

# Incubation Contract

## **Business and Investment Development Agency CZECHINVEST**

Company registration number: 71377999

Štěpánská 15, CZ120 00 Prague, Czech Republic

legally represented by Mr Karel Kučera, General Director,

also referred to hereafter as “**Provider**”

One the one part,

and

## **NG AVIATION SE**

Company registration number 01509667

Jungmannova 36/31, Nové Město, 110 00 Praha 1

legally represented by Bc. Michal Demko

On the other part,

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

**Commencement Date:** .....

**Contract End Date:** .....

The following has been agreed:

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

1. WHEREAS the European Space Agency (the Agency) is an intergovernmental organisation established by the Convention approved by the Conference of plenipotentiaries of its Member States on 30 May 1975 and which entered into force on 30 October 1980.
2. WHEREAS Article II of the Convention assigns to the Agency the task to promote cooperation in space research and technology and their space applications and to elaborate and implement activities and programmes in the space field.
3. WHEREAS the Agency manages a technology transfer initiative to encourage the utilisation of space technology for general non-space industrial, scientific and commercial uses.

4. WHEREAS as part of the technology transfer initiative the Agency has set up the ESA Business Incubation Centre's (ESA BICs) initiative to enable start-up companies (incubatees) to receive comprehensive commercial and technical assistance in order to set up their business using space technology for such general non-space industrial, scientific and commercial uses.
5. WHEREAS the Agency has chosen CzechInvest to implement and manage the ESA BIC Prague through ESTEC contract and its applicable Work Orders.
6. WHEREAS the ESA BIC Prague is partly funded by the European Space Agency, the Capital City of Prague, and Ministry of Industry and Trade (CzechInvest).
7. WHEREAS ČVÚT, GNSS Centre of Excellence, Technology Centre CAS etc. are ESA BIC Prague partners and provide technical know-how for the starter's support
8. WHEREAS Komerční Banka is one of the ESA BIC Prague partners and provides a loanscheme
9. WHEREAS the Incubatee wishes to participate in the ESA BIC Prague and benefit from the assistance which may be offered to it through the provisions of this Contract.
10. WHEREAS, as part of the assistance offered to the Incubatee, ESA BIC Prague and the Incubatee will sign a tenancy agreement covering the same period as this Contract for the provision of office accommodation and related equipment and services to the Incubatee.

## **ARTICLE 1 - CONTRACTUAL BASELINE**

### **1.1 Definitions**

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

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

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

“Business Plan” shall have the meaning set out in Addendum 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 CzechInvest 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 CzechInvest.

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

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

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

“ESA BIC” shall have the meaning set out in the Preamble.

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

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

“ESA BIC Prague ” means the entity which, under this contract, provides business development support and office accommodation to start-up companies.

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

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

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

“Mid Term Review” shall have the meaning set out in Addendum 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 Agency and the Parties to this Contract or their personnel.

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

## **1.2 Contractual baseline**

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

1.2.1 This Incubation Contract;

1.2.2 The Agency's Standard Requirements for Management, Reporting, Meetings and Deliverables as set out in Appendix 1;

1.2.3 The Rental Contract;

1.2.4 The Minutes of the negotiation meeting held on the 10.1.2017, not attached hereto but known to both parties;

1.2.5 The Incubatee's Business Activity Proposal, Ref. ....1....., dated.....12.10.2016....., Version .....2....., 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 ESA BIC Prague' representatives, described in Article 9.3(a) and (b), a report detailing the technical and commercial work carried out by the Incubatee as part of the Activity during the first half of the Contract Term ("Mid Term Report"). Templates are provided in Addendum 2 herein.

#### **2.1.2 Business Plan**

The Business Plan shall be provided to ESA BIC Prague'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 CzechInvest with draft versions of the Final Report and the Executive Summary. CzechInvest 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 CzechInvest.

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

## **2.2 Other Deliverables**

As part of the Incentive Scheme, it is expected from the Incubatee to deliver proof of the developed product or service. It is to be delivered to the Agency through ESA BIC Prague.

