

INCUBATION CONTRACT

Business Incubation Contract – EB2425-XX

Between:

STFC Innovations Ltd,

(hereinafter called the “Incubator” or “SIL”),

located at: Rutherford Appleton
Laboratory, Harwell Campus, Didcot,
Oxon, OX11 0QX,

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

Represented by Mr Paul Vernon, its Director,

of the one part,

and:

.....,
(hereinafter called “.....”),

Whose Registered Office is at:

.....,
.....,
.....,

Whose Company Registration Number in the United Kingdom is:,

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

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

of the other part,

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

Commencement Date of the Incubation:

Planned Incubation End Date:

the following has been agreed:

PREAMBLE

1. WHEREAS as part of the commercialisation initiative the Agency has set up the ESA Business Incubation Centres (ESA BICs) initiative to enable start-up companies (Incubatees) to receive comprehensive commercial and technical assistance in order to set up their business using space technology or systems for general non-space applications, including industrial, scientific and commercial uses ("spin-off") or using non space technology for proposing products and services for the space sector ("spin-in").
2. WHEREAS the Agency has selected to implement and manage the ESA BIC UK through ESA contract.
3. WHEREAS the ESA BIC UK is partly funded by the European Space Agency.
4. WHEREAS the Incubatee wishes to participate in the ESA BIC UK and benefit from the assistance which may be offered to it through the provisions of this Contract.
5. WHEREAS, as part of the assistance offered to the Incubatee, the Incubator and the Incubatee will sign a rental agreement of same date with this Contract for the provision of office accommodation and related equipment and services to the Incubatee (see Appendix 2).

DEFINITIONS

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

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

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

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

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

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

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

“CCN” shall mean a contract change notice.

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

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

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

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

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

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

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

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

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

“ESA BIC UK” shall mean the business incubator contracted by ESA to manage ESA BIC UK.

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

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

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

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

“Final Review” shall have the meaning as set out in Appendix 1, section 3.3.

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

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

“Incubatee” shall mean a start-up company in the early-stage development of its commercial enterprise, applying space technology or systems to non-space applications, including industrial, scientific and commercial uses (“spin-off”) or using non space technology for proposing products and services for the space sector (“spin-in”) and which signed an incubation contract with ESA BIC UK.

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

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

information, data, blueprints, plans, diagrams, models, formulae and specifications together with all copyright, unregistered trademarks, design rights, data base rights, topography rights, know-how and trade secrets or equivalent rights or rights of action anywhere in the world.

“Mid Term” shall mean the midpoint date between the Commencement Date and the Contract End Date, and as set out in Appendix 1, section 3.2.

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

“Minimal Financial Assistance” shall mean the minimal financial assistance given to a single enterprise, and has the meaning given in the Subsidy Control Act 2022.

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

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

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

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

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

“Subsidy Control Act 2022” shall mean the UK’s subsidy control regime to meet the UK’s international commitments detailed in the EU-UK Trade and Co-operation Agreement and World Trade Organisation Agreement on Subsidies and Countervailing Measures.

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

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

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

ARTICLE 1 – SUBJECT OF THE CONTRACT, APPLICABLE DOCUMENTS

1.1 Subject of the Contract

During the Contract Term, the Incubatee undertakes to perform the Activity described in The Incubatee's Business Activity Proposal and the Incubator undertakes to provide Technical Support, business support, IPR advice, and up to the maximum Incentive Amount identified under Article 6.1.1 (hereinafter also referred to as the "**Incubator's Support**").

1.2 Applicable documents

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

- a) This Incubation Contract including the Mid-Term Report and the Final Report templates;
- b) The Standard Requirements for Management, Reporting, Meetings and Deliverables as set out in Appendix 1 hereto;
- c) The Rental Agreement attached herewith as Appendix 2
- d) The Minutes of the negotiation meeting held on the reference; not attached hereto but known to both Parties;
- e) The Incubatee's Business Activity Proposal (Cover Letter, Business Plan, Incubation Proposal) ref....., dated, version not attached hereto but known to both Parties.

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

ARTICLE 2 – ACTIVITY OF THE INCUBATEE; DELIVERY

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

2.1 Documentation

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

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

2.1.1 Mid Term Report

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

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

2.1.2 Final Report and Executive Summary

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

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

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

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

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

2.1.3 Business Plan

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

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

2.2 Other Deliverables

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

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

2.2.1 Software

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

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

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

2.2.2 Hardware

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

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

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

2.2.3 Photographs, Video demonstrations

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

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

2.2.4 Incubation Deliverables List

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

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

ARTICLE 3 – ESA BIC UK UNDERTAKINGS

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

3.1 Technical Support

- (a) A minimum of 20 hours of technical support necessary for, and directly related to the Activity (referred to as “**Technical Support**”) shall be offered to the Incubatee.
- (b) Any information in documentary or other physical form provided to the Incubatee as part of the Technical Support shall remain the property of the Incubator and shall be returned to the Incubator at the end of the Contract Term or upon the termination of this Contract.
- (c) For all matters relating to the Technical Support the responsible person is the representative for technical matters, nominated in Article 8.3 a) below.

3.2 Business Coaching

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

3.3 IPR/Legal advice

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

3.4 Equipment

Any equipment provided by the Incubator to the Incubatee will be in accordance with a separate agreement agreed between the Parties, if needed.

3.5 Software

Any Software provided by the Incubator to the Incubatee will be in accordance with a separate agreement agreed between the Parties, if needed.

ARTICLE 4 – SERVICES TO BE PROVIDED BY THIRD PARTIES

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

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

Spending more than half of the Incentive Amount outside the UK requires prior approval by the Incubator.

