excluded) for his own account and risk.
- The Applicant's first registration at a chamber of commerce shall have taken place no longer than 5 years prior to submission of Applicant's proposal to the Agency.
- In case the Applicant has legal personality, the Applicant shall not form part of a group at the time of submission of the Applicant's proposal to the Agency. This means that no less than half the issued capital or voting rights shall be owned – directly or indirectly – by the authorised representatives applying on behalf of the Applicant. In case the Applicant is a legal entity without legal personality, the Applicant shall be a fully authorised general partner.
- By completing the State Aid Declaration Form the Applicant declares all state aid received during the three years prior to the first submission of the Applicant's proposal to the Agency. The Applicant shall furthermore inform the Agency of any state aid received during the execution of the incubation contract.
- The Applicant shall not conduct business activities promoting, or being related to, alcohol, tobacco, religion, politics, intolerance, violence, firearms, pornography, obscenity, gambling or illegal drugs.
- Certain industrial sectors are excluded: the transport sector, the production, processing and trading of agriculture, fishery and aquaculture products, and the export sector. Therefore the applicant shall not conduct any direct activities within the abovementioned sectors. Also, the applicant shall not receive aid towards expenditure in connection with agriculture or fisheries.

## Call for Proposals for ESA/ESTEC establishment

However, applicants who are not within these sectors but aiming at commercialising products or services amongst other activities to these sectors may still apply for the scheme.

- The Applicant shall be able to communicate in the English language.

### **Application Requirements Specific to ESTEC**

- The Applicant states that the terms and conditions of the draft incubation contract and the draft tenancy agreement [*the latter acceptance is not required for Dutch Applicants*] are read, understood and accepted without any reservations.
- The Applicant states not to be hosted in another business incubator – or entity or organisation providing similar support, for the duration of the incubation contract.
- The Applicant shall register with a Dutch chamber of commerce prior to the start of the business incubation.

### ***B. Evaluation process***

Until further notice by the Agency, Applicants are invited to submit their proposal for ESA business incubation at all times.

Upon its receipt, the Agency and/or its local partners shall first assess the admissibility of the Applicant's proposal. The proposal is only admitted for further evaluation in case all formal requirements (See *A* above) have been met. In all other cases the proposal shall be rejected. The outcome of this first assessment shall be communicated to the Applicant.

In case the proposal is compliant with the formal requirements, the Agency and/or its local partners shall perform a first evaluation in order to shortlist Applicants for final evaluation. The outcome shall be communicated to the Applicant. Shortlisted Applicants will be invited in writing to one of the Agency's establishments for final evaluation.

Shortlisted Applicants will be requested to hold a presentation of the proposal in front of the ESA Evaluation Board and to provide answers to any further questions the Board might have.

The proposal and the presentation will be marked against the selection criteria detailed under *C* below.

The decision of the Agency regarding the application shall be notified to the Applicant in writing. This decision is without appeal, and the Agency will not enter into correspondence on the reasons for the decision.

## Call for Proposals for ESA/ESTEC establishment

Upon receiving notice that the application has been unsuccessful the Applicant may request the Agency and/or its local partners to advise him/her of the reasons why the application was unsuccessful. This outcome of the Agency's evaluation will not be construed as to prevent the Applicant from submitting a renewed application.

Upon receiving notice that the application has been successful the Applicant is requested to register his/her company at a Dutch Chamber of Commerce [*not applicable for Dutch companies*] and to register his/her company as an ESA bidder (further details will be provided in the letter). After such registration the final contract negotiation and placement will take place.

### ***C. Evaluation criteria***

The evaluation shall be based on the way the criteria below have been addressed both in the proposal and during the Applicant's presentation.

- Formal Aspects
  - o Compliance with ESA General and Specific Requirements
- Background and Experience
  - o Team composition and ownership structure
  - o Support entities and ownership structure
  - o Vision
- Business Case
  - o Business idea
  - o Market
  - o Business Model
  - o Strategy
  - o Finance
- Technology
  - o Technical Feasibility
  - o Non-space benefit
  - o Research and development strategy
  - o Intellectual Property strategy
- Activity Proposal
  - o Milestone planning
  - o Task description and related cost
  - o Funding requested
  - o Management

### Section III. Draft contracts

#### DRAFT INCUBATION CONTRACT

Between:

The EUROPEAN SPACE AGENCY,  
(hereinafter called the "Agency" or "ESA"),  
located at: 8-10 rue Mario-Nikis, F-75738 PARIS CEDEX 15, France,

Through its European Space Research and Technology Centre,  
Keplerlaan 1, 2201 AZ Noordwijk, The Netherlands,  
(hereinafter called "ESTEC"),

Represented by Mr. Jean-Jacques DORDAIN, its Director General,

of the one part,

And:

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

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

(hereinafter called the "Incubatee")

Represented by ....., (Name and function to be specified),

of the other part,

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

the following has been agreed:

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

1. WHEREAS 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 is currently implementing 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 European space incubator, which is an Agency facility located in ESTEC 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 (the “European Space Incubator”).
5. WHEREAS the European Space Incubator in ESTEC is partly funded by the Dutch Ministry of Economic Affairs through its agency SENTERNOVEM.
6. WHEREAS the Incubatee wishes to participate in the European Space Incubator and benefit from the assistance which may be offered to it through the provisions of this Contract.

*[The following to be included if the Incubatee requires office accommodation:*

7. *WHEREAS, as part of the assistance offered to the Incubatee, the Agency and the Incubatee will sign a tenancy agreement of even date with this Contract for the provision of office accommodation and related equipment and services to the Incubatee (the “Tenancy Agreement”).]*

**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 European Space Incubator, including the preparation of the Mid Term Report, the Executive Summary, the Annual Performance Report and the Business Plan and all other obligations and deliverables to be made by the Incubatee under this Contract.

