

Responsible Contracts Officer: Mr. M. Houten (PFL-PTE)

SUBJECT: Permanent Open Call for Proposals for ESA Business Incubation  
Centre (BIC) Bavaria

REF: ESA BIC – Rev. October 2011

Dear Madam, Dear Sir,

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

The Anwendungszentrum GmbH Oberpfaffenhofen (AZO) is entrusted by the Agency with the setup, administration and implementation of this Call. AZO is a private incubator in charge of managing the ESA BIC Bavaria programme.

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

Please find attached hereto the following documents:

Appendix 1: Call for Proposals

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

Appendix 2: ESA BIC Bavaria Open Call for Proposal Template

Your attention is drawn to the following:

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

Nature and purpose of this Call for Proposals:

1. The purpose of this Call for Proposals (Call) is to select projects and ideas for business incubation in ESA BIC Bavaria for a maximum of 24 months.
2. ESA BIC Bavaria offers to support projects and ideas for business incubation by providing funding, business support, technical assistance and office accommodation. The modalities and the extent of the support provided are negotiated on a case-to-case basis. As a general rule the incentive granted to one project is only not for direct labour costs and as a general rule can only be spent in Bavaria, Germany. Exceptions have to be approved by AZO. The incentive will be maximum EUR 60.000 and EUR 40.000 as loan covering costs incurred for prototype development and IPR management.
  - “incentive”: EUR 35.000 from Bavarian Ministry of Economic Affairs has to be spent on rent and can be spent on marketing, consulting, IPR and external services.

EUR 25.000 from ESA could be spent on technical development or on IPR related costs.

- loan: EUR 40.000 from a local bank  
(Kreissparkasse München Starnberg Ebersberg, Sparkasse Nürnberg, or Sparkasse Berchtsgadener Land)

A maximum of 40 expert hours for prototyping and technical development will be offered through the German Aerospace Center (DLR) or the Fraunhofer Institute of Integrated Circuits (IIS), or the Economic Development Corporation Berchtesgadener Land (WFG BGL) depending on the incubation location.

3. This Call is of a permanent nature meaning that it has no closing date for the submission of proposals as long as AZO has not indicated otherwise.
4. Applications are only considered from one of the Agency’s Member States (see note 1) and Canada.
5. Start-up companies with or without legal personality as well as individuals may apply for this call.
6. In case of start-up companies with legal personality, the company – represented by its authorised representative(s) – is considered to be the Applicant.
7. In case of legal entities without legal personality, the general partner is considered to be the Applicant.
8. In case the Applicant is a natural person, (s)he is considered to be over eighteen years of age and of sound mind, and therefore able to enter into a binding agreement.

9. All the above categories are hereinafter referred to as ‘Applicant’.
10. This Call is not aimed at particular non-space sectors or domains but explicitly excludes activities promoting, or being related to, alcohol, tobacco, religion, politics, intolerance, violence, firearms, pornography, obscenity, gambling or illegal drugs.

#### Requirements

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

#### Procedure and planning

14. The evaluation of all proposals received shall take place in accordance with the Agency’s and ESA BIC Bavaria’s rules and procedures (see Section 2 of Appendix 1). All Applicants will be informed of the outcome of the evaluation.
15. The evaluation procedure is managed locally by AZO with the participation of:  
Oberpfaffenhofen: ESA, DLR, Bavarian Ministry of Economic Affairs (BStMWIVT) and Kreissparkasse München Starnberg Ebersberg (KSKMSE)  
Nuremberg: ESA, BStMWIVT, Fraunhofer IIS, Sparkasse Nürnberg  
Bechtesgadener Land: ESA, BStMWIVT, WFG BGL, Sparkasse BGL
16. The Evaluation Board meets quarterly to evaluate the proposals received in the preceding three months. Proposals will be accepted for the current evaluation round in case they reach the ESA BIC Bavaria Project Manager and ESA within the current deadline, the date of which is published on [www.esa-bic.de](http://www.esa-bic.de) and [www.esa.int/ttp](http://www.esa.int/ttp).
17. The period between receipt of a proposal and contract placement is in principle no longer than 6 months.

Miscellaneous

18. The contents of Applicant proposals shall be treated as confidential.
19. In spite of the efforts undertaken by AZO to ensure full confidentiality, the Applicant's idea may through this application with AZO (if not specifically protected like for example by patent rights) fall into the public domain. Therefore we strongly recommend that the Applicant discusses the protection of his/her idea with a dedicated expert in this field prior to application with AZO.
20. As far as allowed by law, any title held by the Applicant to his/her idea shall remain vested in him/her. This application shall under no circumstances result in the acquisition of any title whatsoever to the idea<sup>2</sup>.
21. No expenses incurred in either stage of the application procedure will be reimbursed to the Applicant by AZO, the Agency and/or any third party.
22. In no event shall this Call for Proposals be construed as imposing any obligation whatsoever upon AZO to enter into negotiations with any Applicant or to enter into any other specific arrangement for business incubation in any of the Agency's establishments.
23. AZO and the Agency is committed to ensuring equal opportunities and the elimination of discrimination of any type for all applications complying with the conditions and requirements set forth in this Call.

