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## General Terms and Conditions for Participation to the ESA Start-up Competition

Revision n° 4, applicable as of 15 May 2020

*(consolidated version, including the already-notified changes effective as follows:*

*Revision 1 - effective on 10 April 2020*

*Revision 2 – effective on 17 April 2020*

*Revision 3 – effective on 30 April 2020*



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## 1 INTRODUCTION

The ESA Start-up Competition is a one-time competition promoted by the European Space Agency (hereafter: **ESA** or the **Agency**) with a view to give visibility to the Eligible start-up companies in the space sector, while enabling the Winners of the ESA Start-up Competition to benefit from the Agency's technical expertise and assistance in accordance with these General Terms and Conditions. This competition is launched by ESA with the technical support of AZO Anwendungszentrum GmbH Oberpfaffenhofen.

In the context of the increasing role of start-up companies within the space sector landscape, ESA is also striving to encourage and support these companies.

Now, with the ESA Start Up Competition, the Eligible start-up companies have a novel opportunity to show their innovative products and services for space and, for the winners, to benefit from the know-how and support of ESA in the development of similar products and services, without being intended that ESA co-develops such products and services with the Applicants.

Terms in capitals are defined in Section 1.2 below.

### 1.1 APPLICABLE DOCUMENTS – IMPACT OF COVID 19

- (1) In addition to these General Terms and Conditions, the Compliance Statement as foreseen within the Database for applications, connected to the Competition Website ([www.ESA-2020-start-up-companies-competition.com](http://www.ESA-2020-start-up-companies-competition.com)) as well as ESA privacy notice available on the Website shall also apply to the **ESA Start-up Competition** and must to be adhered to by any Eligible start-up company to be able to apply to participate.
- (2) In consideration of measures currently in place or implemented in the future for the Covid-19 pandemic outbreak in many countries, including in ESA Member States (hereinafter "Covid-19 Measures"), which could be subject to change in the course of the application of these General Terms and Conditions or the related mentoring contract and affect its execution, the Applicant agree that the performance by ESA may be suspended, delayed or prevented due to one or more Covid-19 Measures. Nevertheless ESA will make its best efforts to execute the competition as planned and will coordinate with the relevant Applicants/winners in order to mitigate the effect of Covid 19 Measures. In case the Applicant/winner is the party affected by COVID-19 Measures, the Top 10 Applicants/winners shall inform ESA on how Covid-19 Measures affect its performance under these General Terms and Conditions or the related mentoring contract shall cooperate with ESA to mitigate the effects.



## 1.2 LIST OF ABBREVIATIONS AND/OR DEFINITIONS

Agency or ESA	European Space Agency, governed by ESA Convention.
Applicable Conditions	means these General Terms and Conditions and any other terms and conditions referred to in Section 1.1 above.
Applicant	any Eligible Company which applies to take part in the ESA Start-up Competition by submitting an application under these General Terms and Conditions.
Applicant IPR	all IPR created, developed, procured and owned by, or for, the Applicant in the products and/or services included in its application and pitch within the ESA Start-up Competition.
Background IPR	means: (a) with respect to the Applicant, IPR developed, owned, licensed to or otherwise controlled by the Applicant prior to the commencement date of these General Terms and Conditions or generated by the Applicant (or a third party/parties, as applicable) independently of the performance of these General Terms and Conditions and, in each case, made available by the Applicant for use in connection with the ESA Start Up Competition (hereinafter also called the "Initiative") and, in particular, with the products and/or services included in its application and pitch within the ESA Start-up Competition ; (b) with respect to ESA, any IPR developed, owned, licensed to or otherwise controlled by ESA prior to the commencement date of these General Terms and Conditions or independently of the performance of these General Terms and Conditions.
Database	a data base made available by a third party licensor, i.e. Award Force, subcontractor of AZO, under its own terms and conditions and its own privacy notice available on the Database, used as a tool for collecting applications from the Applicants.
Eligible start-up companies	companies which fulfil the eligibility criteria mentioned in Section 3 of these General terms and Conditions.
ESA Convention	Convention for the Establishment of a European Space Agency, available on <a href="http://www.esa.int">www.esa.int</a> .



IPC	the Industry Policy Committee of the European Space Agency.
IPR	all rights in copyright, patents, know-how, Proprietary Information, database rights, rights in trade-marks and designs (whether registered or unregistered), applications for registration of any of the foregoing and the right to apply for registration, and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.
Proprietary Information	Any information or data of financial, personal, commercial or technical nature marked as per Section 7.2 below, whether it is in written, electronic, photographic, oral and/or any other form relating to and/or disclosed by or on behalf of the disclosing party to the receiving party, pursuant to these General Terms and Conditions.
ESA Start Up Competition	the ESA Start Up Competition to which these terms and conditions apply.
Website	means either the website accessible at the following URL <a href="http://www.ESA-2020-start-up-companies-competition.com">www.ESA-2020-start-up-companies-competition.com</a> and/or the Database.
Winner(s)	the Applicants selected following Phase 3 of the ESA Start Up Competition, described in Section 2.1 (3) "IPC Pitch".

## 2 SCOPE

This document is issued by the **European Space Agency**, an international intergovernmental organisation governed by its Convention, having its headquarters at 24 Avenue Général Bertrand, 75007, Paris, France, to address the General Terms and Conditions applicable to the participation in the Agency's "ESA Start Up Competition", without prejudice to the application of the other Applicable Documents referred to in Section 1.2 above.