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

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

“CCN” shall mean a contract change notice.

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

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

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

“Contract” shall mean an agreement between 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

“Declaration of State Aid” shall have the meaning set out in Article 8.2.

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

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

“EFIS” shall mean the ESA Financial and Invoicing System.

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

“European Space Incubator” shall have the meaning set out in the Preamble.

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

“Final Report” shall mean the complete statement of the work undertaken by the Incubatee during the Contract Term, as further defined in Appendix 1, section 5.3.

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

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

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

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

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

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

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

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

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

## 1.2 Contractual baseline

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

- 1.2.1 This Contract [*and its Appendix 2 (Software Licence)*];
- 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 Incubatee’s proposal, reference [...], not attached hereto but known to both Parties.*]

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

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

### 2.1 Documentation

#### 2.1.1 Mid Term Report

At Mid Term, the Incubatee shall provide to the Agency’s representatives, described in Article 9.3(a) and (b), a report detailing the technical and commercial work carried out by the Incubatee as part of the Activity during the first half of the Contract Term (“Mid Term Report”).

#### 2.1.2 Business Plan

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

#### 2.1.3 Final Report and Executive Summary

(a) At least two months prior to the Contract End Date, the Incubatee shall provide the Agency with draft versions of the Final Report and the Executive Summary. The Agency 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 the Agency.

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

### 2.2 Other Deliverables

#### 2.2.1 Software

(a) In the event that the Incubatee develops software during the Contract Term and as part of its Activity the Incubatee shall deliver such software to the Agency in a form to be agreed with the Agency.

(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.

#### 2.2.2 Hardware

(a) In the event that the Incubatee develops any hardware during the Contract Term and as part of its Activity, the Agency is entitled to request the Incubatee to loan the hardware to the Agency for the purposes of displaying it in an exhibition or for the Agency’s promotional purposes for

## Call for Proposals for ESA/ESTEC establishment

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 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 – AGENCY UNDERTAKINGS**

#### 3.1 Technical Support

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

*[Full details of the technical support to be provided by the Agency and the Agency's personnel and use of, for example, the Agency's laboratories]*

(altogether referred to as “Technical Support”).

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

#### 3.2 Equipment

- (a) For the purposes of this Contract the Agency 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 the Agency]*

(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 the Agency;
  - b. the Incubatee shall be responsible for the Equipment and its safekeeping and maintenance;

## Call for Proposals for ESA/ESTEC establishment

- 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 Agency, 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 Agency;
  - e. the Incubatee shall be required to keep a permanent inventory and utilisation account of the Equipment placed under the Incubatee's control by the Agency and, unless already marked by the Agency, shall mark the equipment and components in an unambiguous way as being the property of the Agency; 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)d, 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 the Agency by the Incubatee, in the same condition as it was in when the Incubatee received it from ESA 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

- (a) For the purposes of this Contract the Agency 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 the Agency in accordance with the licence set out in Appendix 2]*
- (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 is entitled to enter into separate agreements with Third Parties to obtain specific advice relevant to the Activity ("Third Party Services"), as notified in advance with the Agency. The Agency shall bear no responsibility for such advice given.

## **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 [*date to be specified*] (“Contract End Date”), unless it is cancelled or otherwise terminated in accordance with Article 16. In no case shall the Contract Term exceed the duration of 2 (two) years.

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

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

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

### 7.1 Financial Contribution

#### 7.1.1 The Agency’s total financial contribution to the Activity amounts to:

[xxx EURO] [*describe in word form*], broken down as follows:

- (a) [yyyy] EURO covering work directly relevant to the Business Plan;  
and
- (b) [zzzz] EURO covering Third Party Services.

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 the Agency.

7.1.3 The above amount does not include any taxes and duties in the Member States of the Agency.

#### ***[SUB-OPTION FOR GERMANY]***

*The price does not include any taxes and duties in the Member States of the Agency other than the German Gewerbeertragsteuer.*

7.1.4 The financial contribution is for all deliverables “delivered duty paid”, exclusive of import duties and VAT in accordance with the INCOTERMS 2000, to the addresses specified in Article 9.3(b) of this Contract.

### 7.2 Payment Terms

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

### 7.3 Categories of Payment

## Call for Proposals for ESA/ESTEC establishment

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

### 7.3.1 Advances and Progress Payments

(a) The Agency may authorise the payment of advances and / or progress payments in connection with this Contract.

(b) Advances or progress payments are not final payments and shall be deducted from the sums due to the Incubatee under this Contract.

(c) Except with the specific agreement of the Agency, the Incubatee shall not divert to uses not provided for in this Contract any material or services in respect of which advances or progress payments have been made. In the event of any violation of this provision the Agency 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 the Agency upon:

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

7.4.4 The Agency shall make the following payments:

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT IN EURO
ADVANCE: upon signature of this Contract by both Parties	TBD	TBD
PROGRESS: upon acceptance by the Agency of the Mid-Term Report	TBD	TBD
FINAL: upon acceptance by the Agency of all Deliverables [and	TBD	... or finally certified firm fixed price minus

## Call for Proposals for ESA/ESTEC establishment

<p><i>Hardware and Software</i>] under this Contract and upon acceptance by the Agency of the Incubatee's Conversion Proposal</p>		<p>(Advance + Progress) payments</p>
---	--	--------------------------------------

### 7.5 Invoices, place and payments

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

7.5.2 The Incubatee shall ensure that all invoices are submitted for payment exclusively through the Agency's EFIS system. If the Incubatee has no access to the Agency's EFIS system at the time of signature of this Contract, the Incubatee shall immediately request an EFIS user account from the Agency's Helpdesk ([idthelp@esa.int](mailto:idthelp@esa.int), specifying a name, the company name and the Agency's obligation number of this Contract).