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<sup>2</sup> If the Agency or its Member States require the use of any Intellectual Property Rights, owned by the Incubatee as described in Item 20 here above, for the performance of the Agency's programmes in the field of space research and technology and space applications only, ESA will issue a tender in direct negotiation to the Incubatee about the performance of activities for the Agency or the use of such Intellectual Property Rights. If the Incubatee is not willing or able to perform these activities for the Agency, the Agency or its Member States shall be entitled to a free of charge, transferable, non-exclusive licence to use such Intellectual Property Rights, which licence shall be limited to the territories of the Agency's Member States.

Any queries relevant to the submissions of proposals are to be addressed, in writing,  
to: esa-bic@anwendungszentrum.de

Your complete proposal and all supporting documents is to be submitted, in electronic  
form (.pdf or .doc) to the following email address:  
esa-bic@anwendungszentrum.de

In parallel, 2 (two) signed paper originals are to be sent to:

One set to:

Anwendungszentrum GmbH Oberpfaffenhofen  
Friedrichshafener Straße 1  
82205 Gilching  
Germany

For the attention of Mrs Dr. Christin Bindl  
Subject: ESA BIC Bavaria Open Call

and one set to:

ESTEC  
Keplerlaan 1  
2201AZ Noordwijk  
The Netherlands

For the attention of Mr. M. Houten (PFL-PTE) and Ms. A. Lucas (PFL-PTE)  
Subject: ESA BIC Bavaria Open Call

Yours faithfully,

Thorsten Rudolph  
AZO Managing Director

## **Call for proposals** *(for business incubation)*

<b>Section I. Instructions for Business &amp; Activity Proposals .....</b>	<b>6</b>
A. Length of proposal .....	6
B. Content of proposal .....	6
1. Cover Letter .....	6
2. Requirements Checklist .....	7
3. Executive Summary .....	7
4. Business & Activity Proposal .....	7
5. <b>Additional Information</b> .....	12
<b>Section II. Formal Requirements, Evaluation Process and Criteria .....</b>	<b>13</b>
A. Formal requirements .....	13
B. Evaluation process .....	15
C. Evaluation criteria .....	16
<b>Section III. Draft contracts .....</b>	<b>17</b>

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

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

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

The proposal shall in average not contain more than 30 pages, annexes excluded.  
The Executive Summary shall be maximum one page.

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

The proposal shall contain the following information:

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

The Applicant is asked to introduce the application with a cover letter (following the template attached in document OpenCall for Proposal TEMPLATE point 1. Cover Letter). The cover letter must clearly state that the draft contract conditions are read, understood and accepted.

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

## **2. Requirements Checklist**

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

The Applicant is welcome to provide additional information on any aspect of the Requirements Checklist.

## **3. Executive Summary**

The Applicant is asked to produce an executive summary as attached in document Open Call for Proposal TEMPLATE point 3. The executive summary shall cover the following aspects, in maximum one page:

### Business idea

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

### Implementation

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

### Program Partner's (ESA, Bavarian Ministry of Economic Affairs, local technical support association, local bank) investment opportunity

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

### Goals

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

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

The Applicant is asked to produce a Business & Activity Proposal as attached in the Open Call for Proposal TEMPLATE point 4.

### 1. Presentation of the Applicant

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

- A) Background and history of company  
*Describe the background of the company, including official name, contact details, age of company, ownership details, company capital, grants already received and industrial organization. Provide an overview of milestones already reached.*
- B) Introduction of the entrepreneur  
*Describe the entrepreneur/inventor by providing the background and CV, as well as his/her role in the company or current involvement with the company. Has the entrepreneur/inventor committed personal time and investments to the company?*
- C) Introduction of the management team  
*Describe the management team by providing the background, references and CVs of the involved persons, as well as their role in the company. Have members of the management team committed personal time and investments to the company?*
- D) Support entities  
*List other supporting entities and what type of support they provide, if any (in kind, in cash, etc).*
- E) Vision  
*Describe the future of the company. Where do you expect to be in 5-10 years?*

## 2. Description of business idea

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

- A) Business idea  
*Describe your business idea, including the stage of implementation.*
- B) Core related customer needs  
*Identify the customer needs which your business idea will address.*
- C) Identified market  
*Describe the market you are focussing in and your point of entry.*
- D) Unique selling proposition  
*Describe the specific benefit your business idea offers the customers.*

### 3. Description of the product and/or service

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

- A) Description of product/service and use  
*Describe the product/service your company provides, and the use. Include how you convert your ideas and materials/labour into goods or services.*
- B) Space relationship  
*Describe the space technology (hardware, software, process, methodology or data) or space system (satellite communication, satellite navigation or earth observation) your product/service is utilizing.*
- C) Non-space benefit  
*Describe how applications in the non-space sector benefit from the use of your product/service.*
- D) In-depth description of technology  
*Describe the core technology of your product/service (a “technology” is not necessarily hardware/software, but can also be a means of converting ideas, materials or labour into goods or services).*
- E) Stage of development of the product/service  
*Describe the current status of development of the product/service.*
- F) Research and development  
*Describe in detail the way forward by stating the needed short- and long-term developments of the product/service.*
- G) Intellectual property  
*Explain how you secure your own IP (e.g by the means of patents, copyrights, trademarks, trade secrets, exclusive license...). Explain how you use 3<sup>rd</sup> party IP, including details on rights of use (License terms) and details on ownership.*

### 4. Market Analysis

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

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

- C) The customer  
*Describe the customer your business is targeting and state if you are familiar with working with this type of customer.*
- D) The geographical coverage  
*State the geographical area your business will cover.*