ARTICLE 5 – CONTRACT TERM

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

ARTICLE 6 – FINANCIAL CONTRIBUTION AND PAYMENT

6.1. Financial Contribution

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

GBP £51,723.60 (Fifty One Thousand Seven Hundred and Twenty Three Pounds and Sixty Pence) and is hereinafter also referred to as the “Incentive Amount”.

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

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

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

- (a) Expenditures follow what has been specified in the expenditure plan provided in the incubation proposal or as subsequently (in course of the incubation) agreed upon with the Incubator, and
- (b) Deliverables are provided to the Incubator as described in this Contract.

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

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

6.2 Payment Terms

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

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

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

6.3 Requirements for invoices being regarded as due:

Progress Payment

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

Final Settlement

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

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

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

6.4 The Incubator shall make the following payments:

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT IN GBP
PROGRESS I: Upon successful 1 st Progress Meeting, submission of all applicable deliverables and Incubatee's registration in relevant ESA systems.	X	17,241.20
PROGRESS II: Upon successful Mid Term Review and acceptance by the Incubator of the MTR report and all related deliverables.	X	17,241.20
FINAL SETTLEMENT: Upon successful Final Review, acceptance by the Incubator of all deliverables due under the Contract and fulfilment of all contractual obligations by the Incubatee under the Contract.	X	17,241.20
TOTAL		Maximum GBP 51,723.60

6.5 Payment implementation conditions

6.5.1 The payments shall be made by the Incubator in GBP 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 by the Incubator on time if the Incubator's orders of payment reach its bank within the payment period stipulated in Article 6.2.a) above.

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

ARTICLE 7 – MINIMAL FINANCIAL ASSISTANCE

7.1 Any subsidy granted to the Incubatee that originates from the Incubator and that is provided under this Contract to the Incubatee by the Incubator, falls under the terms of the Subsidy Control Act 2022.

7.2 The Incubatee shall confirm to the Incubator in writing:

i) how much Minimal Financial Assistance subsidy it has received during the three (3) years prior to the Commencement Date from any public authority;

ii) the Minimal Financial Assistance subsidy from this Contract will not exceed the Minimal Financial Assistance threshold of £315,000; and

iii) it will inform the Incubator promptly of any Minimal Financial Assistance subsidy received until the completion of this Contract.

7.3 The Incubatee agrees to reimburse any Minimal Financial Assistance that the Incubatee has received under this Contract if it is later established that the payment was issued in violation of section 36(1) of Subsidy Control Act 2022.

ARTICLE 8 – PARTIES REPRESENTATIVES AND COMMUNICATIONS

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

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

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

- (a) For technical and administrative matters:
Mr William Gault E-mail: william.gault@stfc.ac.uk
STFC
Rutherford Appleton Laboratory
Harwell Campus
Didcot
OX11 0QX
- or a person duly authorised by him
- (b) For the Incubator's technical support matters (Article 3 above):
Ms Paula Mroczkowska E-mail: paula.mroczkowska@stfc.ac.uk
STFC
Rutherford Appleton Laboratory
Harwell Campus
Didcot
OX11 0QX

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

(a) For technical matters:

Mr/Ms/Dr.....

Address:
.....
.....

Tel.: +.....
Email:

(b) For contractual and administrative matters:

Mr/Ms/Dr.....

Address:
.....
.....

Tel.: +.....
Email:

ARTICLE 9 – PUBLICITY AND VISUAL IDENTITY OF INCUBATEES

9.1 Publicity

- 9.1.1 The Incubatee may produce and/or disseminate communication materials, press releases or other publicity documents, including the Incubatee's advertising and news bulletins, which are intended by the Incubatee for the press, internet/web-sites or television, which refer to the Incubator, ESA, ESA BIC UK or any aspect of ESA BIC UK activities, or permit any Third Party to do so, with a prior written consent of the Incubator.
- 9.1.2 The Incubator may produce and/or disseminate communication materials, press releases or other publicity documents which are intended by ESA BIC UK for the press, internet/websites or television, which refer to the Incubatee or any aspect of the Incubatee's activities, or permit any Third Party to do so, with a prior written consent of the Incubatee's contractual representative or its duly authorised representative.

9.2 Visual Identity of the Incubatee

- 9.2.1 The Incubatee should place the ESA BIC UK logo and if so desired the following text line, in full and without amendment (hereinafter referred to as the "**Text Line**"), on its promotional materials and publicity documents, including exhibition and conference materials and its internet site. The logo shall be linked to <https://esa-bic.org.uk/> and it shall be clearly stated that the Incubatee is incubated under an ESA BIC programme.

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

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

- (a) the Incubatee shall submit to the Incubator for prior written approval all promotional materials and publicity documents, on which the Text Line is to appear or is intended to be used, which approval may be withheld or withdrawn from any material or documents at any time at the discretion of the Incubator;
- (b) the prior approval of the Incubator for the use of the ESA BIC UK logo and/or Text Line shall not constitute an endorsement or approval of the Incubatee's Activity, products or services, or of their quality, technology or suitability for a particular use, neither shall it constitute verification by the Incubator of the compatibility of materials produced by the Incubatee with applicable law and regulations; the Incubatee shall refrain from using any statements which could suggest otherwise;
- (c) any use of the ESA BIC UK logo and/or Text Line on amended or revised promotional material and publicity documents shall be subject to the same approval process as the original material and documents;

- (d) the Text Line may be translated into a different language other than English, subject to the approval of the Incubator; and
- (e) no use of the ESA BIC UK logo neither the Text Line shall be made in connection with material, products or documents that:
 - a. constitute an infringement of law and/or legal provisions;
 - b. undermine the reputation and dignity of the Agency, ESA BICs or ESA BIC UK; and
 - c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

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

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

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

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

Possible uses include their marketing materials, exhibition and conference materials (including their internet site), as long as the logo is linked to <https://esa-bic.org.uk/>.