7.5.3 However, should the Agency's EFIS System be technically unoperational with the Incubatee at the moment of submission of the invoices, the Incubatee may submit invoices in paper format in five (5) copies to ESA-ESTEC Finance, Central Invoice Registration Unit together with justifying documentation as required by this Contract.

7.5.4 The Incubatee undertakes to submit complete invoices and to adhere strictly to the instructions (including instructions for billing taxes and duties, where applicable) contained in the standard EFIS package.

*[Option 2: (VAT Exemption certificate issued)*

Invoices submitted by the Incubatee, which are free of VAT reference shall be made to the serial number indicated in the VAT Exemption Form which the Agency has provided to the Incubatee. On invoices submitted by EFIS the number shall be put in the free text field.]

*[Option 3: (Exemption under national law)*

Invoices submitted by the Incubatee, which are free of VAT due to the applicable national law, shall make reference to the relevant piece of national legislation as shown below:

- for Italy: "Law Nr. 358 of 9/6/1977 – Gazzetta Ufficiale Numero 184 of 7/7/1977
- for the Netherlands: Aanschrijving O.B.-B.T.W. 90, Staatssecretaris van Financiën, 's-Gravenhage 14 maart 1969, Boekwerk Omzetbelasting - BTW Directie Douane en verbruiksbelastingen Nr. D69/1649.]

7.5.5 Payments shall be made by the Agency in EUR to the account specified by the Incubatee. Such information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). Payments shall be considered as effected on time if the Agency's orders of

## Call for Proposals for ESA/ESTEC establishment

payment reach its bank within the payment period stipulated in Article 7.4.3 above.

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

7.5.7 Any questions concerning the operation of EFIS shall be addressed to the ESA Helpdesk ([jdhelp@esa.int](mailto:jdhelp@esa.int)).

### **ARTICLE 8 – DE MINIMIS AID**

8.1 Any aid granted to the Incubatee that originates from the Dutch Ministry of Economic Affairs' agency SENTERNOVEM and that is provided under this Contract to the Incubatee by the Agency falls under the terms of EC Regulation 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid.

8.2 The Incubatee shall notify the Dutch Ministry of Economic Affairs' agency SENTERNOVEM through the Agency in writing of how much state aid it has received during the three (3) years prior to the Commencement Date from any administrative body, insofar as no approval for such state aid was previously obtained from the Commission of the European Communities (“Declaration of State Aid”).

8.3 The Incubatee agrees to reimburse any state aid that the Incubatee has received under this Contract if it is later established that the payment was issued in violation of EC Regulation 69/2001 of 12 January 2001 on the application of Article 87 and 88 of the EC Treaty to de minimis aid.

### **ARTICLE 9 - PARTIES REPRESENTATIVES AND COMMUNICATIONS**

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

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

Call for Proposals for ESA/ESTEC establishment

9.3 For the purpose of this Contract the Agency's representatives are:

(a) For technical matters:

Mr. C.J.J. Eldering (TEC-ST)	E-mail: <a href="mailto:Niels.Eldering@esa.int">Niels.Eldering@esa.int</a>
ESTEC	Tel.: + 31 71 56 55487
P.O. Box 299, 2200 AG Noordwijk	Fax.: + 31 71 56 56635
Keplerlaan 1, 2201 AZ Noordwijk	
The Netherlands	

with copy of all communications to Mr. J. Delgado Meana (RES-PTE).

(b) For contractual and administrative matters:

Mr. J. Delgado Meana (RES-PTE)	E-mail: <a href="mailto:Javier.Delgado@esa.int">Javier.Delgado@esa.int</a>
ESTEC	Tel.: +31 71 56 53531
P.O. Box 299, 2200 AG Noordwijk	Fax.: +31 71 56 55773
Keplerlaan 1, 2201 AZ Noordwijk	
The Netherlands	

or a person duly authorised by him, with copy to Mr. C.J.J. Eldering (TEC-ST) and Mr. J. Delgado Meana (RES-PTE).

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

Mr. J. Delgado Meana (RES-PTE)	E-mail: <a href="mailto:Javier.Delgado@esa.int">Javier.Delgado@esa.int</a>
ESTEC	Tel.: +31 71 56 53531
P.O. Box 299, 2200 AG Noordwijk	Fax.: +31 71 56 55773
Keplerlaan 1, 2201 AZ Noordwijk	
The Netherlands	

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

(a) For technical matters:

[..]	E-mail :
	Tel.:
	Fax :

(b) For contractual and administrative matters:

[..]	E-mail :
	Tel.:
	Fax :

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

## 10.1 Publicity

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

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

## 10.2 Visual Identity of the Incubatee

10.2.1 The Incubatee shall not use the official emblem of the Agency or any other logo or trademark which may be owned or used by the Agency for any purpose whatsoever.

10.2.2 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:

*"[name of incubatee to be inserted] participates in the ESA space incubator initiative"*,

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 the Agency'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 the Agency's discretion;

(b) the prior approval of the Agency 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 the Agency 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;

## Call for Proposals for ESA/ESTEC establishment

- (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 Agency'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; and
  - c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

10.2.3 The Incubatee shall keep appropriate records of the extent of its use of the 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.

