



## **INCUBATION AGREEMENT**

Entered into by and between

**innobiz DUT Centre for Entrepreneurship and Innovation** (“innobiz DUT”)

**AND**

**[insert details]**

(the “Incubatee”)

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**1. PARTIES**

The Parties to this Agreement are:

1.1. innobiz Durban University of Technology (DUT) Centre for Entrepreneurship and Innovation NPC, a non-profit company established in terms of the laws of South Africa, having the registration no: 2021/844061/08, and primary place of business at Milena Court, Steve Biko Campus, 79 Steve Biko Road, Durban, 4001, herein represented by Prof. KS Motaung in her capacity as Acting Deputy Vice-Chancellor: Research, Innovation and Engagement and Ms NG Ngcobo in her capacity as Manager, duly authorised thereto (hereinafter referred to as “innobiz DUT”) and

1.2. [Incubatee....., a private company, incorporated under the laws of the Republic of South Africa, having registration no. .... and having its registered address at ....., herein duly represented by ..... in his/her capacity as ..... and he/she being duly authorised thereto (hereinafter referred to as “the Incubatee”)

OR

1.3. [Student Name.....] a registered student of the DUT, having Student no. [insert student number [.....], and identity number [.....] duly representing the entity [insert company details if any] a company registered in terms of the laws of South Africa, having the registration no. [insert details] and primary place of business at [insert business address], South Africa (hereinafter referred to as “the Student”).

[PLEASE SELECT AS APPROPRIATE]

**2. PREAMBLE TO THE AGREEMENT**

2.1. DUT established innobiz DUT Centre for Entrepreneurship and Innovation to provide business support and incubation services to students and student-

owned companies to facilitate the transfer and adoption of innovations emanating from their research and development outputs.

- 2.2. In order to support student entrepreneurship at the university, innobiz DUT has established an incubation programme aimed at equipping DUT student-owned companies with the knowledge, skills and competencies required to operate sustainable businesses.
- 2.3. The Incubatee applied during an annual callout and was accepted to participate in the innobiz DUT Incubation Programme.
- 2.4. Therefore, in consideration of the foregoing, the Parties wish to express in this written Agreement the scope of the Incubation Programme and their respective rights and obligations under the Agreement.

**THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**3. INTERPRETATION**

Unless inconsistent with the context or a contrary intention appears from the context, in this Agreement:

- 3.1. any reference to a gender shall include male, female and other genders;
- 3.2. any reference to the singular shall include the plural and *vice versa*;
- 3.3. any reference to a "Person" includes a natural or juristic person, including without limitation any sole proprietorship, firm, partnership, trust, close corporation, undertaking, joint venture, government or public entity, or other incorporated or unincorporated entity or association;
- 3.4. any reference to a statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Effective Date and as amended or substituted from time to time;
- 3.5. any provision in the introduction to or definitions of this Agreement that confers rights or imposes obligations on a Party shall be given effect as if it were a

substantive Clause in the body of this Agreement, notwithstanding that it is only contained in the introduction or definitions;

- 3.6. Where any number of days is prescribed in this Agreement, those days shall be deemed to be exclusive of the first and inclusive of the last day unless the last day does not fall on a Business Day, in which event the last day shall be the next succeeding Business Day; and
- 3.7. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they shall operate after such expiration or termination.

#### **4. DEFINITIONS**

- 4.1. The following terms shall have the meanings assigned to them below, and cognate expressions shall have corresponding meanings, namely:
  - 4.1.1. **“Agreement”** means this Incubation Agreement, including all Annexures hereto;
  - 4.1.2. **“Background Intellectual Property”** means any Intellectual Property Right made available by either Party for use in the Incubation Programme or necessary to exploit the Foreground Intellectual Property, but not arising from nor developed in the course of the Incubation Programme, and belonging to such Party or on which such Party has rights which permit its use in the Incubation Programme and the exploitation of the Foreground Intellectual Property.
  - 4.1.3. **“Business Day”** means any day other than a Saturday, Sunday or public holiday in the RSA, within the meaning of the Public Holidays Act, 1994;
  - 4.1.4. **“Confidential Information”** means any information of whatever nature, which is marked in writing as confidential or where it is disclosed verbally, is minuted as confidential and has been or may be obtained by one Party from the other Party in any manner and

which if disclosed to third parties or if used by any individual or entity without the consent of the Party to whom it belongs or pertains, such disclosure or unauthorised use will cause harm to the Party to whom it belongs or pertains;