Alumni identify themselves as "Alumnus" under ESA BIC program.

The Agency may withdraw the right to use the text line at any time for any reason.

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

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

ARTICLE 10 – GENERAL CONDITIONS OF EXECUTION

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

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

ARTICLE 11 – CONFIDENTIALITY

- 11.1 Each Party shall observe complete discretion with regard to all matters related to the activities of the other Party and each Party shall ensure compliance by its employees and agents with the obligations of confidence set out in this Article and assumed by that Party in relation to the other Party.
- 11.2 Neither Party shall disclose any documentation, information or materials obtained from the other Party, whether marked or un-marked ("Proprietary Information"), to any Third Party whatsoever without the prior written consent of the other Party in which case the other Party may require the recipient to sign a non-disclosure agreement. For the purposes of the present Article, documentation shall include any final documentation deliverable under this Contract with the exception of the Executive Summary.
- 11.3 Each Party may disclose Proprietary Information on a strictly "need to know" basis to:
- its employees;
 - its professional agents;
 - ESA BIC UK partners
- as long as they have signed an engagement of confidentiality.
- 11.4 The Incubatee agrees that the Agency may use, copy or disseminate general information related to the Incubatee's company (e.g. name, address, etc.) and its Activity for the Agency's Own Requirements, unless such information is marked as "Proprietary Information", in which case the provisions under Article 11.2 shall apply,
- 11.5 On the Contract End Date, or upon an earlier termination of this Contract in accordance with Article 16, the Receiving Party shall promptly return to the Disclosing Party or otherwise certify the destruction of all Proprietary Information, with exception of the Deliverables provided by the Incubatee to the Incubator.
- 11.6 The obligations in this Article shall not apply to Proprietary Information:
- which is in the public domain at the time of disclosure or becomes part of the public domain after disclosure otherwise than through a breach of this Contract;
 - for which the Receiving Party can provide documentary evidence that it was in its lawful possession prior to disclosure to it by the Disclosing Party or which is lawfully and bona fide obtained thereafter by the Receiving Party from a Third Party who, to the knowledge or reasonable belief of the Receiving Party, did not receive the Proprietary Information directly or indirectly from the Disclosing Party when under a duty of confidentiality;
 - which, at the time of circulation is already known by the Receiving Party (as evidence in writing) and is not hindered by any obligation not to circulate; or
 - which is required to be circulated by governmental or judicial order or applicable law.
- 11.7 The contents of this Contract are Proprietary Information.

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

ARTICLE 12 – INTELLECTUAL PROPERTY

12.1 Ownership of Intellectual Property Rights

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

12.2 Use of Intellectual Property Rights by the Agency

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

- 12.2.1.1 the use is strictly for the Agency's Own Requirements, in particular making the Incubatee's deliverables containing the non-Proprietary Intellectual Property Rights available to employees and/or contractors working at the Agency, copying or reproducing them in whole or in part, in unlimited numbers,
- 12.2.1.2 for public dissemination, in particular, publication as hard copies and in electronic or digital format, publication on the internet including social networks, public display or presentation, communicating through press information services, or inclusion in widely accessible databases.

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

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

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

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

- 12.5 Transfer of Intellectual Property Rights outside the ESA Member States

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

ARTICLE 13 – LIABILITY

13.1 Limitations of Liability

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

- (a) death or personal injury caused by negligence or careless conduct by a Party or those of its employees or agents;
- (b) fraud, including fraudulent misrepresentations; and
- (c) liability as provided for under Articles 11 and/or 12 of this Contract.

13.1.2 Except for Article 13.1.1, the liability of the Parties under or in connection with this Contract, whether arising from negligence, breach of the Contract or any other obligation or duty, shall in no case exceed an amount equal to the Contract price 6Sixty, per event or series of connected events.

13.2 Infringements of the Law

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

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

13.3 Infringement of the Rights of the Incubator's Partners

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

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

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

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

13.4 Compensation for Damage Caused to Goods and Property

Claims shall be settled as follows:

13.4.1 Claims for Direct Damages

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

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

13.4.2 Claims for Indirect or Consequential Damages

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

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

13.5 Damages to Third Parties caused by the Incubatee

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

ARTICLE 14 – CHANGES TO THIS CONTRACT

14.1 Introduction of a Change

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

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

14.2 Approval or Rejection of the CCN Proposal

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

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

14.3 Implementation and Status of an approved CCN

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

ARTICLE 15 – POST INCUBATION REPORTING

On each anniversary of the end of the Contract Term, during 10 years, subject to losing the right to use the ESA BIC UK logo or Text Line if non-compliant, the Incubatee shall prepare and submit an Annual Performance Report to the representative for technical matters of the Incubator, as specified in Article 8.3a), as well as to the Agency following the provisions of Appendix 1, section 4.1.5.

ARTICLE 16 – TERMINATION

16.1 Right of Termination

16.1.1 Each Party reserves the right, after full consideration of all relevant circumstances and following a formal notification in writing of not less than thirty (30) days, to terminate this Contract in the event of a material breach of the Contract by the other Party.

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

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

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

16.1.5 Termination in special cases

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

- a) if the Incubatee becomes insolvent or if its financial position is such that within the framework of its national law, legal action leading towards bankruptcy may be taken against it by its creditors;
- b) if the Incubatee resorts to fraudulent practices in connection with the Contract, especially by deceit concerning the nature, quality or quantity of

the supplies, and the methods of processes of manufacture employed or by the giving or offering of gifts or remuneration for the purpose of bribery to any person in the employ of the Incubator or acting on its behalf, irrespective of whether such bribes or remuneration are made on the initiative of the Incubatee or otherwise.