#### 5. Business model

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

- A) Supply chain  
*Describe where your company is placed in the supply chain.*
- B) Suppliers  
*List the main suppliers for your product/service (raw materials, components, services and/or data).*
- C) Production  
*Describe how the production will be organized. Include by whom, where and the capacity.*
- D) Distribution  
*Describe the distribution network.*

#### 6. Strategy

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

- A) The market approach  
*Describe how you will reach your customers/clients.*
- B) Marketing strategy  
*Describe how you will do your marketing, and who will be doing it.*
- C) Sales strategy  
*Describe how you will do your sales, and who will be doing it.*
- D) Pricing strategy  
*Describe how you will be pricing your product/service.*

7. Risk analysis

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

8. Finance

*To the extent possible, the Applicant is asked to fill in the EXCEL spreadsheets attached (document Open Call for Proposal TEMPLATE point 4.8, table 1: Assets & Liabilities, table 2: Profit & Loss projection). The Applicant needs to double click on the spreadsheets to activate them.*

9. Activity proposal

This part of the proposal shall provide a plan of activities for the period of incubation in the ESA BIC Bavaria, covering the following aspects:

A) Milestone planning

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

B) Task description and related costs

*For each task identified in 4.9.1 Fig. 2 Milestone Planning, fill in the task description template (document Open Call for Proposal TEMPLATE point 4.9.2 Fig. 3 Task description and related costs) indicating the related costs and technical assistance per task.*

C) Funding

*Explain how you want to finance your tasks, describe which ones you want the ESA BIC Bavaria partners to fund, describe the expertise needed from the partners in terms of manpower and other sources of funding (document Open Call for Proposal TEMPLATE point 4.9.3, Table 3: Funding Split, and point 4.9.3 Technical Expertise Support). The Applicant needs to double click on the EXCEL spreadsheet to activate it.*

*The Applicant should note that the financial contribution of this program is broken down as follows:*

*See page 2 of this document and Article 7 of the Draft Incubation Contract):*

- (a) 25.000 EUR incentive from ESA covering work directly relevant to the Business Plan;*
- (b) 35.000 EUR incentive from the Bavarian Ministry covering Third Party Services;*

(c) 40.000 EUR loan from a local bank (Kreissparkasse München Starnberg Ebersberg, Sparkasse Nürnberg, or Sparkasse Berchtesgadener Land)

D) Technical Support

*Indicate the number of hours of technical support.*

E) Management

*Explain how you will organize your management, reporting, meetings and deliverables during the incubation (see draft contract in Appendix 1 section 3). Provide CV's from all team members and describe the ownership structure.*

## **5. Additional Information**

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

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

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

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

In order for the Applicant's proposal to be accepted for evaluation, the requirements listed below need to be fulfilled. The ESA general application requirements are applicable to all ESA BICs Applicants. The specific requirements are only applicable for incubation in the ESA BIC Bavaria .

#### **ESA General Application Requirements**

- The Applicant's product or service is based on a transfer of space technology to, and/or utilisation of a space system in a non-space environment.
- The Applicant sells and delivers innovative products, processes or services (advice is excluded) for his own account and risk.
- The Applicant's first registration at a chamber of commerce has taken place no longer than 5 years (3 years in Bavaria) prior to submission of Applicant's proposal to the Agency.
- In case the Applicant has legal personality, the Applicant does not form part of a group at the time of submission of the Applicant's proposal to the Agency. This means that no less than half the issued capital is owned – directly or indirectly – by the authorised representatives applying on behalf of the Applicant. In case the Applicant is a legal entity without legal personality, the Applicant is a fully authorised general partner.
- The Applicant does not conduct business activities promoting, or being related to, alcohol, tobacco, religion, politics, intolerance, violence, firearms, pornography, obscenity, gambling or illegal drugs.
- The authorised representative of the Applicant must become a resident of Bavaria before starting with incubation.
- The Applicant shall provide a copy of an official identity form
- The Applicant is able to communicate in English.

#### **Application Requirements Specific to ESA BIC Bavaria**

- The Applicant states that the terms and conditions of the draft incubation contract and the draft rental agreement are read, understood and accepted without any reservations.

- The Applicant states not to be hosted in another business incubator – or entity or organisation providing similar support, for the duration of the incubation contract.
- Company headquarters for the incubation time has to be located at the offices of the ESA BIC Bavaria.
- Cash incentives of the Bavarian Ministry of Economic Affairs
  - o The total amount of de minimis aid (such as subsidies, holdings, loans, and bonds) may not exceed €200,000 over a period of three years.
  - o The company in question must be a small or midsize enterprise (SME).
  - o Companies that are not considered SMEs within the meaning of the E.U. definition shall not own more than 25% of the company filing the application
- Local conditions of the incentive scheme:
  - o The Funding is linked to work packages within the incubation project only.
  - o The Funding is granted in net amounts (not including VAT).
  - o The information provided in the application and in the supplementary data sheet is binding and forms the basis of the funding granted. Any changes in this information must be reported immediately and are subject to approval.
  - o ANBest-P  
The General Supplementary Provisions on Project Subsidies (*Allgemeine Nebenbestimmungen für Zuwendungen zur Projektförderung*, ANBest-P) from 1 July 2002 constitute an essential component of the approval notification process.
  - o Subsidies may not be transferred to third parties.
  - o The Bavarian State reserves the right to make changes to the conditions, and addenda if required for the execution of its overall plan.
  - o Any notice of approval of the applicant's proposal is only valid with the submission of a written declaration of consent.
  - o Shareholders of the company in question are:  
  

(1) _____ ( ___%)	(2) _____ ( ___%)
(3) _____ ( ___%)	(4) _____ ( ___%)
- Local conditions of the Loan Scheme
  - o For the loan agreement, a document of self-disclosure for the bank and a signed loan application are required.
  - o A credit report must be completed.