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

### **ARTICLE 11 - CONFIDENTIALITY**

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

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

## Call for Proposals for ESA/ESTEC establishment

- 11.3 Each Party may disclose Confidential Information on a strictly “need to know” basis to:
- its employees; and
  - its professional agents.
- 11.4 On the Contract End Date, or upon the earlier termination or cancellation of this Contract in accordance with Article 16, the Receiving Party shall promptly return to the Disclosing Party or otherwise certify the destruction of all Confidential Information, with exception of the Deliverables provided by the Incubatee to the Agency.
- 11.5 The obligations in this Article 11 shall not apply to Confidential Information:
- which is in the public domain at the time of disclosure or becomes part of the public domain after disclosure otherwise than through a breach of this Contract;
  - for which the Receiving Party can provide documentary evidence that it was in its lawful possession prior to disclosure to it by the Disclosing Party or which is lawfully and bona fide obtained thereafter by the Receiving Party from a Third Party who, to the knowledge or reasonable belief of the Receiving Party, did not receive the Confidential Information directly or indirectly from the Disclosing Party when under a duty of confidentiality;
  - which, at the time of circulation is already known by the Receiving Party (as evidence in writing) and is not hindered by any obligation not to circulate; or
  - which is required to be circulated by governmental or judicial order or applicable law.
- 11.6 The contents of this Contract are Confidential Information.
- 11.7 The obligations set out in this Article 11 shall survive the termination, cancellation or expiry of this Contract.

## **ARTICLE 12 – INTELLECTUAL PROPERTY**

- 12.1 Ownership
- 12.1.1 The Incubatee shall own all Intellectual Property Rights arising out of the Activity performed under this Contract as may be granted by law, as far as no infringement of Third Party rights occurs.
- 12.1.2 All rights pertaining to any results arising out of the Activity performed under this Contract shall belong to the Incubatee.
- 12.2 Use of Intellectual Property Rights by the Agency

12.2.1 If the Agency or its Member States require the use of any Intellectual Property Rights, owned by the Incubatee as described in Article 12.1.1, 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.

12.2.2 When transferring any Intellectual Property Rights, of which the Incubatee retains the ownership in accordance with Article 12.1.1, to an assignee the Incubatee shall ensure that the Agency's and its Member States' rights, as set out in Article 12.2.1, are reassigned to the new assignee.

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

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

## **ARTICLE 13 – LIABILITY**

### 13.1 Limitations of Liability

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

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

### 13.1.2 Limitation of Liability

Subject to Article 13.1.1, the liability of one Party towards the other under or in connection with this Contract whether arising from negligence, breach of contract or any other obligation or duty shall not exceed, an amount equivalent to EURO [*amount equal to financial contribution of this Contract*], per event or series of connected events.

### 13.2 Infringements of the Law

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

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

### 13.3 Infringement of the Rights of Third Parties

## Call for Proposals for ESA/ESTEC establishment

- 13.3.1 The Incubatee shall indemnify the Agency from and against all claims, proceedings, damages, costs and expenses arising from the infringement of Intellectual Property Rights of third-parties with respect to the subject matter of this Contract - excluding any infringement resulting from the use of documents, patterns, drawings or goods supplied by the Agency - which may be made, or brought against the Agency, or to which the Agency may be put by reason of such infringement or alleged infringement.
- 13.3.2 The Agency shall notify the Incubatee immediately of any written claim or notice of infringement of third-party rights that it receives concerning the subject matter of this Contract.
- 13.3.3 The Incubatee shall immediately take all necessary steps within the Incubatee's competence to prevent or end a dispute and shall assist the Agency to defend any such dispute, or make settlement in respect of any claim or notice of infringement or suit for infringement.
- 13.3.4 The Parties shall notify each other of any known Intellectual Property Rights connected with the use of documents, patterns, drawings and goods supplied by one Party to the other [*or connected with the execution of the specifications laid down by the other Party*].

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

Claims in respect of damage shall be settled as follows.

#### 13.4.1 Direct Damages

(a) The Incubatee shall indemnify the Agency against, and shall be personally responsible for, direct damage to 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) The Agency shall indemnify the Incubatee against, and shall be personally responsible for, direct damage to the Incubatee's property and equipment to the extent that such damage is caused by the negligence of the Agency and the Agency's staff or agents.

#### 13.4.2 Indirect or Consequential Damages

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

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

13.5 Damages to Third Parties by the Incubatee

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

**ARTICLE 14 – CHANGES TO THIS CONTRACT**

14.1 Introduction of a Change

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

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

14.2 Approval or Rejection of the Change Proposal

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

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

14.3 Implementation and Status of an Approved CCN

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

**ARTICLE 15 – POST INCUBATION MANAGEMENT**

On each anniversary of the end of the Contract Term, the Incubatee shall prepare and submit to the technical representative of the Agency, as stated in Article 9.3(a), an Annual Performance Report.

**ARTICLE 16 – TERMINATION AND CANCELLATION**

16.1 Right of Termination

## Call for Proposals for ESA/ESTEC establishment

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

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

### 16.2 Cancellation Without Fault of the Incubatee

16.2.1 In the event of cancellation of this Contract by the Agency without any fault of the Incubatee, the Incubatee shall on receipt of the Agency'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 the Agency after consultation with the Incubatee.

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

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

16.2.4 The Agency 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 the Agency, exceeds the total contractual payments due by the Agency to the Incubatee, as set out in Article 7.1.

### 16.3 Grounds for Cancellation by the Agency

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

(a) if the Incubatee assigns or transfers this Contract in breach of Article 17;

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

## Call for Proposals for ESA/ESTEC establishment

(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 Chamber of Commerce registration; and/or
- (d) the Declaration of State Aid.