- 16.1.6 In case of Force Majeure and if the Force Majeure event and its consequences continue for more than two (2) months from the start date of the Force Majeure event, either Party may terminate the Contract by giving not less than one (1) month notice to the other Party.
- 16.1.7 In case of termination due to Force Majeure the amount to be paid shall be calculated as per Articles 16.1.2 and 16.1.3. No other payments or indemnities shall be due by the Incubator to the Incubatee.

16.2 Consequences of Termination

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

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

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

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

ARTICLE 17 - ASSIGNATION OF THIS CONTRACT

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

ARTICLE 18 - APPLICABLE LAW DISPUTE SETTLEMENT

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

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

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

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

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

ARTICLE 19 - DATA PROTECTION

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

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

ARTICLE 20 – EXECUTION OF THE CONTRACT

The Parties agree that electronic signature of this Contract shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Contract.

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

Electronically/Digitally signed by the Parties to this Contract,

On behalf of STFC Innovations Ltd:

Name: Paul Vernon
Title: Director
Location: _____
Date: _____
Signature: _____

On behalf of [Incubatee]:

Name: _____
Title: _____
Location: _____
Date: _____
Signature: _____

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

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

1. MANAGEMENT

1.1 General

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

1.2 Communications

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

2. REPORTING

2.1 Minutes of Meetings

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

2.2 Progress Reports

Every three (3) months, the Incubatee shall provide a progress report to the representatives of the Incubator, covering the Activity. This report shall provide details of:

- action items completed during the reporting period,
- description of progress: events accomplished etc.,
- problem areas, if any, and corrective actions planned and/or taken,
- events anticipated during the next reporting period,
- further details to be provided on a case-by-case basis.

2.3 Problem Notification

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

3. MEETINGS

3.1 Kick-off Meeting

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

3.2 Mid Term Review

At Mid Term, a meeting shall be held ("Mid Term Review"), where the Incubatee shall present the Mid Term Report to verify the status of the Activity and to validate its feasibility.

3.3 Final Review Meeting

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

3.4 Additional Meetings

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

3.5 Notice and Agenda for Meetings

For all meetings the Incubatee shall ensure that proper notice to the Incubator is given at least two (2) weeks in advance. The Incubatee is responsible for ensuring the participation of the Incubatee's personnel and/or Third Party advisors, as needed.

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

4. DELIVERABLES

4.1 Documentation to be delivered

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

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

4.1.1 Mid Term Report

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

4.1.2 Final Report

The Final Report shall be a complete statement of all the work undertaken by the Incubatee during the Contract Term, including the activities functional to the Business Plan. It shall not refer to any other report that may have been provided by the Incubatee and shall detail the full results of the Activity to include:

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

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

4.1.3 Executive Summary to the Final report

The Incubatee shall prepare a summary which shall concisely summarise the findings of the Incubatee in performing the Activity ("Executive Summary"). It shall be suitable for non-experts and should also be appropriate for publication, including on a web page. For this reason, it shall not contain any proprietary information.

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

4.1.4 Business Plan

The Incubatee shall produce a business plan that sets out the Incubatee's expected course of action for next period of the development of the company, including a detailed listing and analysis of risks and uncertainties. The Business Plan should also examine the proposed products (including scientific and technical requirements and feasibility), the market, the industry, the management policies, the marketing policies, production needs and financial needs of the Incubatee.

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

4.1.5 Annual Performance Report

The Annual Performance Report shall follow the template provided by the Incubator and shall describe, among others, the sales made and/or licences granted by the Incubatee during the preceding twelve (12) months. The Incubatee shall submit the Report to the Incubator and to the Agency via esabic@esa.int e-mail address, in electronic form on each anniversary of the end of the Contract Term, during 10 years.

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

4.1.6 Photographic, Video Documentation

Photographic and video documentation shall document (as relevant)

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

They shall be suitable for dissemination and publicity purposes.

Photographic and video documentation shall not contain any proprietary information.

APPENDIX 2 – RENTAL AGREEMENT

TEMPLATE

CONTRACT

<u>CUSTOMER DETAILS</u>				<u>LANDLORD DETAILS</u>	
Name:			UNITED KINGDOM RESEARCH AND INNOVATION		
Address:			Rutherford Appleton Laboratory Harwell Campus Didcot, OX11 0QX		
Contact Name:			I-TAC Contact Name:		
Tel:			Tel:		
Email:			Email:		
			Technical Contact Name:		
			Tel:		
			Email:		
Contract No:			Period for acceptance: 30 days		
<u>SERVICES</u>					
Use of one desk within the Hot Desking office in Atlas building R27 at Rutherford Appleton Laboratory.					
Start Date:				End Date:	
<u>SPECIFICATION</u>					
Use of a desk located within the Hot Desking office in Atlas building R27 at Rutherford Appleton Laboratory at a cost of £163.80 per month payable monthly in advance.					
The desk is provided on a day-to-day available basis and not on a dedicated desk basis. The customer is expected to leave the desk clear and tidy at the end of the day. Access to the use of a desk will be between the Start and End Dates specified above, on any working days when the STFC site is open for business.					
VAT STATUS: Exempt			TOTAL (exclusive of VAT) GBP		
<u>SPECIAL CONDITIONS</u>					
Supplies of Goods and Services stated on this Agreement are governed by UKRI's GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES attached to this form.					
Either parties may terminate this Contract by giving to the other at least three (3) month prior written notice at any time and upon the expiration of which this Contract shall determine but without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim.					
Authorisation of Contract for and on behalf of UKRI			I hereby accept this contract for and on behalf of the customer		
NAME:			NAME:		
SIGNATURE:			SIGNATURE:		
DATE:			DATE:		

GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATION SCIENCE AND TECHNOLOGY FACILITIES COUNCIL, as part of United Kingdom Research and Innovation