***B. Evaluation process***

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

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

In case the proposal is compliant with the formal requirements, the Agency and its local partners shall perform an evaluation meeting (Tender Evaluation Board or "TEB").

Applicants will be requested to hold a presentation of the proposal in front of the above mentioned TEB of ESA BIC Bavaria and to provide answers to any further questions the Board might have.

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

The TEB makes a recommendation for the Agency's Award Board whose decision regarding the application is final and without appeal. The incubator manager is responsible for notifying the Applicant in writing. The incubator manager will debrief the applicant if requested.

Upon receiving notice that the application has been successful the Applicant is requested to register his/her company at a German Chamber of Commerce if not already done so.

***C. Evaluation criteria***

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

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

**Section III. Draft contracts**

**DRAFT INCUBATION CONTRACT**

Between:

Anwendungszentrum GmbH Oberpfaffenhofen  
ESA Business Incubation Centre Bavaria  
Headquarter located at: Friedrichshafener Straße 1, 82205 Gilching, Germany

Represented by Mr. Thorsten Rudolph as General Manager

of the one part,

And:

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

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

(hereinafter called the “Incubatee”)

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

of the other part,

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

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 the Anwendungszentrum GmbH Oberpfaffenhofen (AZO) with more than 5 years of experience in incubation procedures to implement and manage the ESA BIC Bavaria through ESTEC contract No. 22615/09/NL/JD and No. 4000104413 and the corresponding applicable Work Orders.
6. WHEREAS the ESA BIC Bavaria is partly funded by the European Space Agency, the Bavarian Ministry of Economic Affairs, in Oberpfaffenhofen additionally by the German Aerospace Center (DLR), the Kreissparkasse München Starnberg Ebersberg (KSKMSE), in Nuremberg additionally by the Fraunhofer Institute of Integrated Circuits (IIS) and the Sparkasse Nürnberg, in Berchtesgaden additionally by the Economic Development Corporation Berchtesgadener Land (WFG BGL) together with the Sparkasse Berchtesgadener Land.
7. WHEREAS the Bavarian Ministry is one of ESA BIC Bavaria partners and contributes to the starters funding.
8. WHEREAS the German Aerospace Center (DLR) is one of ESA BIC Bavaria partners and provides technical knowhow for the starters support at the Oberpfaffenhofen location.
9. WHEREAS the Kreissparkasse München Starnberg Ebersberg is one of ESA BIC Bavaria partners and provides a loan scheme for starters at the Oberpfaffenhofen location

10. WHEREAS the Fraunhofer Institute of Integrated Circuits is one of ESA BIC Bavaria partners and provides technical knowhow for the starters support at the Nuremberg location.
11. WHEREAS the Sparkasse Nürnberg is one of ESA BIC Bavaria partners and provides a loan scheme for starters at the Nuremberg location.
12. WHEREAS the Economic Development Corporation Berchtesgadener Land is one of ESA BIC Bavaria partners and provides technical knowhow for the starters support at the Berchtesgadener Land.
13. WHEREAS the Sparkasse Berchtesgadener Land is one of ESA BIC Bavaria partners and provides a loan scheme for starters at the Berchtesgadener Land.
14. WHEREAS the Incubatee wishes to participate in the ESA BIC Bavaria and benefit from the assistance which may be offered to it through the provisions of this Contract.
15. WHEREAS, as part of the assistance offered to the Incubatee, a rental agreement of even date with this Contract for the provision of office accommodation and related equipment and services to the Incubatee will be signed.

## **ARTICLE 1 - CONTRACTUAL BASELINE**

### 1.1. Definitions

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

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

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

“Anwendungszentrum” means Anwendungszentrum GmbH Oberpfaffenhofen, a company providing business development support and office accommodations to start up companies.

“Bavarian Ministry of Economic Affairs“ means the ministry of economic, infrastructure, traffic and technology.

“Business Plan” shall have the meaning set out in Appendix I, 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 AZO 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 AZO.

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

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

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

“Economic Development Corporation Berchtesgadener Land” or WFG BGL means a point of contact for all companies in the Berchtesgadener Land region.

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

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

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

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

“Fraunhofer Institute of Integrated Circuits” or Fraunhofer IIS means the research and development centre for localization and navigation in Nuremberg.

“German Aerospace Center” or DLR means the research centre for aerospace of the Federal Republic of Germany.

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

“Kreissparkasse München Starnberg Ebersberg” means a local bank near the ESA BIC Bavaria at the location of Oberpfaffenhofen.

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

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

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

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

“Sparkasse Berchtesgadener Land” means a local bank near the ESA BIC Bavaria at the location of Berchtesgadener Land.

“Sparkasse Nürnberg” means a local bank near the ESA BIC Bavaria at the location of Nuremberg.