### **2.2.1 Software**

- (a) In the event that the Incubatee develops software under the incubation programme, the Agency shall receive via CzechInvest from the Incubatee a copy of the software in source code form, it being understood that the Agency shall keep the source code under confidentiality provisions, for purposes of auditing only.
- (b) The Incubatee shall deliver such software at the end of the Contract Term or upon the cancellation of the model incubation contract, unless otherwise agreed in writing by the Parties.
- (c) In the event it is not feasible to deliver the source code to the Agency via CzechInvest, the Incubatee shall deliver a complete demonstration including hosting server (functional prototype level).
- (d) In the event the Agency or its Member States require the use of the software for its own requirements, the Incubatee shall be asked to expressly authorize such use, the terms and conditions of such use to be agreed beforehand and shall be subject following the provisions stated in Article 12 here below.

### **2.2.2 Hardware**

- a) In the event that the Incubatee develops any hardware during the Contract Term and as part of its Activity, CzechInvest is entitled to request the Incubatee to loan the hardware to CzechInvest and/or the Agency for the purposes of displaying it in an exhibition or for promotional purposes for a period of five (5) years from the end of the Contract Term or from the cancellation of this Contract, unless otherwise agreed in writing by the Parties.
- b) Any photographs and visual presentations (i.e. an automatic slide show and/or video trailer) of any hardware developed by the Incubatee during the Contract Term and as part of its Activity shall be delivered to the CzechInvest at the end of the Contract Term or upon the cancellation of this Contract, unless otherwise agreed in writing by the Parties.

## **ARTICLE 3 – ESA BIC Prague UNDERTAKINGS**

### **3.1 Technical Support**

- a) For the purposes of this Contract CzechInvest (through its technical partners) can offer to the Incubatee the technical support necessary for and directly related to the activity of the Incubatee (referred to as “Technical Support”), with a maximum of 80 hours during the contract term.  
The Technical Support has to be clarified in detail with the responsible technical partner.
- 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 property of the lending institution and shall be returned to this institution at the end of the Contract Term or upon the cancellation of this Contract.
- d) For all matters relating to the technical support the responsible technical officer is nominated in Clause 9.3 a).

### **3.2 Equipment**

It is not foreseen that ESA BIC Prague or any of its partners will loan the Incubatee any equipment.

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

### **3.3 Software**

It is not foreseen that ESA BIC Prague or any of its partners will loan the Incubatee any software.

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

## **ARTICLE 4 - SERVICES TO BE PROVIDED BY THIRD PARTIES**

The Incubatee shall notify CzechInvest prior to entering into agreements with Third Parties to obtain specific advice/product relevant to the Activity (“Third Party Services”).

CzechInvest shall bear no responsibility for such advice or product.

For the purposes of this Article it is hereby understood that the incentive funding shall be spent in Czech Republic unless the product/service is not available in such territory and within the

boundaries stated on Article 7.1 (Financial Contribution) hereto. Exceptions have to be approved by CzechInvest.

## **ARTICLE 5 - CONTRACT TERM**

This Contract shall enter into force upon signature by the legal representatives (or in the name of CzechInvest by the duly authorized representative) of both Parties (“Commencement Date”) and shall continue in force until (“Contract End Date”), unless it is cancelled or otherwise terminated in accordance with Article 16. In no case shall the Contract Term exceed the duration of 2 (two) years.

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

Full details of reporting and meeting requirements are set out in the Appendix 1.

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

### 7.1 Financial Contribution

7.1.1 The total financial contribution to the Activity amounts to EUR 50,000 (Fifty thousand Euros), broken down as follows:

- a) 25.000 from a City of Prague: the exact amount, dates and conditions of the payments and tasks on which the money can be spent is fixed in the official notification of approval and contract of the financing institution.

Direct labour costs are not accepted to be paid with City of Prague.

- b) 25.000 from ESA covering IPR and product development (prototype). Payment will be done upon acceptance of the deliverables on the agreed milestones.

The budget has to be spent on the technical development, e.g. software or hardware development or for prototype development, etc.

Direct labour costs are not accepted to be paid with the ESA incentive

account holder:	NG AVIATION SE
bank name:	Komerční Banka
IBAN :	CZ26 0100 0001 1538 5148 0237
BIC/SWIFT:	KOMBCZPPXXX

7.1.2 For the purpose of this Contract the above mentioned 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 CzechInvest.