Eligible start-up companies willing to take part in the **ESA Start Up Competition** are requested to carefully read these General Terms and Conditions and make sure they fulfil the eligibility criteria provided in Section 3 below, before submitting an application to that effect.

**By submitting such an application, the Applicant is deemed having accepted that its application, selection and participation to the ESA Start Up Competition shall be subject to these General Terms and Conditions (for clarity, as they may be modified under Section 7.12 below), which shall be binding to the Applicant (for clarity, in case of modifications, upon the date indicated in the Agency's notification of changes).**



## 2.1 ESA START UP COMPETITION STRUCTURE

The ESA Start Up Competition is organised in four consecutive phases, as follows:

- (1) **Application**, during which Eligible start-up companies willing to take part in the ESA Start Up Competition can submit an application to that effect;
- (2) **Top 10 Selection**, on which the selection by ESA of the applications submitted shall be carried out. It concludes with the selection of the 10 (ten) best ranked Applicants and their invitation to pitch their products and services before ESA's Member States representatives appointed to the ESA IPC in the modalities decided and communicated in advance by ESA (e.g. presence in meeting, remote live presentation, diffusion of the video prepared by the Applicants etc.) ;
- (3) **IPC Pitch**, during which the Applicants selected in the previous phase present their products and services to the IPC in the modalities decided and communicated in advance by ESA (see art. 2.1 (2) herein) and upon which the 3 (three) winners of the ESA Start Up Competition will be chosen by the IPC.
- (4) **Mentoring Phase** opened only to the Winners of the ESA Start Up Competition, in force until ~~30 June 2022~~~~31 December 2021~~, during which they will benefit from tailor made support by ESA in accordance with these General Terms and Conditions and the specific Mentoring contract to be entered into between ESA and each Winner.

ESA may change any pre-set schedules as necessary or opportune for ESA and shall promptly update the Applicants.

## 3 APPLICATION AND ACCEPTANCE PROCESS

### 3.1 ELIGIBILITY

To be considered as "Eligible start-up companies", the companies willing to take part in the ESA Start Up Competition must comply with all the following eligibility criteria:

- a) **Legal nature and incorporation date:** Applicants must be a commercial company duly incorporated and operating under the laws of one of ESA's Member States and the date of its incorporation is after 1<sup>st</sup> January 2015;
- b) **Registered office and main facilities:** Applicants must have their registered office and their main facilities (i.e., where business decisions are made and/or where the products and services are developed by the Applicant) in an ESA Member State;



- c) **Ownership:** Applicants must have as majority shareholders companies incorporated and operating under the laws of one of ESA's Member States or natural persons that are nationals of such countries;
- d) **Type of products and services:** Applicants must develop products and services for the space sector, whether for the upstream or the downstream;
- e) **Business volume:** Applicants must have for the tax year of 2019 a business volume that does not exceed € 5,000,000.00 (five million Euros);
- f) **Headcount:** Applicants must employ (this means having engaged under an employment contract) a minimum of 2 (two) and a maximum of 15 (fifteen) employees; this condition is deemed fulfilled counting also the founders of the entity applying to the Competition, even if they are not bound by an employment contract to the entity they founded ;
- g) **For peaceful purposes:** the products and services promoted by the Applicants within the ESA Start Up Competition must be for peaceful purposes (e.g. scientific and/commercial purposes) only and not for military use; consistent with the scope of ESA mission under Article II of the ESA Convention;
- h) **Proper conduct:** Applicants and the members of their management team must act, at all times, in such a manner that is consistent with ESA's reputation and statute and does not hinder ESA's reputation and status or the reputation and envisaged positive impact of the ESA Start Up Competition.

In particular, and without limitation, Applicants and the members of their management team shall not:

1. Have been convicted, of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
2. Have been guilty of grave professional misconduct proven by any means;
3. Be in default with any of its obligations relating to the payment of social security contributions and the payment of taxes;
4. Have been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity;
5. Have been subject to an administrative penalty for misrepresenting the information required as a condition of participation or for failing to supply this information, or having



been declared to be in serious breach of its obligations under contracts or agreements covered by the ESA's budget;

6. Have been guilty of infringement of intellectual property rights of a third party, proven by any means.

**The eligibility criteria set out above must be complied with by the Applicants throughout the entire duration of the ESA Start Up Competition and, for the ESA Start Up Competition Winners, including during the Mentoring Phase.**

ESA may, on a case by case basis and strictly on discretionary terms, accept deviations to the eligibility criteria set out above. Such acceptance will be valid only if confirmed in writing by ESA.

In addition to the statement confirming that the eligibility conditions are fulfilled required under Section 3.2 below, ESA shall be entitled to request, at any time, from the Applicants any documentation and clarification as it deems adequate to assess compliance by the Applicants with the eligibility criteria set out above.

**In addition, Applicants are required to confirm in writing their acceptance of these General Terms and Conditions.**

Should an Applicant not provide such confirmation or fail to comply with such General terms and Conditions during the **ESA Start Up Competition** (namely, but without limitation, by submitting false, incomplete or inaccurate information), ESA shall be entitled to exclude the same from the **ESA Start Up Competition**.

### 3.2 APPLICATION PROCESS – APPLICATION DOCUMENTATION

- (1) Modality to apply. To apply to the **ESA Start Up Competition**, the Eligible start-up companies must apply on the Website by registering to the Database and completing a questionnaire within the Database, covering different aspects of the company's business plan.