- 4.1.5. **“Effective Date”** means the date on which the last of the signatories signs this Agreement;
- 4.1.6. **“Foreground Intellectual Property”** means any Intellectual Property Right arising from and developed during the Incubation Period;
- 4.1.7. **“Gross Revenues”** means the sum of all invoiced sales of goods and/or services less the cost of production and excluding labour costs;
- 4.1.8. **“Incubatee”** means the Student or the Company, as described in Clause 1 of this Agreement, and with reference to the company, a company in which the Incubatee owns more 60% of the issues share capital in the company, and wherein the company owns or has a right in respect of a product, technology or business idea/solution that it intends to commercialise and has been accepted into the Incubation Programme;
- 4.1.9. **“Incubation Period”** means the agreed Period of incubation during which the Incubatee will receive support under the innobiz DUT Incubation Programme, as more detailed in Clause 6 below;
- 4.1.10. **“Incubation Programme”** means a programme established by innobiz DUT to support student entrepreneurship at the University and to equip students and student-owned companies with the knowledge, skills and competencies required to operate sustainable businesses.
- 4.1.11. **“Intellectual Property”** means any creation of the mind that is capable of being protected by statute or through common law including, but not limited to, copyright, designs, know-how, patents and trademarks and any other ensuing Intellectual Property Rights

and interests of a similar nature whether registerable or not, including but not limited to the following:

- 4.1.11.1. designs, trade secrets and know-how in the form of material compositions, specifications, computer source code, drawings, concept sketches, models, software, test results, outcomes, tables and compilations, processes and marketing and financial information; and
- 4.1.11.2. copyright in any works, including but not limited to, literary and artistic works, computer topographies and computer Programmes;
- 4.1.12. **“Intellectual Property Rights”** means rights in and to the Intellectual Property;
- 4.1.13. **“Material Adverse Event”** means an event or matter which, in the opinion of innobiz DUT, has or may have a material adverse effect on:
  - 4.1.13.1. the ability of the Incubatee to perform any of its obligations under this Agreement promptly;
  - 4.1.13.2. the legality, validity or enforceability or effectiveness of this Agreement; or
  - 4.1.13.3. the ability of innobiz DUT to enforce or exercise any of its rights or remedies granted or purported to be granted under this Agreement;
- 4.1.14. **“Product/Service”** a product, technology or business idea/solution to be commercialised by the Incubatee; and
- 4.1.15. **“Party/Parties”** means innobiz DUT and/or the Incubatee, as indicated by the context.
- 4.1.16. **“University” or “DUT”** means the Durban University of Technology

**5. CONDITIONS FOR THE INCUBATION PROGRAMME**

5.1. Notwithstanding anything to the contrary contained in this Agreement, innobiz DUT and the Incubatee agree that this Agreement shall be subject to the following conditions precedent (“Conditions Precedent”) being satisfied:

5.1.1. The Incubation Programme is available to registered DUT students, industry funded groups and companies owned by registered students of DUT.

5.1.2. If the person signing this Agreement does so in their capacity as a registered DUT student, such a person shall register a company with the Companies and Intellectual Property Commission (CIPC), within twenty (20) working days of signing the Agreement, and shall transfer, assign and/or cede all rights and obligations accruing by virtue of this Agreement to the Company within ten (10) working days of such registration of the company, failing which innobiz DUT shall have the right to exit the student from the Incubation Programme and terminate this Agreement terms of Clause 17.

5.1.3. Where the Incubatee is a company and the company comprises more than one director, each director of such company shall sign the acknowledgement to be jointly and severally liable for any liabilities or responsibilities that accrue or will accrue to the entity in terms of this Agreement – Annexure D.