“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 I;

- 1.2.3 The Rental Agreement;
- 1.2.4 The Minutes of the negotiation meeting held on the ....., not attached hereto but known to both parties;
- 1.2.4 The Incubatee’s Business Activity Proposal, reference ....., dated ....., Version ....., not attached hereto but known to both Parties

**ARTICLE 2 – ACTIVITY OF THE INCUBATEE**

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

2.1 Documentation

2.1.1 Mid Term Report

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

2.1.2 Business Plan

The Business Plan shall be provided to AZO’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 AZO with draft versions of the Final Report and the Executive Summary. AZO 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 AZO. Templates are provided in Appendix III herein.

(b) The Final Report and the Executive Summary shall be delivered by the Incubatee to AZO in 3 (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 AZO.

### 2.2.1 Software

- (a) In the event that the Incubatee develops software during the Contract Term and as part of its Activity the Incubatee shall deliver such software to AZO in a form to be agreed with the AZO.
- (b) The Incubatee shall deliver such software at the end of the Contract Term or upon the cancellation of this Contract, unless otherwise agreed in writing by the Parties.
- (c) The Incubatee shall deliver a complete demonstration including hosting server (functional prototype level).

### 2.2.2 Hardware

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

### 3.1 Technical Support

- (a) For the purposes of this Contract and depending on the location DLR, Fraunhofer IIS, or WFG BGL will provide the Incubatee with the following technical support necessary for and directly related to the Activity of Incubatee (referred to as “Technical Support”).

A maximum of 40hrs during the contract term.

- (b) The Technical Support shall be provided for the duration of the Contract Term, unless a shorter period is agreed between the Parties.
- (c) Any information in documentary or other physical form provided to the Incubatee as part of the Technical Support shall remain the property of the lending institution and shall be returned 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 c).

3.2 Equipment

It is not foreseen that the ESA BIC Bavaria partner will loan the Incubatee any equipment.

In the event that during negotiation between the Incubatee and the technical support entity concerning the technical development 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 the ESA BIC Bavaria partner will loan the Incubatee any software.

In the event that during negotiation between the Incubatee and the technical support entity concerning the technical development 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 AZO when entering into agreements with Third Parties to obtain specific advice/product relevant to the Activity (“Third Party Services”). AZO shall bear no responsibility for such advice or product.

For the purpose of this Article it is hereby understood that the incentive funding shall be spent in Bavaria, Germany 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 AZO.

**ARTICLE 5 - CONTRACT TERM**

This Contract shall enter into force upon signature by the legal representatives of both Parties from (“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 Appendix I sections 3 and 4 respectively.

**ARTICLE 7 – FINANCIAL CONTRIBUTION AND PAYMENT**

7.1 Financial Contribution

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

60.000 EUR (sixty thousand Euro) for IPR & product development (funded by ESA) and for external services not related to the technical development (funded by the Bavarian Ministry), broken down as follows:

- (a) 35.000 EUR from the Bavarian Ministry of Economic Affairs:  
at the beginning: 7.000 EUR  
after every 6 months until the end: 7.000 EUR each

The amount and dates of the payments will be fixed in the official notification of approval from the government of Upper Bavaria. That budget has to be paid for external services not directly related to the technical development like rent, marketing and promotional material, coaching, IPR, etc.

Direct labour costs are not accepted to be paid with the Bavarian Ministry incentive.

- (b) 25.000 EUR from ESA covering IPR & product development and will be paid depending on the approved progress reports. That 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: XXX  
bank name: XXX  
bank code: XXX  
account number: XXX

7.1.2 For the purpose of this Contract the above mentioned total financial contribution is stated to be a ceiling which amount shall not be exceeded and for which the Incubatee shall perform the Activity in full. At the end of the Contract Term the ceiling amount shall be converted into a firm fixed amount by means of a Conversion Proposal, detailing all costs incurred, with all invoices attached in copy, to be submitted by the Incubatee to AZO.

7.1.2.1 The incubatee shall proof all expenses from the ESA funding solely with third parties' invoices used for IPR and product development following the provisions on Article 4 here above. The incubatee is not authorized to use the above stated funding for reimbursement of his own hours spent in the project.

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

## 7.2 Payment Terms

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

## 7.3 Categories of Payment

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

7.3.1 Advances and Progress Payments

- (a) AZO 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 AZO, 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 AZO 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 AZO upon:

- a) receipt by AZO of the Conversion Proposal;
- b) receipt by AZO of the relevant invoice(s) from the Incubatee with a clear indication of all the invoices paid with the funding provided under this contract; and
- c) certification by AZO 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 AZO for the execution of the final payment.