In addition, the following information should be submitted through the database:

- a) Company corporate presentation, including official state document confirming the incorporation of the company and its corporate information;
- b) Video presentation (pitch) of the innovative product and/ or services to be offered by the company (not exceeding a duration of 5 (five minutes)); the videos may be accepted even if





they do not reach a professional level, provided they have a sufficient quality to enable a good understanding of the content by the viewer ;

- c) Statement confirming compliance with the eligibility criteria set out under Section 3.1. above and adherence to these General Terms and Conditions, made by ticking the relevant form available in the Database registration process.
- (2) General requirements for any documentation submitted by the Applicants. All documentation and information to be submitted in connection with the application process shall be made available in English. If the same is not delivered in English, ESA reserves the right to refuse to accept the application or ask the English translation of the same to be provided by the expiration of the Deadline for Application.

Also, the Application and any supporting documentation submitted by the Applicants must not contain any content owned or controlled by third party, in case the Applicant has not express written permission to submit to, and be used by or for, ESA for the purpose of **Start Up Competition**.

- (3) Deadline for Application. Applications for participation to the **ESA Start Up Competition** must be received until **3 May 2020 [23:59pm CEST]**. No Application will be admitted after the closure of the application period.

## 4 TOP 10 SELECTION: PROCESS AND CRITERIA

### 4.1 SELECTION PROCESS

After the closure of the application period, Applications submitted by Applicants in accordance with Section 3 above will be reviewed by ESA with a view to make a preliminary selection of the best Applicants and, amongst them, to select the 10 (ten) Applicants with the most innovative products and services for space.

### 4.2 SELECTION CRITERIA

ESA, by itself or with the assistance of third party experts, will evaluate the applications submitted as concerns the **innovative character** of the products and services for space being proposed by the Applicants, also taking into account **how they can contribute to address challenges posed within the context of ESA's space activities** (for products and services aimed at the space upstream sector) **or how they can contribute to maximize the use of space technology and space generated assets in the**



**lives of the citizens of ESA Member States** (for products and services aimed at the space downstream sector) hereinafter collectively referred to as the “Project”.

To that effect, and without limitation, the following criteria including Weighting Factors will be taken into consideration by ESA:

- a) Team (skills, resources and experience) – (30%);
- b) Business model (commercial viability and business potential) – (25%);
- c) Societal impact of the Project (ability to positively impact the users) – (20%);
- d) Utility of the project and added value for the users of the product/service, compared to existing products / services – (15%);
- e) Project quality (quality of the information submitted by the Applicant) (10%).

ESA may, at its sole discretion and as part of its evaluation, pose additional questions to Applicants or request them clarifications or additional information.

The decision on the specific selection criteria to be considered by ESA and the decision to select or not select an Applicant in respect of the preliminary selection of the best Applicants and, amongst them, of the Top 10 Applicants and subsequent advancement of the latter to the IPC Pitch phase of the **ESA Start Up Competition** shall be taken by ESA at its sole and absolute discretion and shall be final and binding to the Applicant in all respects.

#### 4.3 COMMUNICATION OF RESULTS

ESA will publish on its Corporate Website (<https://www.esa.int>) the **preliminary selection of the best Applicants** until **16 May 2020 [23:59pm CEST]**.

ESA will notify those Applicants amongst the preliminary best Applicants that were **selected to the Top 10** until **20-29 May 2020 [23:59pm CEST]**.

A public announcement of the Top 3 Applicants shall also be made available by ESA on the Website [following the closure of the IPC WG meeting, on 2 July 2020](#).

#### 4.4 EXCLUSION AND WITHDRAWAL OF APPLICANTS

Should an Applicant preliminarily pre-selected amongst the best Applicants or thereafter selected for the Top 10 fail to comply with these General Terms and Conditions, ESA shall notify the Applicant of its exclusion of the **ESA Start Up Competition**.



Should an Applicant preliminarily pre-selected amongst the best Applicants or thereafter selected for the Top 10 withdraw, for any reason whatsoever, from the ESA Start Up Competition, the same shall notify ESA to that effect.

Upon the exclusion or withdrawal of an Applicant preliminarily pre-selected amongst the best Applicants or thereafter selected for the Top 10 in accordance with the terms above, ESA may, at its discretion, select a new Applicant in the preselection short-list or, as the case may be, to the Top 10.

A decision to exclude and/ or to select a replacement Applicant shall be taken by ESA at its sole and absolute discretion and shall be final and binding to the Applicant in all respects.

## 5 IPC PITCH: PROCESS AND CRITERIA

### 5.1 PITCH

The Applicants selected into the Top 10 in accordance with Section 4 above will be required to present their services and products included in the Application to the IPC members in the modalities decided and communicated in advance by ESA (see art. 2.1 (2) herein). If so required by ESA in advance, Applicant shall be present in this respect at the IPC WG meeting of ~~16-29~~ **June 2020**, at ESA-ESTEC or shall make a remote presentation.

For a potential venue on site and on modalities of the remote presentation, the details shall be communicated in advanced by ESA.

ESA may also decide to use the video presentations delivered by the Applicants instead of an on-site or remote presentation by Applicants, whenever ESA considers this as appropriate for organisational or logistic reasons, including in case of difficulties or risks related to COVID 19 crisis.

If ESA invites the Applicants to deliver a presentation on-site or remotely, each Applicant selected into the Top 10 shall have 5 (five) minutes to deliver its presentation. Presentation shall be made by a sole person per Applicant.

In case the presentation must be delivered in person, it may be supported by any visual or audio-visual materials, provided that such material is made available to the IPC Secretary by the date and on modalities which shall be mentioned by ESA on the Website or by any other means. To ensure that there are not technical incompatibilities, Applicants are urged to use common programmes and file storage systems.