### 16.4 Consequences of Cancellation

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

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

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

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

## **ARTICLE 18 - DISPUTE SETTLEMENT**

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

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

18.3 Any dispute arising out of the interpretation or implementation of this Agreement that cannot be settled through the consultations referred to in Article 18.1 above may, at the request of either Party, be submitted to arbitration according to the Rules of Arbitration of the International Chamber of Commerce. The arbitral tribunal shall sit in The Hague, The Netherlands and the language of the arbitration shall be English. The enforcement of the award shall be governed by the rules of procedure in force in The Hague, The Netherlands.

Call for Proposals for ESA/ESTEC establishment

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

on behalf of the European Space Agency in Noordwijk:

\_\_\_\_\_  
Mr.M. COURTOIS  
Director of Technical and  
Quality Management  
Date : \_\_\_\_\_

on behalf of the Incubatee in ... :

\_\_\_\_\_  
*(specify name and  
function)*  
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 the Agency in regard to the European Space Incubator.

#### **1. CONTRACTUAL BASELINE**

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

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

#### **2. MANAGEMENT**

##### **2.1 General**

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

##### **2.2 Communications**

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

#### **3. REPORTING**

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

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

## Call for Proposals for ESA/ESTEC establishment

### 3.2 Progress Reports

Every three (3) months, the Incubatee shall provide a progress report to the Agency'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 the Agency'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 the Agency'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 the Agency or the Incubatee.

### 4.4 Notice and Agenda for Meetings

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

## Call for Proposals for ESA/ESTEC establishment

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 the Agency, 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 the Agency'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 the Agency at the Mid Term Review. The Incubatee shall submit the presentation of the Mid Term Report to the Agency 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 the Agency;
- (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 of input TEC-ST 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

## Call for Proposals for ESA/ESTEC establishment

appropriate. It shall also be delivered to the Agency by the Incubatee in HTML format.

### 5.5 Business Plan

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

### 5.6 Annual Performance Report

The annual performance report shall describe the sales made and/or licences granted by the Incubatee during the preceding twelve (12) months ("Annual Performance Report"). The Incubatee shall submit this to the Agency in one (1) paper copy and in electronic form. The Incubator shall submit an Annual Performance Report to the Agency every year for a period of ten (10) years from the end of the Contract Term.

**TENANCY OF OFFICE ACCOMMODATION**

Between:

The EUROPEAN SPACE AGENCY,  
(hereinafter called “the Agency or “ESA”),  
located at:  
8-10 rue Mario-Nikis, F-75738 PARIS CEDEX 15, France,

through its European Space Research and Technology Centre,  
Keplerlaan 1, 2201 AZ NOORDWIJK, The Netherlands,

Represented by Mr. Jean-Jacques DORDAIN, its Director General,

of the one part,

And:

.....,

Registered in the Trade Register in (address): .....,  
.....,

Whose Trade Register number in The Netherlands is: .....,

(hereinafter called “the Tenant” or “the Incubatee”)

Represented by ... [*specify name and function*],

of the other part,

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

the following has been agreed:

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

1. WHEREAS the European Space 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 is currently implementing 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 European space incubator, which is an Agency facility located in ESTEC 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 (the “European Space Incubator”).
5. WHEREAS the Incubatee for the purpose of the execution of its incubation contract wishes to take up tenancy in the office facilities of the European Space Incubator in ESTEC which are offered to it through the provisions of this Contract.

## ARTICLE 1 : CONTRACTUAL BASELINE

### 1.1 Definitions

“Contract” shall mean an agreement between the Agency and the Incubatee regulating the tenancy of office facilities of the European Space Incubator in ESTEC.

“Contract Term” shall have the meaning set out in Article 4.1.

“ESTEC Badge” shall have the meaning set out in Article 5.2.2.

“European Space Incubator” shall have the meaning set out in the Preamble.

“Incubation Contract” shall mean ESTEC Contract No. ... [*specify contract number*]

“Office Accommodation” shall have the meaning set out in Appendix I.

“Personnel” shall have the meaning set out in Article 5.2.1.

“Services” shall have the meaning set out in Appendix II.

“Tenancy” shall mean the tenancy of office facilities of the European Space Incubator in ESTEC for the sole purpose of the execution of the Incubation Contract.

1.2 The Agency shall, under the conditions set forth in this Contract and for the purpose of the execution of the Incubation Contract, put at the disposal of the Tenant (a) office accommodation and equipment and (b) provide services (for instance electricity supply). In return the Tenant shall pay a rent to the Agency as specified in Article 2 and Article 3 of this Contract.

1.3 The office accommodation let under this Contract is located at:

ESA/ ESTEC  
Keplerlaan 1  
2201 AZ Noordwijk  
The Netherlands  
Mb building, room number ...

*(In case of shared office accommodation)*

*The Office Accommodation shall be a shared Office Accommodation to which the Agency reserves the right to allocate a second Tenant (Co-Tenant).*

1.4 Appendix I contains a description of the office accommodation and equipment (hereinafter jointly referred to as “Office Accommodation”) and Appendix II contains a description of the services provided under this Contract (hereinafter referred to as “Services”).

## Call for Proposals for ESA/ESTEC establishment

- 1.5 The Tenancy shall be governed in accordance with the rules and regulations applicable to the Agency, and in particular those resulting from the ESTEC Safety and Security Manual reference AOS/4167/issue 2 and its subsequent amendments or new issues not attached hereto but known to both Parties.
- 1.6 The Appendices of this Contract form an integral part hereof.