1.1. In the Contract (as defined below) the following expressions have the meaning set opposite:

Confidential Information – the Customer's Confidential Information and/or STFC's Confidential Information as the context requires;

Contract – the contract between STFC and the Customer incorporating these General Conditions, any Special Conditions and the Sales Form;

Customer – the person so described in the Sales Form;

Customer's Confidential Information – any confidential information, know-how and data belonging to the Customer (including the Results) that is disclosed directly or indirectly by the Customer to STFC, any member of the STFC Group, or any other employee or representative of STFC to the Customer in the course of STFC's provision of the Goods and/or the Services;

Goods – any goods supplied or to be supplied by STFC to the Customer under the Contract that are identified as goods on the Sales Form, as amended from time to time in accordance with the Contract;

End Date – the end date (if any) stated in the Sales Form;

General Conditions – these general terms and conditions;

Intellectual Property Rights – any invention, patent, copyright, trade mark, trade name, service mark, registered design, design right (registered and unregistered), know-how, right of confidence, trade secret, right to extract or exploit data, database rights, any similar rights protected in any jurisdiction, whether now existing or coming into existence at some future date, any application for any of the above, and any accrued rights of action in respect of any of the above;

Price – the price or charges set out in the Sales Form, as revised from time to time in accordance with the Contract;

Results – all advice, information, know-how, results, data, inventions, materials and software identified, created or first reduced to practice or writing in the course of conducting the Services;

Sales Form – the form (including the Specification (if any) attached to and incorporating these General Conditions which sets out the details of the Goods and Services to be supplied to the Customer by STFC;

Services – the services supplied or to be supplied by STFC to the Customer under the Contract that are identified as services in the Sales Form, as amended from time to time in accordance with the Contract;

Special Conditions – the special conditions (if any) appended to these General Conditions;

Specification – the specification (if any) of any of the Services or the Goods set out in, or attached to and forming part of, the Sales Form;

Start Date – the Start Date stated in the Sales Form;

STFC – The Science and Technology Facilities Council;

STFC's Confidential Information – any confidential information, know-how and data belonging to STFC that is disclosed directly or indirectly by STFC, any member of the STFC Group or any other employee or representative of STFC to the Customer in the course of STFC's provision of the Goods and/or the Services;

STFC Group – STFC and its wholly owned subsidiaries;

Warranty Period – the warranty period for the Goods stated in the Sales Form, or if none is stated, the period of 12 months from the date of delivery of the relevant Goods; and

Working Day – any day when all of STFC's sites are open for business.

1.2. References in the Contract to any enactment, act, order, regulation or similar instrument are to be construed as references to that enactment, act, order, regulation or instrument as amended by any later enactment, order, regulation or instrument or as contained in any later re-enactment of it.

1.3. The headings in these General Conditions are for ease of reference only and do not affect their interpretation or construction.

2. CONTRACT

2.1. When STFC sends to the Customer a completed Sales Form signed by an authorised representative of STFC, it is making an offer to supply the Services and/or the Goods. The Contract is formed when the Customer signs and returns a copy of the Sales Form to STFC provided that it does so within the period for acceptance (if any) stated in the Sales Form, such period (if any) being deemed to begin on the day the Sales Form is sent to the Customer.

2.2. These General Conditions and the Sales Form, together with any Special Conditions, apply to the supply of the Services and the Goods to the exclusion of all other terms and conditions. Any other terms and conditions proposed by the Customer or which the Customer purports to apply (whether in any purchase order, confirmation of order, in correspondence or in any other context) will not form part of the Contract or be binding on STFC.

2.3. These General Conditions, the Special Conditions (if any) and the Sales Form constitute the entire agreement between the Customer and STFC in relation to the Services and the Goods and supersede all earlier agreements, arrangements and understandings relating to the subject matter of this Contract with the exception of any existing non-disclosure agreement ("NDA") between STFC and the Customer regarding the subject matter of this Contract. If there is any conflict between the confidentiality provisions of this Contract and an NDA,

the relevant terms of this Contract shall be superseded.

- 2.4. If there is any conflict or inconsistency between these General Conditions, the Sales Form and the Special Conditions (if any), the Sales Form will prevail over the Special Conditions and the Special Conditions will prevail over these General Conditions, in each case to the extent necessary to resolve that conflict or inconsistency.
- 2.5. STFC may amend any Service or Goods where necessary to comply with any statutory or regulatory requirement or in any way that does not materially affect their quality.
- 2.6. Subject to Condition 2.5, neither the Contract nor any Service or Goods may be amended, supplemented or varied without the written agreement of both STFC and the Customer and any attempt to amend, supplement or vary the Contract or any Service without that written agreement will be null and void.

3. PERFORMANCE

- 3.1. STFC will use reasonable endeavours to supply the Services and the Goods in accordance with the Contract.
- 3.2. The Customer will provide STFC with any and all information, software, equipment, materials and documentation, and will carry out any task allocated as the Customer's responsibility in the Sales Form in good time to allow STFC to carry out its obligations under the Contract.
- 3.3. If the Customer does not perform or delays in performing its obligations under the Contract, and that non-performance or delay affects STFC's ability to perform the Contract, STFC will not be in breach of contract, and the Customer will pay STFC as if STFC had performed its obligations
- 3.4. If, in connection with the supply of any Services, STFC permits any employees or representatives of the Customer to have access to any STFC premises, the Customer will ensure that, while on STFC premises, its employees and representatives comply with (i) all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and (ii) any STFC policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any STFC laboratory, facility or equipment which is brought to their attention or given to them whilst they are on STFC premises by any employee or representative of STFC.
- 3.5. STFC has absolute discretion to deny access to any person to any of its premises at any time.