Applicants shall make their presentations in a predetermined order, in accordance with a lottery to be carried out between the Applicants before the start of the pitch. Changes to that order may be agreed between Applicants, if accepted by ESA. ESA may also change the order or modalities of presentations for any organizational or logistical reason.



Presentations and videos shall be delivered in English.

If so requested, the Applicant shall briefly respond to queries or requests for clarification, in the modalities then decided and notified by ESA.

## 5.2 WINNER SELECTION PROCESS

Upon the IPC Pitch phase as set in Section 5.1 above, the IPC members will electronically vote to select the 3 (three) best Applicants. The awards granted to the most voted Applicant, to the second most voted Applicant, and to the third most voted applicant are mentioned in Section 5.4 below.

ESA, through the Executive present at the IPC WG meeting, shall announce the Winners at the conclusion of the IPC WG meeting of the ~~16~~<sup>17</sup> June 2020 meeting. The information shall also be published on the Website within 3 (three) calendar days after the closure of the IPC meeting.

Certificates of participation at the IPC meeting shall be established ~~by ESA~~ and shall be delivered by ESA, ~~through the Executive present at the IPC WG meeting,~~ ~~ESA~~ to the 3 (three) best Applicants, by any means, following the closure of the IPC WG meeting, on ~~17 June~~<sup>2 July</sup> 2020.

Selection of the 3 (three) Winners shall be taken by ESA at its sole and absolute discretion and shall be final and binding to the Applicants in all respects.

## 5.3 WINNER SELECTION CRITERIA

During the IPC WG meeting, ESA, through the Executive and the members of its IPC, will evaluate the presentations delivered taking into account the criteria set out under Section 4.2. above. **Positive evolution between the application made and the pitch delivered may also be taken into account.**

The decision on the specific selection criteria to be considered by ESA shall be taken by ESA at its sole and absolute discretion and shall be final and binding to the Applicant in all respects.

## 5.4 AWARDS

The 3 (three) Applicants selected as Winners shall be offered to conclude a Mentoring contract with ESA as per Section 5.5 below.



The Mentoring contract with ESA may also include the coverage of costs engendered by the use of third party products and services that may be required in the context of the performance of said Mentoring contract, up to the following amounts and subject to reasonable justifications provided by the relevant Applicants upon ESA request:

- a) 1<sup>st</sup> Winner: equivalent of € 100,000.00 (one hundred thousand Euros);
- b) 2<sup>nd</sup> Winner: equivalent of € 50,000.00 (fifty thousand Euros);
- c) 3<sup>rd</sup> Winner: equivalent of € 25,000.00 (twenty-five thousand Euros).

In addition, the 3 (three) Winners will be invited by ESA to attend ~~a prestigious event~~ the Global Space Congress of May 2021 in Abu Dhabi, where they will have the opportunity to present themselves and their products/services.

In no circumstance the amounts referred to under this Section 5.4. above that are not used under the mentoring programme shall be transferred to the Winner.

## 5.5 MENTORING CONTRACT WITH WINNERS

A Mentoring contract will be offered in view to be entered into between each Winner and ESA. It will reflect the content of the mentoring programme as per Article 6 of these General Terms and Conditions.

The Mentoring contract will follow a template prepared by ESA, generally in line with these General Terms and Conditions. It must be concluded in writing and signed by the authorised representatives of each Party within a period not exceeding 90 days from the date of announcement of Winners.

The Agreement shall incorporate as well as any specific conditions which may be agreed by the Parties in connection with the Winner's specific mentoring needs; such specific terms and conditions shall prevail over these General Terms and Conditions in case of conflict or ambiguity.

## 5.6 COSTS

ESA shall book and pay for travel and accommodation costs which are reasonably incurred and necessary for the attendance of one representative of the Top 10 at the IPC Pitch and of one representative of the Top 3 Applicants at the Global Space Congress of May 2021 in Abu Dhabi ~~prestigious event~~, subject to reasonable justifications provided by the relevant Applicants upon ESA request.

All other costs incurred by the Applicants with the ESA Start Up Competition shall be solely and exclusively born by the Applicant.



## 5.7 EXCLUSION AND WITHDRAWAL OF APPLICANTS

Should an Applicant selected as Winner fail to comply with these General Terms and Conditions ESA may exclude the Applicant from the **ESA Start Up Competition** and refuse the signature of a Mentoring Contract or, if such Mentoring Contract is already signed, ESA may terminate the Mentoring Contract upon notice effective immediately.

Should an Applicant selected as Winner withdraw, for any reason whatsoever, from the **ESA Start Up Competition**, the same shall promptly and in writing notify ESA to that effect.

Upon the exclusion or withdrawal of an Applicant selected as Winner in accordance with the terms above, ESA may, at its discretion, select a new Applicant as Winner.

A decision to exclude and/ or to select a replacement Winner shall be taken by ESA at its sole and absolute discretion and shall be final and binding to the Applicant in all respects.

## 6 MENTORING UNDER ESA START UP COMPETITION

### 6.1 ESA START UP COMPETITION MENTORING PROGRAMME

ESA shall design, with the assistance of the Winner, a prospective mentoring programme addressing the specific needs of the Winner in light of the expertise available at ESA and the Mentoring contract shall provide the specific terms and conditions of such mentoring, in the light of the general conditions set forth in these General Terms and Conditions for Participation to the **ESA Start Up Competition**. Such programme shall be reflected in the Mentoring Contract to be concluded by ESA and each Winner.