5.1.4. The Incubation Programme is available in respect of a Product/Service, including Intellectual Property relating to such Product/Service, that is owned by or licensed to a registered DUT student. The Incubatee warrants that:

5.1.4.1. it is the proprietor or licensee of the Product/Service and associated intellectual property rights;

- 5.1.4.2. the Product/Service is not in any way encumbered and no third party holds any rights of any nature whatsoever in and to the said Product/Service;
- 5.1.4.3. the use or exploitation of the Product/Service does not to its knowledge and belief infringe the intellectual property rights of any third person;
- 5.1.4.4. to the best of its knowledge and belief, the Product/Service is not the subject of any existing litigation and the Incubatee is not aware of any facts or circumstances which would give rise to litigation relating to the Intellectual Property; and
- 5.1.4.5. it is not aware of any fact, matter or circumstance which is, or would be likely to be material to a transaction of a nature recorded in this Agreement.

Should it be determined at any point that the Incubatee misrepresented any material facts regarding any of the above warranties or mislead innobiz DUT, innobiz DUT shall have the right to exit the student from the Incubation Programme and terminate this Agreement terms of Clause 17.

- 5.1.5. The acceptance of any Incubatee into the Incubation Programme is the sole discretion of innobiz DUT, which may, from time to time, publish an eligibility criterion detailing the specific requirements for acceptance into the Programme.
- 5.1.6. Upon acceptance into the Incubation Programme, the Incubatee shall sign this Agreement as an acknowledgement and acceptance of the term and conditions of participation in the Incubation Programme.
- 5.1.7. innobiz DUT shall have the sole and absolute discretion to retain the Incubatee in the Incubation Programme or to advance the Incubatee to the next phase in the Incubation Programme, notwithstanding the fact that the Incubatee has not met all the

applicable Conditions of participation in a specific phase of the Incubation Programme as provided in this Agreement and in Schedules A and B.

## **6. DURATION OF THE AGREEMENT**

- 6.1. Unless otherwise extended in terms of this Clause 6 or terminated in accordance with this Clause 6 or Clause 17, this Agreement shall be valid from the Effective Date of this Agreement to the date of graduation of the Incubatee from the Incubation Programme as indicated on a signed graduation letter and Certificate or exit of the Incubatee from the Incubation Programme in terms of Clause 10, which period shall not be more than thirty-six (36) months from the Effective Date,
- 6.2. innobiz DUT shall have the right to extend the duration of this Agreement at least one month prior to its expiration, and in its sole discretion, where it is of the opinion that such extension is reasonably necessary for the Incubatee to complete the Incubation Programme or any part thereof, and shall notify the Incubatee of such extension in writing.
- 6.3. The parties may otherwise agree in writing to extend the duration of this Agreement, at least one (1) month prior to the expiration of this Agreement, for other reasons than that stated in Clause 6.2.

## **7. UNDERTAKINGS BY innobiz DUT**

- 7.1. innobiz DUT undertakes to render certain business incubation services to the Incubatee, during the Incubation Period, subject to Clause 7.2, which will include, but are not limited to, access to:
  - 7.1.1. Business incubation and support services including business consultation and advisory services including legal, financial, Intellectual Property management etc;

- 7.1.2. Various training and workshops including business start-up training and sector specific skills trainings.
  - 7.1.3. Hackathon, bootcamps, exchange programmes, stakeholder funded programmes, mentorship and coaching;
  - 7.1.4. Access to state-of-the-art facilities/ sector specific hubs with WIFI connectivity;
  - 7.1.5. Shared working spaces suitable for the Incubatee's business (as the case may be) subject to availability;
  - 7.1.6. Facilitation of access to market and network opportunities; or
  - 7.1.7. Facilitation of access to external funding.
- 7.2. The extent to which innobiz DUT will provide any of the above-mentioned services shall be determined by an assessment of the Incubatee's business and the determination of the needs of Incubatee in respect of the establishment, growth, and sustainability of its business following completion of the Incubation Programme.
- 7.3. In view of Clause **Error! Reference source not found.**, a separate agreement may be concluded between innobiz DUT and the Incubatee where innobiz DUT makes available funding to the Incubatee or, on behalf of the Incubatee, sources funding towards the Incubatee's business activities that lie outside the scope of the Incubation Programme.
- 7.4. innobiz DUT will evaluate the Incubatee's performance at least once every quarter during the Incubation Period, and based on the outcome of the evaluations, innobiz DUT reserves the right to extend or terminate the Incubatee's participation in the Incubation Programme and this Agreement.
- 7.5. innobiz DUT shall furnish the Incubatee during the annual performance evaluation session, with the cumulative costs incurred for the incubation services offered to the Incubatee.
- 7.6. innobiz DUT will, within its means, provide the Incubatee with training and support necessary to equip the Incubatee to be a supplier or service provider