4. PRICE AND PAYMENT

- 4.1. The Customer will pay the Price to STFC.
- 4.2. The Customer will reimburse STFC for all reasonable travel, subsistence and other expenses incurred by STFC's staff and contractors in providing any Service or Goods to the Customer.

- 4.3. All prices, fees, charges and expenses are exclusive of any applicable value added, sales, excise, or similar taxes and all customs duties. The Customer will pay these in addition to the Price and STFC's expenses.
- 4.4. The Customer will also pay for all packaging, carriage and insurance.
- 4.5. STFC may invoice the Customer as set out in the Sales Form, and the Customer will pay each of STFC's invoices, in the currency stated in the Sales Form, within the period for payment stated on such invoice.
- 4.6. If the Customer is required by law or regulation to make any deduction or withholding on account of tax or otherwise on any sum payable under the Contract, the amount payable to STFC by the Customer will be increased by the amount of that deduction or withholding to ensure that STFC receives a sum equal to the amount to be paid under the Contract.
- 4.7. If any payment to STFC is overdue, STFC may do one or more of the following:
 - (a) suspend work under the Contract until that payment has been made in full. (In that case all expenses incurred by STFC in connection with that suspension and any subsequent resumption of work will be added to the amounts payable and will be paid by the Customer, and any time scales will be extended accordingly.); or
 - (b) treat the non-payment as a material breach and terminate the Contract in accordance with Condition 12.2(a); or
 - (c) charge the Customer interest on any overdue sum and the costs of recovery in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.8. STFC is not obliged to carry out any work except that specifically stated in the Contract. STFC reserves the right to charge the Customer, and the Customer will pay STFC a reasonable charge for, any additional work carried out for the Customer by STFC.
- 4.9. On the termination or expiry of the Contract, the Customer will pay STFC, in accordance with this Condition 4, all unpaid fees and expenses accrued up to the date of termination or the expiry of the Contract and for all costs and expenses that STFC has incurred or agreed to incur in connection with any work done or to be done for the Customer.

5. DELIVERY

- 5.1. Any date or period for delivery is intended to be an estimate only. The Customer will not be entitled to terminate the Contract solely because the delivery of any Service or Goods is delayed, even if it has given notice to STFC requiring delivery by a specific date.

5.2. The Customer will take delivery of Goods within 7 Working Days after STFC gives the Customer notice that such Goods are ready for delivery.

5.3. If the Customer does not take delivery of any Goods within the time stated in Condition 5.2, or if STFC is unable to deliver any Goods because the Customer has not provided appropriate information, documents, licences and authorisations:

- (a) risk in such Goods will immediately pass to the Customer;
- (b) such Goods will be deemed to have been delivered; and
- (c) STFC may store such Goods until actual delivery, and the Customer will be liable for all related costs and expenses (including, without limitation, the costs of storage and insurance).

5.4. STFC may make a partial delivery of any Goods and invoice for the part(s) delivered or shipped, even though all of the Goods have not been delivered or shipped.

5.5. The Customer will obtain, at its risk and expense, any export and import licences or other authorisations necessary for the export and import of the Goods and their transit through any country or territory, will deal with all customs formalities necessary for their export, import and transit, and will bear the costs of complying with those formalities, and all duties, taxes and other charges payable on export or import.

5.6. The Customer will inspect the Goods within 14 Working Days after delivery and will notify STFC of any defects or shortages. Subject to any Special Conditions, the Goods will be deemed to have been accepted by the Customer if no notice of rejection is given to STFC within that period.

6. TITLE AND RISK

6.1. Risk in Goods will pass to the Customer on delivery to the Customer or deemed delivery under Condition 5.3(b).

6.2. Ownership of any Goods will remain with STFC until all sums due from the Customer under the Contract have been paid to STFC in full (in cash or cleared funds) and STFC has received in full all other sums that are or that become due to STFC from the Customer on any account.

6.3. Until ownership of each of the Goods has passed to the Customer, the Customer will hold the Goods in good faith as STFC's bailee.

6.4. The Customer's right to possess any Goods will terminate immediately if:

- (a) the Customer undergoes any of the events set out in Condition 12.2(b);
- (b) the Customer encumbers or in any way charges any of the Goods; or

(c) STFC terminates the Contract before STFC has received payment in full (in cash or cleared funds) for the Goods and the Services.

6.5. STFC may recover payment for the Goods even though ownership of any of the Goods has not passed from STFC to the Customer.

6.6. The Customer grants STFC, its agents and employees, an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or, where the Customer's right to possession has come to an end, to repossess them.

6.7. If at the Customer's request, STFC insures any Goods after risk has passed to the Customer, the Customer will reimburse the costs of that insurance to STFC on demand.

7. INTELLECTUAL PROPERTY RIGHTS

7.1. Except as expressly stated to the contrary in these Conditions, any Special Conditions or the Specification, nothing in the Contract assigns or transfers any Intellectual Property Rights or grants either party any licence to use any Intellectual Property Rights, except that STFC may use, for the purpose of performing its obligations under the Contract, all information, software and materials supplied to it by or on behalf of the Customer.

7.2. The Customer will own all Intellectual Property Rights in the Results.

7.3. STFC reserves for itself, the STFC Group and each of their employees, officers, students, visiting researchers, and contractors the non-exclusive, perpetual, irrevocable, worldwide, royalty-free right to use the Results, subject to Condition 8.1, for the purposes of research, publication, and teaching, including research collaborations with third parties.

7.4. STFC and the Customer will each take any action or execute any document reasonably required by the other to give effect to any of its rights under the Contract or to enable their registration in any relevant territory provided that the requesting party pays the other party's reasonable expenses.