Subject to the signature of the Mentoring Contract by ESA and each Winner:

- a) ESA support under the mentoring programme may include the provision of technical support in the development and testing of products and services, support in definition of business models and business plans, assistance with compliance with international technical standards for space (e.g., space debris), among others. In any case, it is not intended that ESA and the Winner co-develop any IPR in performance of such mentoring programme.
- b) ESA will strive to make available on a timely manner the manpower, equipment and other technical resources (excluding any IPR belonging to, or controlled by ESA) that it may have to allocate to its support of the winner under the mentoring programme.



- c) ESA support will be available until ~~31 December 2021~~30 June 2022.

## 6.2 RESOURCES

ESA's support to the Winners shall not involve any exchange of funds or the loan of any equipment or software ; such ESA support does not include the grant of any right in any ESA IPR. Use of ESA facilities (e.g. centrifuge, laboratories) will depend on resource availability and will be subject to specific written authorisation given by ESA.

Where ESA's support requires the use of third party facilities or third party expertise, ESA shall inform the Winner accordingly. In that case, and if agreed by the winner, ESA shall bear the associated costs up to the total maximum amount in accordance with the amounts referred to under Section 5.4. above.

## 6.3 ROLE OF THE AGENCY

Within the Mentoring phase, the Agency will be responsible for complying with the tasks agreed in the Mentoring contract, in particular in the mentoring programme referred to above.

Those tasks may include, among others:

- a) To assess the performance of the Mentoring Contract by the Winner through project reviews;
- b) To facilitate the interaction between the Winner and ESA experts on matters relevant for the project;
- c) To provide free-of-charge access to certain ESA facilities, including test facilities, during certain days and hours, as they will be notified in writing and in advance by ESA's point of contact;
- d) To support the definition of business plans for the relevant products and/or services;
- e) To provide other support on matters relevant for the project.

## 6.4 UNDERTAKINGS OF THE WINNERS



Subject to signature of the Mentoring contract referred to above, the Winner undertakes to take part in the Mentoring phase and to comply with the obligations set forth in these General Terms and Conditions and in the said Mentoring contract, including to:

- a) Participate at all project meetings and reviews to be held on dates to be agreed with ESA in advance;
- b) Not rely on ESA for any funding or other support except the support described in Section 6.2 above;
- c) Ensure that the personnel involved in the project possess the required qualifications to perform their tasks;
- d) Accept that ESA can mention freely, and at any time, without further notification, approval or other formality, the Winner, its logo or trademark(s) and the products and/or services being supported under the Mentoring programme, in writing or by any means, including by means of photographs, or audio and/or video of the winner, of its team, of the project and of its results. This does not apply to Proprietary Information as described in Section 7.2;
- e) Comply with the eligibility criteria set out under Section 3.1. of these General Terms and Conditions.





## 7 OTHER TERMS AND CONDITIONS

### 7.1 INTELLECTUAL PROPERTY

- (1) ESA does not anticipate to share any proprietary Background IP in the framework of the ESA Start Up Competition or in the performance of the Mentoring Contracts.

In the event that the Applicant will share with ESA or use in the performance of the Mentoring contract certain Background IPR, the Applicant:

- a) shall first declare in writing such Background IPR to ESA and any restrictions, or encumbrances on the use of such Background IPR and
  - b) retain the ownership or have lawful title to all their Background IPR.
- (2) Any IPR solely developed by an Applicant in the framework of the ESA Start Up Competition (e.g. Application) or in the performance of the Mentoring contract (herein "Applicants IPR") shall be and remain sole and exclusive owner of such IPR.
- (3) In the event that ESA and a Winner intend to jointly develop IPR in the performance of the Mentoring contract, the Parties shall engage in good faith negotiations and establish their respective rights in the Mentoring contract or an amendment thereof, before disclosing the jointly developed IPR to any third party.
- (4) Notwithstanding the Subsection (1) and (2) above, Applicants hereby grant ESA with a royalty-free, worldwide, non-exclusive licence to use, and permit its personnel and on-site contractors or other third parties (experts, contractors, Delegates of ESA Member States) involved in the ESA Start Up Competition, to use the Background IPR (subject to any restrictions, or encumbrances on the use of such Background IPR as previously communicated in writing to ESA in the application documentation) and Applicants IPR as provided below:
- a) Scope of the license to use: This licence includes specifically the rights:
    - i. to access, copy and archive the Background IPR and the Applicants IPR;
    - ii. the right to disseminate the Background IPR and the Applicants IPR, including documents, software and hardware, to third parties involved in the **ESA Start Up Competition**; and
    - iii. the right to copy, modify and publicly disseminate details of the Background IPR and the Applicants IPR, in writing or by any means, including by means of



photographs, or audio and/or video, regardless whether recorded by ESA or by the Applicant, on all media, including the internet, for communication purposes (and provided it does not compromise the confidentiality of Proprietary Information).