7.4.4 AZO shall make the following payments:

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT IN EURO
PROGRESS: upon acceptance by ..... of the deliverables due on MTR		
FINAL: upon acceptance by ..... of all Deliverables under the contract, including the hardware and software and upon acceptance by ..... of the Incubatee’s Conversion Proposal		.....or finally certified firm fixed price minus (Advance + Progress) payments

- 7.5 Invoices, place and payments
- 7.5.1 The Incubatee is required to submit invoices for all payments due under this Contract.
- 7.5.2 Payments shall be made by AZO in EUR to the account specified by the Incubatee, see Article 7.1.1. here above. 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 AZO 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 the Bavarian Ministry of Economic Affairs and that is provided under this Contract to the Incubatee by AZO falls under the terms of EC Regulation 1998/2006 of 15<sup>th</sup> 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 the Bavarian Ministry of Economic Affairs through AZO 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 15<sup>th</sup> 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 ESA BIC OPF representatives are:

(a) For technical and administrative matters:

Mrs Dr. Christin Bintl  
ESA BIC OPF  
AZO, Friedrichshafener Straße 1,  
82205 Gilching, Germany  
Tel.: + 49 (0) 8105 77277 15  
Fax.: + 49 (0) 8105 77277 55  
email: [bindl@anwendungszentrum.de](mailto:bindl@anwendungszentrum.de)

(b) For contractual matters:

Mrs Stefanie Herrmann  
ESA BIC OPF  
AZO, Friedrichshafener Straße 1  
82205 Gilching, Germany  
Tel.: + 49 (0) 8105 77277 12  
Fax.: +49 (0) 8105 77277 55  
email: [herrmann@anwendungszentrum.de](mailto:herrmann@anwendungszentrum.de)

(c) For .....’s technical support (Article 3 here above) matters:

Mr.	E-mail:
	Tel.:
	Fax.:

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

(a) For technical matters:  
*[Full contact details]*

(b) For contractual and administrative matters:  
*[Full contact details]*

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

- 10.1.2 None of the ESA BIC Bavaria partners shall produce or disseminate any form of communication material, press releases or other publicity documents which are intended by the ESA BIC Bavaria partners 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.
- 10.1.3 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 AZO or any aspect of AZO's activities, or permit any Third Party to do so, without the prior written consent of AZO's contractual representative or his duly authorised representative.
- 10.1.4 AZO shall not produce or disseminate any form of communication material, press releases or other publicity documents which are intended by AZO 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 AZO or ESA BIC Bavaria or any other logo or trademark which may be owned or used by AZO for any purpose whatsoever without approval.
- 10.2.2 The Incubatee may place the logo attached in Appendix IV 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 incubatee to be inserted] participates in the ESA Business Incubation Centre Oberpfaffenhofen”, referred to as the “Text Line”.*

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

- (a) the Incubatee shall submit to AZO'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 AZO's discretion;

- (b) the prior approval of AZO for the use of the Text Line shall not constitute an endorsement or approval of the Incubatee's Activity, products or services, or of their quality, technology or suitability for a particular use, neither shall it constitute verification by AZO of the compatibility of materials produced by the Incubatee with applicable law and regulations, and the Incubatee shall refrain from using any statements which could suggest otherwise;
- (c) any use of the Text Line on amended or revised promotional material and publicity documents shall be subject to the same approval process as the original material and documents;
- (d) the Text Line may be translated into a different language other than English, subject to the approval of the AZO's contractual representative or his duly authorised representative; and
- (e) no use of the Text Line shall be made in connection with material, products or documents that:
  - a. constitute an infringement of law and/or legal provisions;
  - b. undermine the reputation and dignity of the Agency or ESA BIC Bavaria partners; and
  - c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

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

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

## **ARTICLE 11 - CONFIDENTIALITY**

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

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

documentation shall include any final documentation deliverable under this Contract with the exception of the Executive Summary.

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

## **ARTICLE 12 – INTELLECTUAL PROPERTY**

### 12.1 Ownership

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

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

## 12.2 Use of Intellectual Property Rights by the Agency

12.2.1 If the Agency or its Member States require the use of any Intellectual Property Rights, owned by the Incubatee as described in Article 12.1.1, for the performance of the Agency's programmes in the field of space research and technology and space applications, the Agency will issue a request for quotation to the Incubatee. If the Incubatee is not willing or is not able to perform the activity for the Agency, the Agency or its Member States shall be entitled to a free of charge, transferable, non-exclusive licence to use such Intellectual Property Rights, which licence shall be limited to the territories of the Agency's Member States.

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

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

The Incubatee shall inform AZO'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 EURO (Fifty Thousand EURO), per event or series of connected events.

### 13.2 Infringements of the Law

13.2.1 AZO 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 Germany or in any other country whatsoever.

13.2.2 The Incubatee shall indemnify AZO 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 ESA BIC Bavaria Partners

13.3.1 The Incubatee shall indemnify the ESA BIC Bavaria 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 subject matter of this Contract - excluding any infringement resulting from the use of documents, patterns, drawings or goods supplied by the ESA BIC Bavaria partners through AZO - which may be made, or brought against the ESA BIC Bavaria partners, or to which the ESA BIC Bavaria partners may be put by reason of such infringement or alleged infringement.

13.3.2 AZO shall notify the Incubatee immediately of any written claim or notice of infringement of third-party rights that it receives concerning the subject matter of this Contract.

13.3.3 The Incubatee shall immediately take all necessary steps within the Incubatee's competence to prevent or end a dispute and shall assist the ESA BIC Bavaria 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 in respect of damage shall be settled as follows.

#### 13.4.1 Direct Damages

(a) The Incubatee shall indemnify AZO and ESA BIC Bavaria partners against, and shall be personally responsible for, direct damage to 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) AZO and ESA BIC Bavaria 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 AZO or ESA BIC Bavaria partners or AZO's and ESA BIC Bavaria partners' 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

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

14.1.2 The Incubatee shall ensure -in liaison with AZO- that each change proposal is fully coordinated and that all reasonably foreseeable implications of the change have been considered by the Incubatee and AZO. The Incubatee shall, on the request of AZO, provide additional documentary evidence of the affect 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 AZO, a corresponding CCN shall be prepared by AZO's contractual representatives as stated in Article 9.3(b) and submitted to both Parties for signature.