8. CONFIDENTIALITY

8.1. STFC will keep confidential and not disclose to any third party any of the Customer's Confidential Information.

8.2. Except as necessary to exploit its rights under Condition 7.3, STFC will not use for any purpose except providing the Goods and/or Services any of the Customer's Confidential Information.

8.3. The Customer will keep confidential and not disclose to any third party nor use for any purpose any of STFC's Confidential Information.

8.4. Neither party will be in breach of its obligations to keep the other party's Confidential Information confidential to the extent that it:

- (a) is known to the party making the disclosure before its receipt from the other party, and not already subject to any obligation of confidentiality to the other party;
 - (b) is or becomes publicly known without any breach of the Contract or any other undertaking to keep it confidential;
 - (c) has been obtained by the party making the disclosure from a third party in circumstances where the party making the disclosure has no reason to believe that there has been a breach of obligation of confidentiality owed to the other party;
 - (d) is disclosed pursuant to the requirement of any law or regulation or the order of any court of competent jurisdiction, and the party required to make that disclosure has informed the other, within a reasonable time after being required to make the disclosure, of the requirement to make the disclosure and the information required to be disclosed; or
 - (e) is approved for release in writing by an authorised representative of the other party.
- 8.5. STFC will not be in breach of any obligation to keep the Customer's Confidential Information confidential or not to disclose it to any third party by making it available to any member of the STFC Group.
- 8.6. If STFC receives a request under the Freedom of Information Act 2000 to disclose any information that, under the Contract, is the Customer's Confidential Information, it will notify the Customer and will consult with the Customer. The Customer will respond to STFC within 10 Working Days after receiving STFC's notice if that notice requests the Customer to provide information to assist STFC to determine whether or not an exemption to the Freedom of Information Act applies to the information requested. The Customer acknowledges that the decision as to whether or not an exemption does apply and whether the Confidential Information requested can be withheld rests solely with STFC.
- 8.7. The Provisions of Condition 8.6 shall also apply as though STFC were the Customer and vice versa if the Customer is subject to the Freedom of Information Act 2000 or any equivalent legislation.
- 8.8. Neither STFC nor the Customer will use the other's name or logo in any press release or product advertising, or for any other promotional purpose, without first obtaining the other's written consent.

9. WARRANTIES

9.1. STFC warrants to the Customer that:

- (a) the Goods will comply with the Specification (if any) or their description in the Sales Form during the Warranty Period for such Goods; and

- (b) the Services will be supplied with reasonable skill and care.

9.2. If STFC breaches the warranty in Condition 9.1(a) and the Customer has notified STFC of that breach within the Warranty Period, STFC will:

- (a) repair or replace any Goods or part thereof which do not comply with that warranty; or
- (b) refund the Price paid by the Customer for such Goods.

9.3. If STFC breaches the warranty in Condition 9.1(b) and the Customer has notified STFC of that breach within 2 months after the provision of that Service STFC will, at its option:

- (a) re-perform that Service at no additional charge to the Customer; or
- (b) refund the Price paid by the Customer for that Service.

9.4. STFC may decide whether any Goods are to be repaired in situ or returned to STFC. If any Goods are to be returned to STFC, the Customer will bear the risk of loss or damage in transit and the Customer will pack the Goods for return to STFC in accordance with STFC's instructions. STFC will re-imburse the reasonable costs of carriage to the Customer.

9.5. STFC will not be in breach of the warranty in Condition 9.1(a) if:

- (a) the failure to comply with that warranty results from damage in transit or after delivery; or
- (b) the Customer sells or uses the Goods after giving notice under Condition 9.2; or
- (c) the problem arises because the Customer has failed to follow STFC's instructions or recommendations in relation to the storage, installation, commissioning, use or maintenance of the relevant Goods or (if there are no such instructions or recommendations) good trade practice; or
- (d) the Customer or any third party has altered, repaired or damaged the relevant Goods.

9.6. The warranties and undertakings given by STFC in the Contract are given in lieu of all implied warranties, terms and conditions and, to the extent permitted by law, all conditions, warranties, representations or other terms on the part of STFC (except those expressly set out in the Contract), including any relating to satisfactory quality, fitness for a particular or any purpose, or the ability to achieve any particular result, are excluded from the Contract.

9.7. The Customer warrants that it has not been induced to enter into the Contract by any representation or by any warranty (whether oral, or in writing) except those specifically set out in the Contract. The Customer waives all claims for breach of any warranty and all claims for any misrepresentation, (negligent or of any other kind, unless made by STFC fraudulently) which is not specifically set out in the Contract.

10. LIABILITY

- 10.1. Nothing in the Contract excludes or limits STFC's liability for: (i) fraud or other criminal act; (ii) personal injury or death caused by negligence; or (iii) any other liability that cannot be excluded by law.
- 10.2. STFC's aggregate liability for damage to tangible property arising in connection with the Contract or in connection with any and all of the Services and the Goods is limited to the total Price paid by the Customer.
- 10.3. Subject to Condition 10.1, in no event will STFC be liable for any loss or damage resulting from: loss of or damage or corruption of data; loss of use of software, data or systems; loss of profits; loss of business; loss of anticipated savings; loss of revenues; loss of opportunity; loss of goodwill, or loss of reputation whether, in each case, direct or indirect and whether or not the type of loss was foreseen or reasonably foreseeable. Moreover STFC will not be liable for any indirect loss or damage.
- 10.4. Except as provided for in Condition 10.1 and Condition 10.2, STFC's maximum aggregate liability to the Customer in connection with the Contract and the provision or failure to provide any or all of the Services and the Goods will be limited to a sum equivalent to the Price.
- 10.5. The above limitations and exclusions on STFC's liability apply regardless of the cause of action, whether arising under statute, in contract, in tort (including but not limited to negligence), or in any other way.
- 10.6. Despite anything else contained in the Contract, neither party will be liable for any delay in performing or failure to perform its obligations (except an obligation to pay) caused by circumstances beyond its control including, without limitation, any act or omission of the other party or of any third party (except a party's employees, contractors or suppliers who will be deemed to be under its control for the purposes of this Condition). In those circumstances the Customer or STFC (as the case may be) will be granted a reasonable extension of time for the performance of its obligations, the reasonableness of that extension to be assessed not only in the context of the Contract but also in the context of STFC's other commitments.