to DUT, industries and other markets, including innobiz DUT. The provision of such training and support by innobiz DUT shall not constitute an obligation for innobiz DUT, DUT or any of its affiliates to procure goods or service from the Incubatee, whether during duration of this Agreement or following its termination.

## **8. ACCESS TO FUNDING**

- 8.1. innobiz DUT shall facilitate access to funding and communicate various funding opportunities.
- 8.2. innobiz DUT may assist the Incubatee in raising funds outside DUT to fulfil specific business objectives, other than through its innobiz DUT Incubation Programme.
- 8.3. The Incubatee shall be encouraged to source external funding.

## **9. innobiz DUT's RIGHT TO AUDIT THE BUSINESS**

- 9.1. innobiz DUT shall, for the duration of this Agreement and for a period of 12 months thereafter, have the right on reasonable prior written notice to the Incubatee, which shall not be less than five (5) Business Days, arrange for an audit (during normal business hours) of the activities and financial management of the Incubatee's business.
- 9.2. The Incubatee shall provide innobiz DUT access to relevant documents, files, facilities, etc., as may be required to enable the audit to be conducted comprehensively to the satisfaction of innobiz DUT.
- 9.3. innobiz DUT or its duly authorised representatives shall have the right to inspect and audit the Incubatee's financial records upon giving prior written notice of five days, and during normal business hours.
- 9.4. In view of Clause 9.3, the financial information of the Incubatee shall be provided to an independent third-party auditor, who shall have the right to extract pertinent information for the sake of informing innobiz DUT of the financial status of the Incubatee. The Incubatee shall grant such independent

auditor appointed by innobiz DUT unfettered access to information relating to the status of its bank account(s) and other relevant financial information.

- 9.5. The costs of such an audit will be borne by innobiz DUT, unless the audit identifies any material irregularities by the Incubatee, in which case the Incubatee will bear the cost.

## **10. EVALUATION, PROGRESSION AND EXIT OF INCUBATEE FROM INCUBATION PROGRAMME**

- 10.1. innobiz DUT reserves the right to undertake an evaluation of the Incubatee's performance, progress and participation in the Incubation Programme, including the commercial viability of the Incubatee's business.
- 10.2. In the evaluation of the Incubatee's performance and progress in the Incubation Programme, innobiz DUT will review the Incubatee's achievement of the agreed milestones of the Incubation Programme, and will make a decision, in its sole discretion, to either:
- 10.2.1. Exit the Incubatee from the Incubation Programme before its completion as a result of:
- 10.2.1.1. unsatisfactory performance and/or progress of the Incubatee in the Incubation Programme; or
- 10.2.1.2. the Incubatee's continued participation in the Incubation Programme being deemed to be unviable for reasons related to a Material Adverse Event, including, but not limited to, gross mismanagement, misconduct, negligence or criminal conduct by the Incubatee.
- 10.2.2. Extend the pre-Incubation Period, if satisfied that the additional time will enhance the ability of the Incubatee to graduate into the Post-Incubation Programme successfully;

- 10.2.3. Progress the Incubatee into the Post-Incubation Programme subject to the Incubatee meeting eligibility criteria under the Post-Incubation Programme; or
- 10.2.4. Graduate and exit the Incubatee from the Programme upon completion of the Post-incubation Programme.