- b) Purposes: The license is granted for the purpose of carrying out the **ESA Start Up Competition**, in particular:
    - i. for analysis, review and testing, use for safety reviews;
    - ii. for verification of compliance with applicable documents;
    - iii. for ESA communication purposes.
  - c) Duration of the license: The license is granted for the term of the **ESA Start Up Competition** and, after the expiration or termination of the **ESA Start Up Competition** (including, for winners, the expiration or termination of the Mentoring contract), for the longest among these two periods: (i) 5 (five) years and (ii) for as long as ESA communication purposes subsist.
  - d) Sublicensing: ESA may not grant any sub-licence to use the Background IPR or the Applicant IPR, except to ESA personnel, on-site contractors or other relevant third parties (experts, contractors, Delegates of ESA Member States) involved in the **ESA Start Up Competition**.
- (5) By submitting an Application to participate to the **ESA Start Up Competition**, Applicants are deemed having confirmed and warranted that they have formalised the necessary arrangements for the purpose of this Section 7.1. with all its personnel, contractors and third parties involved in the creation, development and/or delivery of the Background IPR or of products and/or services included in its application and pitch within the **ESA Start Up Competition**.
- (6) Applicants shall mark the items with Background IPR with "*Copyright \*\*\*\*\* (year of creation of the item). ESA has the right to use and disseminate this item according to the ESA Start Up Competition General Terms and Conditions*".
- (7) ESA retains all rights and title over its IPR. No licence for the Applicants and Winners to use any of ESA IPR is granted or implied by these General Terms and Conditions, except in cases and under conditions expressly mentioned in Section 7.4 of these General Terms and Conditions.



## 7.2 PROPRIETARY INFORMATION

- (1) Any Proprietary Information exchange between ESA and the Applicants within the ESA Start Up Competition shall be clearly and conspicuously marked by the disclosing party as “*Proprietary Information belonging to [insert name of the Party]*” at the time of disclosure. Proprietary Information, which is orally disclosed or disclosed in any other intangible form, may only be protected under these General Terms and Conditions if it is identified as Proprietary Information at the time of disclosure and then confirmed in writing within 30 (thirty) days from such oral or intangible disclosure.
- (2) Applicants confirm hereby that none of the products and/or services or documentation included in its application and pitch within the ESA Start Up Competition will contain Proprietary Information that would prevent the exercise of the rights granted under these General Terms and Conditions, in particular under Section 7.1. above.
- (3) The disclosing party, to the extent of its right to do so, shall disclose to the receiving party only such Proprietary Information deemed appropriate to fulfil the purpose of these General Terms and Conditions.
- (4) The Parties’ obligations include the following:
  - a) All Proprietary Information will neither be used, duplicated, in whole nor in part, for any purpose other than the Purpose of these General Terms and Conditions as specified above, without the prior written consent of the disclosing party;
  - b) All disclosed Proprietary Information will be protected and kept in confidence by the receiving party, who shall use at least the same degree of care and safeguard as it uses to protect its own Proprietary Information of like importance but no less than a reasonable degree of care;
  - c) If the receiving party becomes aware of any unauthorised disclosure concerning Proprietary Information of the disclosing party, it shall promptly inform the disclosing party and the parties shall attempt jointly to find a remedy to the situation.
- (5) The obligations with respect to handling and using Proprietary Information as aforesaid are not applicable to information that the receiving party can demonstrate by written evidence:
  - a) Has come into the public domain prior to, or after, the disclosure thereof and in such case through no fault of the receiving party;



- b) Was already or has become in the possession of the receiving party without any obligation of confidentiality upon the receiving party;
- c) Has been or is published without violation of these General Terms and Conditions;
- d) Is independently developed in good faith by staff or employees of the receiving party who did not have access to the Proprietary Information;
- e) Is approved for release or use by written authorisation of the disclosing party;
- f) Is not properly designated or confirmed as Proprietary Information according to these General Terms and Conditions; or
- g) Is disclosed pursuant to the request of a governmental or jurisdictional authority, in which case the receiving party, subject to possible constraints of such governmental or jurisdictional authority, shall as soon as possible give the disclosing party a written notice of the aforementioned request and shall reasonably cooperate with the disclosing party's lawful efforts in order to delay or limit such disclosure (at the cost and expense of the disclosing party).

### 7.3 PERSONAL IMAGE RIGHTS

- (1) By submitting an Application to participate in the ESA Start Up Competition, Applicants are deemed to have:
  - a) agreed to make its personnel, contractors and (if any) third parties involved in the ESA **Start Up Competition** available for the communication activities required by ESA (which may include interviews in writing/audio/video and photo/audio/video recording of the personnel, contractor and/or the project activities); and
  - b) undertook to obtain upfront the written authorisation for this purpose and for the further use of their image and identification information from its personnel, contractors and (if any) third party involved by the Applicant in the ESA **Start Up Competition**, for the purposes highlighted in (a) in the relevant communication by ESA.
- (2) Applicants shall not allow participation in the ESA Start Up Competition of any personnel, contractors and (if any) third party involved by the Applicant in the ESA Start Up Competition if they did not give such written authorisation. All these individuals actually taking part in all or part of the ESA Start Up Competition are deemed, as between ESA and the Applicant, as having given such authorisation.



- (3) If, at the submission of an Application, the Applicant does not submit all the required identification information and/or personal data, the Applicant will not be given access to the Database and may be considered as non-eligible.