11. LOSS OF ACCOMMODATION AND INSURANCE

- 11.1. The security of the Tenant's Accommodation is the responsibility of the Tenant and the Landlord cannot accept any responsibility for loss or damage to the Tenant's Accommodation in the event of breaches of security or for any other reasons. The Tenant will ensure that its security arrangements comply with the site security requirements relating to the Landlord's Premises.

- 11.2. The Tenant will obtain insurance in respect of any potential liabilities it may incur as a result of entering into this Lease including (but without prejudice to the generality of the foregoing) Employer's Liability and Public Liability insurance and against such risks as the Landlord may from time to time in its reasonable discretion deem it desirable to insure against (subject to such exclusions and limitations as are imposed by the insurers) with a reputable insurance office or underwriters. Such insurance for Employer's Liability and Public Liability shall be for an amount of not less than £5,000,000. The Tenant will from time to time provide evidence of this and proof that the current premium has been paid if reasonably requested by the Landlord.
- 11.3. The Tenant will comply with all requirements and recommendations of the insurers. The Tenant shall notify the insurers and the Landlord forthwith about any incidents at the Accommodation, which could possibly give rise to an insurance claim and about any other event that ought reasonably to be brought to the attention of the insurers. The Tenant will not delegate its obligations under this Clause to any other party.
- 11.4. The Landlord shall self-insure the Landlord's Premises against loss or damage, either by way of crown indemnity or under a commercial policy, for the Insured Risks.
- 11.5. If the Accommodation is damaged or destroyed by an Insured Risk so as to be unfit for occupation and use or if the Common Parts are damaged or destroyed by an Insured Risk so as to make the Accommodation inaccessible or unusable then, unless the policy of insurance in relation to the Accommodation or the Common Parts has been vitiated in whole or in part in consequence of any act or omission of the Tenant, its employees, its visitors or any Authorised Third Party, payment of the Rent, or a fair proportion of it according to the nature and extent of the damage, shall be suspended until the Accommodation has been reinstated and made fit for occupation and use or the Common Parts have been reinstated so as to make the Accommodation accessible or useable (as the case may be), or until the end of three years from the date of damage or destruction, if sooner.
- 11.6. The Tenant will have the Landlord's interest as owner of the Accommodation noted on their policies. The Tenant shall give the Landlord immediate written notification in the event of any cancellation of its insurance cover.

12. DURATION AND TERMINATION

- 12.1. The Services will begin on the Start Date and, subject to earlier termination of the Contract under Condition 12.2 or any Special Condition, will continue until the End Date.
- 12.2. STFC or the Customer may terminate the Contract by giving notice to the other if:
- (a) the other commits any material breach of the Contract and (in the case of a breach that is capable

of being remedied) has failed to remedy that breach within 30 days after receiving notice requiring it to remedy that breach; or

- (b) the other has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or the other passes a resolution for winding-up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if the other becomes subject to an administration order, or if the other enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun in any jurisdiction, or if it ceases or threatens to cease to carry on business.

12.3. The expiry or termination of the Contract will not affect any accrued rights or liabilities of STFC or the Customer, nor will it affect the coming into force or the continuance in force of any provision of the Contract that is expressly, or by implication, intended to come into or to continue in force on or after termination.

12.4. General Conditions 1, 2, 3.3, 3.4, 3.5, 4.7, 4.8, 4.9, 5.1, 5.2, 5.3, 5.6, 6, 7, 8, 9, 10, 12.3, 12.4 and 13 will survive the termination or expiry of the Contract and will continue indefinitely.

13. GENERAL

13.1. No forbearance or delay by STFC or the Customer in enforcing its rights will prejudice or restrict those rights. No waiver of any right or breach will operate as a waiver of any other right or breach. No right, power or remedy conferred on, or reserved to, STFC or the Customer is exclusive of any other right, power or remedy available to it, and each of those rights, powers, and remedies is cumulative.

13.2. If any part of the Contract is held to be illegal, invalid or unenforceable, the legality, validity and

enforceability of the remainder of the Contract will not be affected.

13.3. All notices to be given under the Contract must be in writing or by email and be sent to the address or email address of the intended recipient set out in the Sales Form, or any other address or email address which the intended recipient may designate by notice given in accordance with the provisions of this Condition.

13.4. Any notice may be delivered personally (including by courier), or sent by first class pre-paid letter or by email and will be deemed to have been served: if by hand, when delivered; if by first class post, 48 hours after posting; and if by email, when received.

13.5. Subject to Condition 13.6, neither STFC nor the Customer may assign the Contract or any of its rights or obligations under it, whether in whole or in part, without first obtaining the other's written consent. That consent will not be unreasonably withheld or delayed.

13.6. STFC may, provided it gives written notice to the Customer, assign its rights and obligations under the Contract to any member of the STFC Group.

13.7. The Contract and its validity are governed by, and the Contract is to be construed in accordance with, the laws of England. Both parties agree to submit to the exclusive jurisdiction of the English Courts.

13.8. Nothing in the Contract creates any partnership or joint venture between STFC and the Customer, or the relationship between them of principal and agent.

13.9. No third party is entitled to the benefit of the Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise, except that any member of the STFC Group may directly enforce or rely on any Condition expressed to be for the benefit of the STFC Group or any member of it.