### **ARTICLE 2 : RENT**

- 2.1 The Tenant shall pay a yearly all-inclusive rent of

EURO 6.876  
(Six Thousand Eight-hundred and Seventy-six)

*(or alternatively in case of shared office accommodation)  
The Tenant shall pay a yearly all-inclusive rent of*

*EURO 4.500  
(Four-thousand Five-hundred)*

- 2.2 The rent shall include both the Office Accommodation (as specified in Appendix I to this Contract) and the Services (as specified in Appendix II to this Contract).
- 2.3 The rent indicated above does not include any taxes (for instance Value Added Tax). The Tenant shall pay the Agency, together with the rent, any taxes that may be applicable.
- 2.4 Annually, on the 1st of January the rent shall be adjusted within the limits of the maximum allowable percentage as published yearly on the 1st of July by the Dutch Ministry of Volkshuisvesting, Ruimtelijke Ordening en Milieu.

### **ARTICLE 3 : PAYMENT**

- 3.1 The Agency shall submit an invoice to the Tenant for the rent of each calendar year. In the event that this Contract enters into effect or terminates prior to the completion of a calendar year, the rent shall be adjusted accordingly.
- 3.2 The Tenant shall pay the Agency quarterly in arrears within 30 days of each calendar quarter.
- 3.3 In the event of termination of this Contract prior to the completion of a quarter, the Tenant shall adjust his final payment according to the corresponding rental period. This payment shall be made within 30 days of termination of this Contract.
- 3.4 All payments shall be made in EURO to the bank account indicated by the Agency. Any bank charges related to the payment shall be borne by the Tenant.

#### **ARTICLE 4: DURATION OF THE CONTRACT**

- 4.1 This Contract shall enter into force on the date of its signature and shall remain in force as long as the Incubation Contract remains in force (“Contract Term”).
- 4.2 In the event the Agency and the Tenant agree to extend the Incubation Contract, this Contract is automatically extended for the same period, unless otherwise agreed between the Parties.
- 4.3 In no case shall the duration of this Contract exceed 2 years.

#### **ARTICLE 5: OBLIGATIONS OF THE TENANT**

##### 5.1 GENERAL

- 5.1.1 The Tenant shall use the Office Accommodation and the Services for the sole purpose of the execution of the Incubation Contract number. Any use for other purposes is hereby expressly excluded.
- 5.1.2 Any use of ESA corporate applications by the Tenant’s personnel nominated in Article 7 (“the Personnel”) and/or the Tenant’s visitors is expressly forbidden.
- 5.1.3 The Tenant shall be responsible for the proper use of the Office Accommodation and/ or Services, and shall take any appropriate and timely steps to prevent and/ or confine any damage resulting from but not limited to electrical short circuit, fire, leakage, storm, frost or any other weather conditions, influx and escape of gases and liquids. The Tenant shall inform the Agency immediately if such damage occurs or threatens to occur.
- 5.1.4 Upon termination of this Contract the Tenant shall render the Office Accommodation to the Agency in the same conditions as those existing at the date on which the this Contract enters into effect and which are described in Appendix I, account being taken of any normal wear and tear.
- 5.1.5 The Tenant shall observe and shall be responsible for the observation by his personnel of all applicable rules and regulations and in particular of those resulting from the ESTEC Safety and Security Manual reference AOS/4167/issue 2 and its subsequent amendments or new issues, and of any applicable national, communal or provincial health and safety legislation and regulations.
- 5.1.6 The Tenant undertakes to obtain the insurances appropriate for the Tenancy.

## Call for Proposals for ESA/ESTEC establishment

### 5.2 ON SITE COMPLIANCE

- 5.2.1 The Tenant shall be responsible for the proper registration of the Personnel on the ESTEC site and for the compliance of the Personnel with all site regulations and for obtaining the necessary clearances and for supplying all relevant information to enable the Agency to identify the personnel concerned.
- 5.2.2 The Personnel shall complete the compulsory introductory course regarding on-site safety, prior to the issue of an Agency identity card (“the ESTEC Badge”). The ESTEC Badge shall be issued in accordance with the provisions herein.
- 5.2.3 While on site, the Personnel shall visibly wear the ESTEC Badge at all times. The ESTEC Badge must be immediately returned to the Agency when Personnel are replaced and upon termination of this Contract.
- 5.2.4 The ESTEC Badge does not entitle the Personnel to an ESTEC Guest Card nor to an Area 1 (family) badge.
- 5.2.5 A retention fee of EURO 200 (Two-hundred EURO) shall apply in respect of each identity card not returned in accordance with these conditions. This fee shall be added to the Tenant's last rent.
- 5.2.6 The Tenant's visitors shall follow the formal visitor procedure through the Agency's nominated Technical Representative. Visitors are not permitted to visit areas other than the Tenant's Office Accommodation and the Restaurant/Conference facilities, without the prior authorisation of the Agency's Technical Representative concerned.

### **ARTICLE 6: AGENCY UNDERTAKINGS**

- 6.1 The Agency shall put at the disposal of the Tenant Office Accommodation specified in Appendix I to this Contract.
- 6.2 The Agency shall provide to the Tenant with the Services specified in Appendix II to this Contract.
- 6.3 The Agency shall furthermore provide the Tenant with the following:
- ESTEC badge for the Tenant's nominated key personnel in accordance with Article 5.2;
  - Use of the conference facility in the Mb building (room number Mb 010) after consultation with the Agency's Technical Representative and Site Management;
  - Use of on-site facilities, such as the restaurant, coffee corner, recreational facilities;
  - Access to services provided by the travel agency and bank.