14.2.2 Should a change proposal be rejected for any reason by AZO, 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 years, subject to losing the right to use the ESA BIC logo if non compliant, the Incubatee shall prepare and submit an Annual Performance Report (see Appendix I, point 5.6 annual performance report) to the Incubation Manager of ESA BIC Bavaria, as stated in Article 9.3(a), as well as to the European Space Agency's Technical Representative, as follows:

Mr. C.J.J. Eldering (TEC-ST)

E-mail: [Niels.Eldering@esa.int](mailto:Niels.Eldering@esa.int)

ESTEC  
Keplerlaan 1  
2201AZ Noordwijk, NL

Tel.: + 31 71 56 55487  
Fax.: + 31 71 56 56635

## **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 AZO without any fault of the Incubatee, the Incubatee shall on receipt of AZO'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 AZO after consultation with the Incubatee.

16.2.2 AZO 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 AZO. In calculating the amount of compensation payable to the Incubatee AZO 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 AZO shall in no circumstances be liable to pay any sum which deviates from the provisions set out in Article 7.1 and Article 4 herein or when added to the other sums paid, due or becoming due to the Incubatee under this Contract by AZO, exceeds the total contractual payments due by AZO to the Incubatee, as set out in Article 7.1.

### 16.3 Grounds for Cancellation by AZO

AZO 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:
  - (a) the Statement of Non Co-incubation;
  - (b) the Incubatee's legal ownership;
  - (c) the Incubatee's Chamber of Commerce registration; and/or
  - (d) the Declaration of State Aid.

### 16.4 Consequences of Cancellation

Any information, in documentary or other physical form, pertaining to the Activity carried out by the Incubatee during the Contract Term, remains the property of AZO and shall be handed over to AZO 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 the laws of Germany.
- 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 Germany and the language of the arbitration shall be English. The enforcement of the award shall be governed by the rules of procedure in force in Germany.

**ARTICLE 19 - DATA PROTECTION**

- 19.1 To the extent that is reasonably necessary, in connection to the Incubatee’s activities under this contract, his data may be disclosed to others, including staff of ESA BIC Bavaria, AZO and all ESA BIC Bavaria partners, for any studies and/or reporting that may be carried out by the Agency and/or AZO. 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 Germany and other countries for the fulfilment of the above requirements.

Done and signed in three (3) original copies, one for each Party to this Contract,

on behalf of the ESA BIC OPF:

Mrs Stefanie Herrmann  
AZO CFO

Date: \_\_\_\_\_

on behalf of the Incubatee:

Specific name and function

Date: \_\_\_\_\_

## **APPENDIX I**

### **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 AZO in regard to the ESA BIC Bavaria.

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

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

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

#### **2. MANAGEMENT**

##### **2.1 General**

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

##### **2.2 Communications**

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

### **3. REPORTING**

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

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

#### **3.2 Progress Reports**

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

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

#### **3.3 Problem Notification**

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

### **4. MEETINGS**

#### **4.1 Kick-off Meeting**

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

#### **4.2 Mid Term Review**

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

#### **4.3 Additional Meetings**

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

#### **4.4 Notice and Agenda for Meetings**

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

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

## **5. DELIVERABLES**

### **5.1 Documentation to be delivered**

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

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

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

5.1.2 in one (1) paper copy.

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

### **5.2 Mid Term Report**

The Incubatee shall document in detail the status of its technical and commercial progress in relation to the Activity in the Mid Term Report and confirm the feasibility of the Activity. The Mid Term Report shall furthermore contain all invoices relevant to the Third Party Services obtained by the Incubatee in accordance with Article 4 of this Contract. The Mid Term Report shall be presented by the Incubatee to AZO at the Mid Term Review. The Incubatee shall submit the presentation of the Mid Term Report to AZO two (2) weeks in advance of the Mid Term Review meeting.

### **5.3 Final Report**

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

- (a) lessons learned;
- (b) details of the support received from AZO and/or other support entity of ESA BIC Bavaria partners;
- (c) contacts established;
- (d) description of technical developments;
- (e) financial details;

- (f) all invoices relevant to the Third Party Services obtained by the Incubatee in accordance with Article 4 of this Contract.
- (g) licences granted and patent filings and applications;
- (h) photographic documentation
- (i) ... [*further of input by ... required on a case by case basis*]

#### 5.4 Executive Summary to the Final report

The Incubatee shall prepare a summary which shall concisely summarise the findings of the Incubatee in performing the Activity (“Executive Summary”). It shall be suitable for non-experts and should also be appropriate for publication, including on a web page. For this reason, it shall not contain any confidential information. The Executive Summary shall not exceed three (3) to four (4) pages of text with coloured illustrations or photographs, if appropriate. It shall also be delivered to AZO by the Incubatee in HTML format.

#### 5.5 Business Plan

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

#### 5.6 Annual Performance Report

The annual performance report shall describe the sales made and/or licences granted by the Incubatee during the preceding twelve (12) months (“Annual Performance Report”). The Incubatee shall submit this to AZO and to the Agency (according to Article 15 of the contract) in one (1) paper copy and in electronic form on each anniversary of the end of the Contract Term, during 10 years.