The Incubatee shall provide copies of invoices to show all expenses at the end of every month were incurred solely with third parties used for IPR and product development.

The Incubatee is not authorized to use the stated ESA funding for reimbursement of his own hours spent in the project.

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

## **7.2 Payment Terms**

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

### **7.3 Categories of Payment**

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

#### **7.3.1 Progress Payments**

- a) CzechInvest may authorise progress payments in connection with this Contract.
- b) Progress payments are not final payments and shall be deducted from the sums due to the Incubatee under this Contract.
- c) Except with the specific agreement of CzechInvest, 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 CzechInvest 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 CzechInvest upon:

- a) receipt by CzechInvest of the Final Report, including Cost Report;
- b) receipt by CzechInvest of all of the invoice(s) from the Incubatee with a clear indication of the funding provided under this contract, and;

- c) certification by CzechInvest 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 CzechInvest for the execution of the final payment.

7.4.4 CzechInvest will make the following payments (to be agreed on a case to case basis, depending on the needs):

<b>MILESTONE DESCRIPTION</b>	<b>SCHEDULE DATES</b>	<b>AMOUNT IN EURO</b>
<b>PROGRESS I:</b> Upon signature of the incubation contract by the Incubatee		10.000 (ESA) + 10.000 (CP)
<b>PROGRESS II:</b> Upon successful MTR, acceptance by CzechInvest of MTR report, business plan and all related deliverables		10.000 (ESA) + 10.000 (CP)
<b>FINAL:</b> upon acceptance by CzechInvest of all Deliverables under the contract, including Final Report, business plan, the hardware and/or software and upon acceptance by CzechInvest of the Incubatee's Cost Report		5.000 (ESA) + 5.000 (CP)

## 7.5 Invoices, place and payments

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

7.5.2 Payments shall be made by CzechInvest 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 CzechInvest orders of payment reach its bank within the payment period stipulated in Article 7.4.3 above.

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

## **ARTICLE 8 – DE-MINIMIS AID**

- 8.1** Any aid granted to the Incubatee that originates from ESA and that is provided under this contract to the Incubatee by CzechInvest falls under the terms of EC regulation 1998/2006 of 15th of December 2006 on the application of articles 87 and 88 of the EC treaty to “de minimis aid”.
- 8.2** The Incubatee shall notify Czech authorities through CzechInvest 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 1998/2006 of 15th of December 2006 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.
- 9.2** All correspondence for either Party shall be sent to both representatives of each Party stated in Articles 9.3 and 9.4, i.e. depending on the subject, addressed to one representative with a copy to the other.
- 9.3** For the purpose of this Contract the ESA BIC Prague representatives are:
- a) For technical and administrative matters: Marek Aldorf**
  - b) For financial matters: Tereza Kubicová**
  - c) For contractual matters: Silvana Jirotková**

## **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 *CzechInvest*, *ESA*, *ESA BICs*, *ESA BIC Prague*, *ESA BIC Prague's partners* or any aspect of *ESA BIC Prague* activities, or permit any Third Party to do so, without the prior written consent of *CzechInvest's* contractual representative or his duly authorised representative.

10.1.2 *CzechInvest* shall not produce or disseminate any form of communication material, press releases or other publicity documents which are intended by *ESA BIC Prague* 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 *ESA*, *ESA BICs* or *ESA BIC Prague* or any other logo or trademark which may be owned or used by the Agency or *CzechInvest* for any purpose whatsoever without approval.