#### 7.4 PROMOTION

- (1) Applicants shall make sure that communication about their participation in the ESA Start Up Competition is fully coordinated in advance with ESA. No action shall be implemented without ESA's prior and written authorisation to proceed, such acceptance being obtained from the ESA Start Up Competition contact point mentioned on the Website and from ESA Communication's point of contact, i.e. Emmet Fletcher at Emmet.Fletcher@esa.int.
- (2) In particular, Applicants shall submit, for ESA's prior and written approval, the electronic version of any communication material using the ESA logo and/or the ESA Start Up Competition key-visual; ESA may, at its discretion, withhold such approval or grant it under modified conditions that it considers appropriate.
- (3) In addition, all publications related to the work carried out under the ESA Start Up Competition shall carry a disclaimer with the following wording (or wording to the same effect): *"The view expressed herein by the authors can in no way be taken to reflect the official opinion of the European Space Agency."*
- (4) Pursuant to the selection of Applicants into Top 10, ESA grants the Applicants a right to use the ESA logo and the ESA Start Up Competition key-visual only as follows:
- c) A non-exclusive, non-transferable, non-assignable, revocable (in case of breach of these General Terms and Conditions), worldwide, non-sublicenseable;
  - d) Exclusively to reproduce and display the ESA Start Up Competition key-visual and ESA logo only on communication materials related to its participation to ESA Start Up Competition, subject to their acceptance by ESA in writing and in advance, such acceptance being obtained from the persons referred to in Section 7.4 (1) above;
  - e) Only for the duration of the ESA Start Up Competition; nevertheless, ESA may terminate the right to use granted as above at any moment, by written notice to the Applicant or by announcement through the ESA website. Such notice shall be effective immediately, without any formality being needed;
  - f) The license shall not include the right to grant sub-licenses, except to third parties involved in the production of the communication materials, only as strictly necessary for their production and subject to the Applicant remaining liable for such third parties, towards ESA.



- (5) Applicants are not entitled to use, or to register as trademark (or obtain any intellectual property title into), any logo, sign or mark identical or similar to ESA logo or the ESA Start Up Competition key-visual.
- (6) In any case, the ESA logo shall never be used in a manner that could be detrimental to the good reputation of the Agency.
- (7) In consideration of the right to use ESA logo and ESA Start Up Competition key-visual, Applicants selected into the Top 10 shall:
  - a) Provide to ESA an electronic copy, in the highest possible resolution, of the communication materials using the ESA logo and the ESA Start Up Competition key-visual as well as with video and sound recordings of the communication activities related to the Applicant's participation to the ESA Start Up Competition, done by, or for, the Applicant;
  - b) Permit ESA to place links to web pages pertaining to the Applicant on ESA's own websites, including the Website;
  - c) Obtain all the necessary authorisations from any third party right holders ; by submitting their Application, the Applicants are deemed having authorised ESA to use (including to reproduce, copy, publish, communicate, make available, distribute and disseminate to the public on any current or future communication media or network) such sample communication materials and any such video or sound recordings, in all cases for ESA's own communication purposes.
- (8) These rights are granted to ESA under these General Terms and Conditions, without further formality:
  - a) On worldwide, non-exclusive and free-of-charge basis, during the period of protection of said sample communication materials, video or sound recordings by an IPR, with the possibility for ESA to sublicense under the same terms for its own communication purposes; and
  - b) In view to a peaceful use by ESA and/or its sub-licensees, Applicants shall defend, indemnify and hold harmless ESA in case any third party (including but not limited to artists) claims a violation of its intellectual property rights by ESA's (or its sub-licensees') use as authorised above.
- (9) Applicants shall also immediately inform ESA fully of any legal action, if such action is brought against the Applicant in respect of the use of any part of ESA logo or ESA Start Up Competition key-visual. The Applicant shall not make any admission of liability or agreeing to any settlement or compromise without the prior written consent of ESA.



- (10) ESA does not endorse (and may not be presented in any way creating appearance of an endorsement of) the general activity of the Applicant. ESA is not (and may not be presented in any way creating appearance of being) liable for any matter that relates to the Applicants' role.
- (11) In order to preserve the goodwill and reputation associated with ESA and its Member States, Applicants shall not use the ESA logo or ESA Start Up Competition name or any communication in any way that could:
- a) Imply endorsement by ESA and/or ESA staff of any commercial product, process or service provided by the Applicant, of the Applicant or any of its activities;
  - b) Imply endorsement by ESA and/or ESA Staff of any commercial product, process or service, or of any ideology, religion, political doctrine or party;
  - c) Be incompatible with the reputation, status and objectives of ESA and its Member States and able to jeopardise them; such as but not limited to, in connection with tobacco, alcohol, illegal drugs, pornography, violence, gambling; or,
  - d) Be inconsistent with these General Terms and Conditions.
- (12) In consideration of the respective roles of ESA and the Applicant, the Applicant must:
- a) refrain from any misleading communication in relation to the respective roles of ESA and the Applicant; and,
  - b) take into account any suggestion made by ESA, should any information or communication media made by the Applicant appear as misleading or not consistent with these General Terms and Conditions. The Applicant shall remedy this to ensure compliance with these General Terms and Conditions.

## 7.5 WARRANTIES - DISCLAIMER OF WARRANTY

- (1) By submitting their Application, the Applicant warrants that it has the right and authority to enter into the ESA Start Up Competition, to perform its obligations under these General Terms and Conditions and, when applicable, to enter into discussion on a Mentoring Contract.
- (2) ESA does not grant to the Applicant any warranties whatsoever in connection with the participation of the Applicant to the ESA Start Up Competition, in relation to the Mentoring Contract for the Winners or in connection with ESA logo or ESA Start Up Competition key-



visuals. In particular, and without limitation, ESA does not warrant that ESA will select the Applicant to go into any subsequent phase of the ESA Start Up Competition.