**ARTICLE 7: PARTIES REPRESENTATIVES AND COMMUNICATIONS**

- 7.1 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 or French.
- 7.2 All correspondence for either Party shall be sent to both representatives of each Party stated in Articles 7.3 and 7.4, i.e. depending on the subject, addressed to one representative with a copy to the other.
- 7.3 For the purpose of this Contract the Agency's representatives are:

(a) For day-to-day matters relating to the Tenancy:

Mr. C.J.J. Eldering (TEC-ST)	E-mail: <a href="mailto:Niels.Eldering@esa.int">Niels.Eldering@esa.int</a>
ESTEC	Tel.: + 31 71 56 55487
P.O. Box 299, 2200 AG Noordwijk	Fax.: + 31 71 56 56635
Keplerlaan 1, 2201 AZ Noordwijk	
The Netherlands	

with copy of all communications to Mr. J. Delgado Meana (RES-PTE)

(b) For contractual and administrative matters with the exception of payments:

Mr. J. Delgado Meana (RES-PTE)	E-mail: <a href="mailto:Javier.Delgado@esa.int">Javier.Delgado@esa.int</a>
ESTEC	Tel.: +31 71 56 53531
P.O. Box 299, 2200 AG Noordwijk	Fax.: +31 71 56 55773
Keplerlaan 1, 2201 AZ Noordwijk	
The Netherlands	

or a person duly authorised by him, with copy to Mr. C.J.J. Eldering (TEC-ST) and Mr. J. Delgado Meana (RES-PTE).

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

Mr. J. Delgado Meana (RES-PTE)	E-mail: <a href="mailto:Javier.Delgado@esa.int">Javier.Delgado@esa.int</a>
ESTEC	Tel.: +31 71 56 53531
P.O. Box 299, 2200 AG Noordwijk	Fax.: +31 71 56 55773
Keplerlaan 1, 2201 AZ Noordwijk	
The Netherlands	

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

(a) For day-to-day matters relating to the Tenancy:

[..] E-mail :  
Tel.:  
Fax :

(b) For contractual and administrative matters:

[..] E-mail :  
Tel.:  
Fax :

### **ARTICLE 8: DISPUTE SETTLEMENT**

- 8.1 This Contract shall be governed by the laws of the Netherlands.
- 8.2 The Parties agree to solve in an amicable way any dispute which might arise out of the interpretation or execution of this Contract. Should the Parties not find an amicable solution the issue shall be submitted to arbitration.
- 8.3 Either Party may submit the dispute to arbitration under the rules of the Netherlands Arbitration Institute. The Arbitration Tribunal shall have its seat in The Hague and the proceedings shall be conducted in the English language. The award shall be final and binding on the Parties; no appeal shall lie against it. The enforcement of the award shall be governed by the laws of the Netherlands.
- 8.4 In all cases where the Agency undertakes proceedings against the Tenant for compliance with its obligations under this Contract or vacation of the Office Accommodation, the Tenant shall be obliged to pay to the Agency all costs incurred arising in connection with the arbitration proceedings - except when there is a final award against the Agency for payment of procedural costs.

### **ARTICLE 9: TRANSFER OF CONTRACT**

The Tenant does not have the right to assign this Contract in whole or in part. This is to be understood that no subletting is allowed.

### **ARTICLE 10: ACCESS TO ESTEC SITE - TERMINATION**

#### 10.1 ACCESS TO ESTEC SITE

The Agency reserves the right to deny the Personnel access to the ESTEC site in case emergency and in case of violation by the Personnel of the rules and

## Call for Proposals for ESA/ESTEC establishment

regulations of the ESTEC Safety and Security Manual reference AOS/4167/issue 2 and its subsequent amendments or new issues.

### 10.2 TERMINATION

10.2.1 This Contract shall terminate upon completion of the Contract Term.

10.2.2 Either Party may terminate this Contract as long as a notice period of one month is respected.

10.2.3 The Agency may terminate this Contract with immediate effect and without observation of any notice period in the event that the Personnel violate the rules and regulations of the ESTEC Safety and Security Manual reference AOS/4167/issue 2 and its subsequent amendments or new issues.

10.2.3 The notice of termination shall be given by registered letter.

### **ARTICLE 11: CHANGES TO THIS CONTRACT**

For the purpose of this Contract, the provisions of Article 14 of the Incubation Contract shall apply.

### **ARTICLE 12: CONDITION, SUITABILITY AND ALTERATIONS OF THE OFFICE ACCOMMODATION**

12.1 At the date on which this Contract enters into force the Office Accommodation shall be delivered to and accepted by the Tenant in its then existing condition. This condition is described in Appendix I to this Contract.

12.2 The Tenant shall carry out a thorough inspection of the Office Accommodation put at his disposal by the Agency before the this Contract enters into force in order to confirm that the Office Accommodation is suitable for the purpose of the Incubation Contract.

12.3 In no event the Agency grants the suitability of the Office Accommodation for the use made by the Tenant.

12.4 Unless the Parties agree otherwise in writing, the Agency does not grant any consent for alterations and additions to the Office Accommodation the Tenant wishes to introduce.

### **ARTICLE 13 : LIABILITY**

13.1 Liability of the Tenant

13.1.1 The Tenant shall indemnify the Agency for any damage to the Office Accommodation and/ or the complex in which the Office Accommodation is located and/ or the Services, arising from any action, omission or negligence of the Tenant, the Tenant's staff, visitors or agents. Furthermore, the Tenant

## Call for Proposals for ESA/ESTEC establishment

shall indemnify the Agency for any damage arising from the violation by the Tenant of any obligation of this Contract or any applicable law or regulation.