Where the Incubatee is exited from the Incubation Programme in terms of Clause 10.2.1, then innobiz DUT shall have the right to terminate this Agreement in terms of Clause 17.2 of this Agreement, withhold any funds not already disbursed and to claim any amounts disbursed but not expended or committed at the date of termination.

## **11. UNDERTAKINGS BY THE INCUBATEE**

- 11.1. By accepting admittance to the Incubation Programme, the Incubatee understands and agrees to:
  - 11.1.1. abide by all the provisions and stipulations of the Incubation Programme as outlined in this Agreement, all its Annexures and Rules & Code of Conduct for Student Entrepreneurs;
  - 11.1.2. disclose any agreements or arrangements concluded prior to the start of the Incubation Period that have or may have a material impact on the Incubatee and/or the business of the Incubatee. Failure to disclose such agreements or arrangements shall constitute a material breach of this Agreement and innobiz DUT shall be entitled to termination this Agreement in terms of clause 17.1 of this Agreement.
  - 11.1.3. duly and faithfully adhere to these provisions in order to receive the full benefits of the Incubation Programme.
- 11.2. The Incubatee undertakes to attend the following:
  - 11.2.1. various training, seminars and interventions determined and recommended and/or made available by innobiz DUT as being

advantageous to the Incubatee in improving its business skills, considering the outcomes of the reviews set out in Clause 7.4 above; and

- 11.2.2. meetings with assigned innobiz DUT's staff and allocated business and/or technical mentor, as set out in the Incubation Programme schedule to be provided by innobiz DUT.
- 11.3. The Incubatee undertakes to diligently apply itself in implementing the recommendations of innobiz DUT through its staff, mentors and/or the Incubation Programme, to ensure that it delivers against the milestones as agreed between the Incubatee and innobiz DUT as set out in Annexure C.
- 11.4. The Incubatee shall, for the duration of this Agreement, not conclude any agreements or arrangements with any third party, without the prior written consent of innobiz DUT, which innobiz DUT shall not unreasonably withhold.
- 11.5. The Incubatee acknowledges that, notwithstanding any supply chain or enterprise development related training or support provided by innobiz DUT or DUT during the Incubation Period, neither innobiz DUT, DUT nor any of its affiliates are obliged to procure any goods or services from the Incubatee either during the duration of this Agreement or following its expiration.
- 11.6. The Incubatee shall, on a quarterly basis, and not later than the 20<sup>th</sup> of the last month of each calendar quarter, provide innobiz DUT with a progress report, including on templates provided by innobiz DUT.
- 11.7. The Incubatee shall provide in terms of Clause 11.6 shall detail the status of agreed milestones and other performance measures as may be agreed between the Parties, which may include the number of jobs created, as well as the status of implementation of innobiz DUT's and mentors' recommendations as agreed.
- 11.8. The Incubatee undertakes to provide innobiz DUT with accurate and updated reports, which may include financial reports as per the direction of innobiz DUT, at the end of each calendar quarter.
- 11.9. The Incubatee undertakes to acknowledge the incubation support provided by innobiz DUT, in all printed or electronic media, including media interviews.

## **12. FINANCIAL AND NON-FINANCIAL OBLIGATIONS BY THE INCUBATEE**

- 12.1. The Incubatee and innobiz DUT acknowledge that, in consideration of the Incubation services provided under the Incubation Programme, the Incubatee may in its own discretion elect to make a financial contribution to innobiz DUT upon the successful commercialisation of its Product/Service.
- 12.2. In the case that the Incubatee makes the election in terms of Clause 12.1, the Parties shall discuss and agree in good faith on the terms of such a financial contribution, which shall be determined in a manner that ensures that such financial contribution does not adversely affect the success or sustainability of the Incubatee's business.
- 12.3. The total financial contribution, shall in any event, not be greater than the amount of support provided by innobiz DUT to the Incubatee during Incubation Period.
- 12.4. Notwithstanding the foregoing, innobiz DUT and the Incubatee may agree to non-financial contributions by the Incubatee *in lieu* of financial contributions, including but not limited to:
- 12.4.1. Mentoring and coaching other Incubatees,
  - 12.4.2. Number of jobs created by the Incubatee; or
  - 12.4.3. Participation in events arranged by innobiz DUT.