#### 5.7 Photographic Documentation

Photographic documentation comprises photographs of events organised by the Contractor and photographs of hardware under manufacture by the Techno-starters showing major progress, as well as of tests and test set-ups. Videos presenting the functioning of hardware/test set-up and relating test activities may also be included in this category.

5.8 Software (including computer programmes)

Copy of the software developed by the Incubatee shall be a deliverable.

The Techno-starters shall provide a demonstration of the software to AZO's representative including a trailer/movie clip illustrating the use and application of their developed software program for the purpose of ESA exhibitions.

5.9 Hardware

A prototype or product manufactured by the techno-starter. In case of very high production costs, the techno-starter can keep the original prototype and deliver a mock-up of the prototype. Techno-starters shall however keep the prototype available for lending it to ESA for exhibitions.

**APPENDIX II - AGENDA FOR MID TERM REVIEW**

1. Welcome/Introduction

2. Elevator pitch

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

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

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

<b>Task/Work Package #</b>	
<b>Objectives</b>	
<b>Sub-tasks</b>	
<b>Costs</b>	
<b>Sub-tasks</b>	<b>Costs (€)</b>
<b>Total (€)</b>	
<b>Output</b>	

4. Planning of tasks/work packages, next phase

Refer to each task in original proposal and present current status or changes, if any. Include overview of additional new tasks (if any).

<b>Task/Work Package #</b>	
<b>Objectives</b>	
<b>Sub-tasks</b>	
<b>Costs</b>	
<b>Sub-tasks</b>	<b>Costs (€)</b>
<b>Total (€)</b>	
<b>Output</b>	

5. Incubation Planning Overview:

Task/WP	Task Name		Month/Year	Month/Year	Month/Year	Month/Year	Month-Year	Month/Year
1		Planned						
		State			50%			
2		Planned						
		State	33%					
3		Planned						
		State						
4		Planned						
		State			150%			
5		Planned						
		State			100%			
6		Planned						
		State	0%					
7		Planned						
		State	100%					
8		Planned						
		State						

Midterm Review

Final Review

6. Cost Breakdown Overview, first phase:

WP	Task Name	Business Plan Development in €	Third Party Advice in €
1			
2			
3			
4			
5			
6			
7			
8			
<i>Total</i>			

7. Changes in expected Costs, first phase:

WP	Task Name	Expected amount at Midterm Review		Real Costs		Difference in €		Difference in %	
		BPD	TPA	BPD	TPA	BPD	TPA	BPD	TPA
1									
2									
3									
4									
5									
6									
7									
8									
<i>Total</i>									
<i>BPD+TPA</i>									

8. Overview of technical experts

Expert hours used, this phase

Experts hours needed, next phase

9. Overview of major challenges/concerns.

10. Other news/updates

Very short, f.ex

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

11. Proposal of CCN

If any

12. Q&A

**APPENDIX III – FINAL REPORT TEMPLATE**

*Template for Final Report (see also 5.3 of Appendix I of the incubation contract). Please use this template also to structure your presentation for the Final Review.*

1. Introduction

2. Elevator pitch

2-3 minutes Pitch (*This is good training and will introduce the company and business idea to potential new audience.*)

3. Lessons learned (5.3.a in annex 1.5 of the contract);

4. Details of the support received from ..... (5.3.b in Appendix I of the contract);

Also mention the expert's names, sections and hours used during incubation period

5. Business contacts established (5.3.c in Appendix I of the contract);

6. Progress report on work packages of total incubation period (5.3.d in Appendix I of the contract);

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

<b>Task/Work Package #n</b>								
<b>Objectives</b>								
<b>Sub-tasks</b>								
<b>Costs</b>								
<table border="1"><thead><tr><th>Sub-tasks</th><th>Costs (€)</th></tr></thead><tbody><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td><b>Total (€)</b></td><td> </td></tr></tbody></table>	Sub-tasks	Costs (€)					<b>Total (€)</b>	
Sub-tasks	Costs (€)							
<b>Total (€)</b>								
<b>Output</b>								

7. Incubation Planning Overview (planned *and* actual):

Task/WP	Task Name		Month/Year	Month/Year	Month/Year	Month/Year	Month-Year	Month/Year
1		Planned						
		State			50%			
2		Planned						
		State	33%					
3		Planned						
		State						
4		Planned						
		State			150%			
5		Planned						
		State			100%			
6		Planned						
		State	0%					
7		Planned						
		State	100%					
n		Planned						
		State						

Midterm Review

Final Review



9. Overview of major challenges/concerns.

10. Other news/updates

- changes in your team's composition
- financial developments; i.e. secured financing , launching customers, other income
- cooperation agreements

11. Way forward

12. Feedback on ESA Business Incubation support

ANNEX to the Final Report. Please attached to this report also:

- I. An overview and the copies of all invoices relevant to the Third Party Services obtained by the Incubatee (*5.3.f in Appendix I of the contract*);
- II. An overview and copies of patents, patent filings and/or licences granted (*5.3.g in Appendix I of the contract*);
- III. Photographic documentation accordance (*5.3.h in Appendix I of the contract*).

**APPENDIX IV – LOGO**



**business  
incubation  
centre**

Bavaria  
managed by AZO