### 13.2 Liability of the Agency

- 13.2.1 The Agency shall not be liable towards the Tenant for any damage incurred by the Tenant as a result of a reduction in the enjoyment of the Office Accommodation and/or Services. This includes such reduction as a result of latent defects of the Office Accommodation or complex containing the Office Accommodation or Services, weather conditions, discontinuation of access to the Office Accommodation, discontinuation of gas, water, electricity, heating, ventilation or air-conditioning supplies, failure of systems and equipment, influx and escape of gases or liquids, fire, explosion, or shortfall in the provision of Services.
- 13.2.2 The Agency shall not be liable towards the Tenant for denying the Personnel access to the ESTEC site in accordance with Article 10.1.
- 13.2.3 In the events described in 13.2.1 and 13.2.2 herein, the Tenant may not claim any indemnification nor reduce the rent, set-off or suspend any payment obligations or dissolve the tenancy.
- 13.2.4 In no event shall the Agency be liable for the Tenant's commercial losses or for losses resulting from activities of other tenants, or from restriction on the use of the Office Accommodation and/ or the Services caused by third parties.
- 13.2.5 The Tenant shall hold free the Agency from any action or claim brought by third parties, such as but not limited to other tenants, agents or visitors, on the ground of a violation by the Tenant of any of its obligations under the this Contract and/or his improper or negligent use of the Office Accommodation and/or the Services.

## **ARTICLE 14: PROHIBITIONS**

- 14.1 The Tenant is not permitted to:
- a. have any environmentally hazardous materials in, on or in the immediate vicinity of the Office Accommodation, including noxious, flammable or explosive materials, unless all necessary permissions have been obtained from the Agency;
  - b. load the floors of the Office Accommodation or the building or complex containing the Office Accommodation in excess of the technically permitted limit of 250KG/M<sup>2</sup>;
  - c. use the Office Accommodation in such a way as results in the occurrence of soil or other pollution, damage to the Office Accommodation or spoiling of the appearance of the Office Accommodation, including the use of transportation equipment which might damage walls or floors;
  - d. introduce alterations or facilities in, on or about the Office Accommodation in contravention of government or authority laws or regulations or the conditions under which the Agency accepted the

right to make the Office Accommodation available or other restricted rights, or such as might be a nuisance to other tenants or neighbours or hinder their usage rights.

- 14.2 Unless the Parties agree otherwise in writing, the Agency does not grant any consent for alterations and additions to the Office Accommodation the Tenant wishes to introduce.

#### **ARTICLE 15: MAINTENANCE, REPAIR, RENEWAL, INSPECTIONS AND TESTS**

- 15.1 The Agency shall be entitled to have access to the Office Accommodation as described in Appendix I for itself or any other third party at any time for necessary maintenance, emergencies or official purposes. If the Agency wishes to exercise this right, it shall notify the Tenant accordingly in advance and shall take the Tenant's interests into consideration when exercising this right. In cases of emergency and for authorities related to health, safety and/or security, the Agency shall be entitled to enter the Office Accommodation without notification in advance.
- 15.2 The Agency shall be permitted to carry out, or have carried out, work or inspections in, on or about the Office Accommodation or Services or the building or complex where they are located or the adjacent premises in the context of maintenance, repair and renewal. This includes the introduction of extra facilities and alterations or work required in connection with (environmental) requirements or measures imposed by the government or other competent authorities.
- 15.3 Renovation shall be deemed to include demolition, partially or wholly, replacement, additions and alterations to the Office Accommodation or the Services or the building or complex where they are located.
- 15.4 Renovation and maintenance work to the Office Accommodation and the Services or the building or complex where they are located shall not constitute a defect as far as the Tenant is concerned. Furthermore the Tenant shall permit the Agency or Agency authorized third parties to perform maintenance and renovations works to the Office Accommodation or the Services or the building or complex where they are located and provide the Agency with the opportunity to carry out such works, without any right to reduction of the price or any other payment obligation, partial or complete termination of this Contract and/or compensation.
- 15.5 In relation to those parts of the Office Accommodation or Services of which the Tenant does not enjoy exclusive rights of use, such as common spaces, lifts, escalators, stairs, stairwells, passages, access points, and/or other immovable appurtenances, the Agency shall be entitled to alter the fittings and finishing thereof and to move, replace or eliminate these parts of the Office Accommodation or Services.

Call for Proposals for ESA/ESTEC establishment

Done and signed in two original copies, one for each Party to this Contract,

on behalf of the Agency in Noordwijk, on this day,

\_\_\_\_\_  
M. Courtois  
Director of Technical and  
Quality Management  
Date: \_\_\_\_\_

on behalf of the Tenant in ..., on this day,

\_\_\_\_\_  
*(name and function to be  
specified)*  
Date: \_\_\_\_\_

### **APPENDIX I – OFFICE ACCOMMODATION**

The Office Accommodation shall be provided by the Agency to the Tenant in accordance with the “Contractor with Office” standard as modified by the provisions below.

1. The Office Accommodation includes:
  - One shared office; the minimum gross number of square meters per office is 18m<sup>2</sup>, (25,5 m<sup>2</sup> including shared facilities).
  - One table.
  - One chair.
  - One cupboard per room.
  - One telephone.
  - One-off package of Office Stationery
  
2. The Tenant has the right to use the following Mb building shared facilities:
  - Meeting Room (Mb 010);
  - Display Area;
  - Kitchen;
  - WC facilities.
  
3. Description of the condition of the Office Accommodation:
  - Walls: good / acceptable / poor
  - Floors: good / acceptable / poor
  - Ceiling: good / acceptable / poor
  - Windows/ window sills: good / acceptable / poor
  - Door: good / acceptable / poor

### **APPENDIX II – SERVICES**

The Services include:

- Broadband internet connectivity (the use of ESA corporate applications being explicitly excluded);
- Access to the public section of the library and publication system;
- Access to the public section of the ESA Technical Information and Documentation Centre;
- Shared use of a fax machine for messages within the Netherlands;
- Shared use of a printer;
- Shared use of a photocopier;
- Telephone connection for use within ESA and the Netherlands;
- Gas;
- Electricity;
- Water.