## **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1. All Background Intellectual Property that existed prior to the commencement of the Agreement, remains the exclusive property and right of the Party who created the Background Intellectual Property, and the Parties undertake not to, at any time, or in any manner, contest the validity of each other's exclusive ownership of and/or rights in and to the Background Intellectual Property.

- 13.2. If the Incubatee creates Foreground Intellectual Property during the Incubation Period, and such Intellectual Property is unrelated to the activities of the Incubatee as a DUT student or is neither derived from nor the consequences of an output of publicly financed research and development activities, such Intellectual Property shall be owned by the Incubatee in accordance with the conditions for its creation.
- 13.3. If an Incubatee creates Foreground Intellectual Property during the Incubation Period, and such Intellectual Property is related to the activities of the Incubatee as a DUT student, derived from or the consequences of an output of publicly financed research and development activities or the Incubatee in creating such Intellectual Property makes use of DUT/innobiz DUT's Intellectual Property and/or resources, such Foreground Intellectual Property shall be owned by DUT in accordance with the DUT IP Policy, and the Incubatee hereby agrees to transfer the rights in and to such Foreground Intellectual Property to DUT/innobiz DUT. In cases where this might not be obvious, the Incubatee is expected to disclose such Foreground Intellectual Property to innobiz DUT so that a determination of ownership may be made in good faith.
- 13.4. Foreground Intellectual Property that is developed using funding sourced by innobiz DUT from a third-party funder, as envisaged in Clause 7.3, shall be governed by the agreement that is concluded between the Incubatee and the third party funder.
- 13.5. Where DUT owns the Foreground Intellectual Property, the Incubatee shall have the right of first refusal in respect of an exclusive licence to use or assignment of the Foreground Intellectual Property resulting from or developed under the Incubation Programme, in line with required approvals from the National Intellectual Property Management Office (NIPMO) and subject to the payment of a reasonable royalty or assignment fee to be determined and agreed to by the Parties in writing. Such an agreement shall be an annexure to this Agreement.
- 13.6. The exclusive licence granted in terms of Clause 13.4, shall be valid for a period not exceeding five (5) years, and DUT reserves the right to review the grant of such a license, and may, on prior written notice to the Incubatee, renew

the licence for a further period of five (5) years, or where it is determined that the Incubatee has failed to commercialise of the Foreground Intellectual Property without reasonable grounds, revoke the licence.

- 13.7. No Party will claim any Intellectual Property rights to any trademarks or brands of the other Party, nor will one Party use any trademarks or brands of the other Party without the written consent of that Party.
- 13.8. Notwithstanding anything in this Clause, the Parties agree that the Publicly Financed Research and Development Act 51 of 2008 (“IPR Act”), and its Regulations apply in respect of any Foreground Intellectual Property emanating from publicly financed research development activities as defined in the Act.
- 13.9. The foregoing shall apply *mutatis mutandis* after the termination of this Agreement from any cause whatsoever.

#### **14. CONFIDENTIALITY**

- 14.1. Each Party acknowledges that in its dealings with the other Party, governed by the terms of this Agreement, it may have access to or obtain Confidential Information of the other Party. The Disclosing Party agrees that neither it nor any of its employees, consultants or agents shall at any time during or after the performance of such services disclose such Confidential Information to any third party directly or indirectly, or use any such Confidential Information otherwise than for providing services in terms of this Agreement, unless the Receiving Party first obtains the written consent of the Disclosing Party or unless required by law or the lawful order of a court or governmental agency to do so in which event the Receiving Party shall immediately give written notice to the Disclosing Party so that it may seek a protective order or other remedy from the court or governmental agency.
- 14.2. The Receiving Party shall, with respect to the Confidential Information:
- 14.2.1. Inform its employees, consultants, contractors and/or agents of the confidentiality restraint set out in this Clause and ensure that they are subject to the same confidentiality undertaking.