## 7.6 LIABILITY

- (1) Nothing herein may be interpreted as limiting the liability of the Applicant for gross negligence or wilful misconduct.
- (2) In no case shall ESA be liable for any failure, total or partial, to fulfil its role, nor for any delays or errors in fulfilling its role, including the following:
  - a) ESA shall not be liable for not selecting, or failing to select, the Applicant to proceed into the next phases of the ESA Start Up Competition;
  - b) ESA shall not be liable for any malfunctioning or non-performance of the Applicant's products and services in the context of the mentoring phase nor any lack of suitability, fitness, adequacy, or timeliness for the purposes of the same, unless where any of the foregoing have been caused by gross negligence or wilful misconduct on the part of ESA.
- (3) The Applicant remains liable for obtaining the intellectual property licenses from Applicant's personnel, contractors (and any other person or entity in the Applicant's team) and from any third party IPR holders and/or suppliers as well as the authorizations for the personal image rights required for the exercise of rights granted under these General Terms and Conditions.

## 7.7 INFRINGEMENT OF THIRD-PARTY RIGHTS

The Applicant guarantees hereby that it will perform the activities within the ESA Start Up Competition without infringing any rights of third parties. If the Applicant infringes any rights of third parties during the ESA Start Up Competition, then the Applicant shall indemnify, defend and hold ESA harmless from and against all claims, proceedings, damages, costs and expenses arising from the infringement of those third-parties rights.

## 7.8 STATUTORY OBLIGATIONS – PERSONAL DATA PROTECTION

- (1) Both ESA and the Applicants shall comply with the provisions of their respective legal frameworks with respect to Personal Data Protection and must duly observe all their





obligations set forth in these General Terms and Conditions. This Section 7.8 is in addition to, and does not relieve, remove or replace, a party's obligations under its own Data Protection Legislation.

- (2) The collection, handling and use of Personal Data relating to individuals shall be treated as proprietary personal information and appropriately protected at all times.
- (3) Both ESA and the Applicants shall at all times be responsible for ensuring that all Personal Data (including data in any electronic format) is stored securely and guard against unauthorised access to, disclosure of, or loss or destruction of the Personal Data whilst in its custody.

#### 7.9 SAFETY AND SECURITY

- (1) The Applicant shall comply with all applicable laws, decrees, rules, and regulations, in particular national legal frameworks (including national space legislation) as applicable, those concerning safety and security at ESTEC or any other ESA site, as well as at any other organisation involved by ESA in the ESA Start Up Competition. The Applicant is solely responsible for acquiring the appropriate licenses, waivers or permits from the applicable regulatory bodies or other applicable third parties.
- (2) In the cases where the laws, decrees, rules, and regulations imply an obligation to be directly fulfilled by Applicant's personnel, contractors or (if any) third parties involved in the ESA Start Up Competition, the Applicant shall enforce such laws, decrees, rules and regulations on those persons. The Applicant shall take appropriate insurance coverage (including health, accidents, and liability) for those persons during the ESA Start-up Competition.
- (3) ESA reserves the right to expel immediately from the site and deny access to any Applicant's personnel, contractors or (if any) third parties involved in the ESA Start Up Competition that fail to follow the applicable safety and security rules and procedures, or who infringe any applicable rules and regulations. The consequences of such expulsion or access prohibition shall be borne by the Applicant.
- (4) During their stay at ESA sites, Applicant's personnel, contractors or (if any) third parties involved in the ESA Start Up Competition shall carry at all times the Agency's identity card. Identity cards must be immediately returned to the Agency at the end of their stay at ESA sites. Applicant's personnel, contractors or (if any) third parties involved in the ESA Start Up Competition shall complete the formal visitors' procedure at the site. Visitors are not permitted to visit areas, other than the restaurant and conference facilities, without the prior authorisation of the Agency's technical supervisor concerned. Unless anything is agreed to the contrary, explicitly or implicitly, the tasks to be performed at ESA sites under



these General Terms and Conditions shall be performed during normal working hours and days.

#### 7.10 ENTRY INTO FORCE

These General Terms and Conditions shall enter into force for the respective Applicant upon submission of the application of the Applicant to participate to the ESA Start Up Competition and shall remain in force for the longest of the two following periods:

- a) A period of 5 (five) years; or,
- b) The duration of the Mentoring Contract and 5 (five) years afterwards.

#### 7.11 APPLICABLE LAW – SETTLEMENT OF DISPUTES

(1) Without prejudice to the privileged status of ESA as an international organization:

- a) These General Terms and Conditions are subject to the laws of France; and,
- b) The Mentoring Contract shall be governed by the law of the ESA Member State in which the Winner has its registered office.

(2) ESA and Applicants shall use their best endeavours to amicably settle any dispute arising out of these General Terms and Conditions or of the Mentoring Contract. Failing an attempt towards an amicable settlement, the disputes between the parties shall be submitted to arbitration according to the Rules of Arbitration of the International Chamber of Commerce and shall be finally settled by one arbitrator or more arbitrators (in this latter case, one appointed by each party and the third one appointed independently). The Arbitration proceedings shall take place in Paris, France, and shall be conducted in English. The decision from the arbitration shall be final, not subject to appeal. The enforcement of the award shall be governed by the rules of procedure in force in the state/country in which the award is to be executed.

#### 7.12 MISCELLANEOUS

(1) ESA and the Applicant are independent parties under these General Terms and Conditions and nothing herein is intended nor shall be construed as creating a partnership, joint venture or agency relationship.



- (2) These General Terms and Conditions may be changed by ESA at any time and shall be applicable to the Applicant upon notification of change. Pursuant to the signature of an Mentoring Contract incorporating these General Terms and Conditions, the changes to the General Terms and Conditions shall be valid only if they are formalised by ESA in writing by amendment to the Mentoring Contract and signed by both Parties. The amendments shall be numbered sequentially for the sake of traceability.
- A specific ESA point of contact for every phase of the ESA Start Up Competition shall be communicated by ESA to the Applicants on the Website or by any appropriate means.