10.2.2 The Incubatee may place the logo attached in appendix 4 and the following text line, in full and without amendment, on its promotional material and publicity documents, including exhibition and conference material and its internet site, and also on its products (including prototypes) and other material which it produces:

*"[Name of the Incubatee] participates in the ESA Business Incubation Centre Prague"*,  
Referred to as the "Text Line"

### **10.3. Use of the Text Line and Logo by the Incubatee shall be subject to the following conditions:**

- (a) the Incubatee shall submit to *CzechInvest'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 *CzechInvest's* discretion;
- (b) the prior approval of *CzechInvest* for the use of the Text Line and logo 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 CzechInvest of the compatibility of materials produced by the Incubatee with applicable law and regulations, and the Incubatee shall refrain from using any statements which could suggest otherwise;

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

(d) the Text Line may be translated into a different language other than English, subject to the approval of CzechInvest's contractual representative or his duly authorised representative;

(e) no use of the Text Line shall be made in connection with material, products or documents that:

- a. constitute an infringement of law and/or legal provisions;
- b. undermine the reputation and dignity of the Agency or CzechInvest;
- c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

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

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

10.3.3 Incubatees which successfully conclude the ESA BIC programme ("Alumni") shall be allowed to use the following Text Line, in its marketing material, including exhibition and conference material (not on products nor materials) and its internet site, as long as it is linked to [www.esa-bic.cz](http://www.esa-bic.cz) and stated as a partner of the company.

"[name of the techno-starter] is an Alumnus of ESA Business Incubation Centre Prague [graduation year]" is referred to as the Text Line.

10.3.4 Alumni using the text line have the obligation to report its use on a yearly basis to the Agency for as long as the text line is used. The Agency may withdraw the right to use the text line at any time for any reason.

10.3.5 The Agency has set-up and registered “ESA Space Solutions” trademark to be used by techno-starters on their products. To use this trademark, the techno-starter has to enter into a licensing agreement with the Agency and pay a fee. Details can be found on <http://www.esa.int/spacesolutionslogo>.

## **ARTICLE 11 – CONFIDENTIALITY**

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

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

**11.3** Each Party may disclose Confidential Information on a strictly “need to know” basis to:

- its employees; and
- its professional agents; and
- the ESA BIC Prague’s partners

**11.4** On the Contract End Date, or upon the earlier termination or cancellation of this Contract in accordance with Article 16, the Receiving Party shall promptly return to the Disclosing Party or otherwise certify the destruction of all Confidential Information, with exception of the Deliverables provided by the Incubatee to CzechInvest.

**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 disclose 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 Foreground IPR**

Software that is considered ESA's foreground shall not be subject to royalties

### **12.3 Use of Intellectual Property Rights by the Agency**

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 of the model incubation contract, for the performance of the Agency's programmes in the field of space research and technology and space applications, the Incubatee shall be contacted and offered the work. If within 60 days following the Agency's request, the Incubatee does not decide to or for any reason is not able to confirm its willingness to undertake the requested work, the Agency is automatically entitled to a worldwide, free of charge, irrevocable, transferable, non-exclusive licence to use such IPR, which licence shall be limited to the territories of the Agency's Member States, with the right to grant sub-licenses in the source code. In this case, the Agency and its Member States have the irrevocable right to enter into negotiations with and award such contract to or place any other kind of agreement with a third party. The same applies:

- in case the Incubatee does not submit a quotation within the adequately determined tendering period set by the Agency, or

- in case that, following a quotation by the Contractor, negotiations fail despite all reasonable efforts made in good faith by the Agency and the Contractor.
- In case the Agency continues the development with a third party a new branch of the source code shall be created.

#### **12.4 Transferring Intellectual Property Rights:**

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 12.3, are reassigned to the new assignee.

#### **12.5 Transfer of Intellectual Property Rights outside the ESA Member States**

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

### **ARTICLE 13 – LIABILITY**

#### **13.1 Limitations of Liability**

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

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

13.1.2 Limitation of Liability

Subject to Article 13.1.1, the liability of one Party towards the other under or in connection with this Contract whether arising from negligence, breach of contract or any other obligation or duty shall not exceed, an amount equivalent to €50,000 (Fifty thousand Euros), per event or series of connected events.

#### **13.2 Infringements of the Law**

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

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

### **13.3 Infringement of the Rights of Third Parties**

13.3.1 The Incubatee shall indemnify the ESA BIC Prague' partners and the Agency from and against all claims, proceedings, damages, costs and expenses arising from the infringement of Intellectual Property Rights of third-parties with respect to the subject matter of this Contract - excluding any infringement resulting from the use of documents, patterns, drawings or goods supplied by the ESA BIC Prague partners or the Agency through - which may be made, or brought against the ESA BIC Prague' partners or the Agency, or to which ESA BIC Prague' partners or the Agency may be put by reason of such infringement or alleged infringement.

13.3.2 CzechInvest 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 ESA BIC Prague's partners and 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 CzechInvest and the Agency against, and shall be personally responsible for, direct damage to CzechInvest 's or the Agency's property and equipment to the extent that such damage is caused by the negligence of the Incubatee and the Incubatee's personnel or agents.
- b) CzechInvest and ESA BIC partners shall indemnify the Incubatee against, and shall be personally responsible for, direct damage to the Incubatee's property and equipment to the extent that such damage is caused by the negligence of CzechInvest or ESA BIC partners or their staff or agents.

#### **13.4.2 Indirect or Consequential Damages**

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

indirect economic loss or for any indirect or consequential loss or damage whatsoever suffered by the other Party.

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

### **13.5 Damages to Third Parties by the Incubatee**

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

## **ARTICLE 14 – CHANGES TO THIS CONTRACT**

### **14.1 Introduction of a Change**

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

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

### **14.2 Approval or Rejection of the Change Proposal**

14.2.1 Should the change proposal be approved by CzechInvest, a corresponding CCN shall be prepared by CzechInvest '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, the Incubatee shall be informed accordingly, together with the reasons for the rejection. At the request of either Party, the change may be discussed at a Change Review Board, consisting of a contractual and a technical representative of each Party.

### **14.3 Implementation and Status of an Approved CCN**

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

## **ARTICLE 15 – POST INCUBATION MANAGEMENT**

On each anniversary of the end of the Contract Term, during 10 (ten) years, subject to losing the right to use the ESA BIC logo or Test Line if non-compliant, the Incubatee shall prepare and submit an Annual Performance Report (See Addendum 1, point 5.6 – annual performance report) to the Incubation Manager of ESA BIC Prague, as stated in Article 9.3(a) as well as to the Agency's Technical Representative, as follows:

POC Appendix 1 Section I-III

Mr. B. Naulais (TEC-ST)  
E-mail: Bruno.Naulais@esa.int  
ESTEC Tel.: + 31 71 56 54711  
P.O. Box 299, Fax.: + 31 71 56 56635  
2200 AG Noordwijk, NL

## **ARTICLE 16 – TERMINATION AND CANCELLATION**

### **16.1 Right of Termination**

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 CzechInvest without any fault of the Incubatee, the Incubatee shall, on receipt of CzechInvest'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 CzechInvest after consultation with the Incubatee.

16.2.2 CzechInvest 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 CzechInvest. In calculating the amount of compensation payable to the Incubatee, CzechInvest 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 CzechInvest 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 CzechInvest, exceeds the total contractual payments due by CzechInvest to the Incubatee, as set out in Article 7.1.

### **16.3 Grounds for Cancellation by CzechInvest**

CzechInvest 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;
- 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:
  - the Statement of Non Co-incubation;

- the Incubatee's legal ownership;
- the Incubatee's chamber of commerce registration
- 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 CzechInvest and the Agency and shall be handed over to CzechInvest upon the expiry or cancellation of this Contract. This shall include:

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

### **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 Czech law.

**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 Czech Republic and the language of the arbitration shall be Czech. The enforcement of the award shall be governed by the rules of procedure in force in Czech Republic.

**ARTICLE 19 - DATA PROTECTION**

**19.1** To the extent that is reasonably necessary, in connection to the Incubatee's activities under this contract, his/her data may be disclosed to others, including staff of ESA BIC Prague, the Agency and all ESA BIC Prague's partners, for any studies and/or reporting that may be carried out by the Agency and/or CzechInvest.

The Incubatee hereby consents to the recording, processing, use and disclosure of personal data related to him as set out here above (including the recording, processing, use and disclosure of his sensitive personal data to the extent required by reason of the contractor's performance of the activities under this contract) including the transmission of such data between Czech Republic and other countries for the fulfilment of ESA's own requirements.

Done and signed in two (2) original copies, one for each party to this contract, on behalf of the ESA BIC Prague.

**ON BEHALF OF CzechInvest: Date: .....**

**ON BEHALF OF THE INCUBATEE Date: .....**

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