- 14.2.2. Restrict disclosure of Confidential Information only to its employees, consultants, contractors and/or agents who have a need to know such Confidential Information in order to perform the Services, and to whom disclosure and by whom the use of Confidential Information has been authorised by the Disclosing Party, provided that in any event, the Receiving Party shall be liable for any unauthorised use or disclosure to any third party by any of its employees, consultants, contractors and/or agents of the Confidential Information.
  - 14.2.3. Ensure that its employees, consultants, contractors and/or agents use a reasonable degree of care appropriate for the protection of the Confidential Information
  - 14.2.4. Use the Confidential Information only for the purposes for which it was provided.
  - 14.2.5. Upon request by the Disclosing Party promptly deliver any and all records containing Confidential Information which is in its possession or control, or the possession or control of its consultants, contractors and/or agents.
  - 14.2.6. Not acquire any proprietary or any other rights to any of the Disclosing Party's Confidential Information.
- 14.3. The restrictions on the Receiving Party's disclosure and use of Confidential Information shall not apply to the extent that such information:
- 14.3.1. can be clearly demonstrated that it was already rightfully known to the Receiving Party prior to receipt from the Disclosing Party;
  - 14.3.2. is or becomes public knowledge without breach of the Receiving Party's obligations under this Agreement;
  - 14.3.3. is rightfully acquired by the Receiving Party from a third party with authority to disclose, without restriction on disclosure or use to the Disclosing Party;

- 14.3.4. is independently developed by the Receiving Party without resort to the Disclosing Party's disclosure; or
- 14.3.5. is disclosed or used following the Receiving Party's receipt of express written consent from a duly authorised representative of the Disclosing Party.
- 14.4. Any information which consists of a combination of more than one aspect shall not be deemed to be of public knowledge by virtue of the fact that said aspects have been disclosed separately.
- 14.5. If disclosure of Confidential Information is required or requested by a court order or statute, the Receiving Party, if permissible, shall promptly notify the Disclosing Party in writing in such detail and give the Disclosing Party a reasonable time, if possible, to seek a protective order or otherwise appear to intervene for the purposes of protecting the Confidential Information. Any disclosure under such a requirement shall be limited only to the information required.
- 14.6. Upon written demand from the Disclosing Party, or termination of this Agreement, whichever is earlier, the Receiving Party shall (a) cease all use of the Disclosing Party's Confidential Information, and (b) within 30 days of the demand, return to the Disclosing Party or destroy all documents or material embodying Confidential Information received under this Agreement, whether tangible or intangible (c) delete all Confidential Information residing on non-portable electronic media, e.g., e-mails and other electronic documents residing on networks.
- 14.7. The Receiving Party shall promptly advise the Disclosing Party in writing if it learns of any misappropriation or unauthorised use or disclosure of Confidential Information by any person, including any Receiving Party personnel or former Receiving Party personnel. The Receiving Party shall take all steps reasonably requested by the Disclosing Party to limit, stop or otherwise remedy such misappropriation or unauthorised use or disclosure.
- 14.8. The provisions of this Clause shall survive termination or expiry of this Agreement.

**15. DATA PROTECTION**

- 15.1. Each Party to this Agreement undertakes to and shall ensure that any of its data operators (as that term is defined by the Protection of Personal Information Act 4 of 2013), agents and contractors comply with the Data Protection Legislation and all other applicable data protection legislation and regulations in connection with the performance of its obligations and exercise of its rights under this Agreement.
- 15.2. Without prejudice to the generality of Clause 11.1, with respect to any processing (as that term is defined by the Protection of Personal Information Act 4 of 2013) of Personal Data under this Agreement, each shall (and shall procure that any of its data operators, as that term is defined by the Protection of Personal Information Act 4 of 2013, agents or contractors,) take appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data supplied to it by another Party and against accidental loss or destruction of, or damage to, that Personal Data in accordance with Condition Seven as set out in the Protection of Personal Information Act 4 of 2013.
- 15.3. Each Party to this Agreement undertakes to:
- 15.3.1. obtain the relevant consent as prescribed within the Protection of Personal Information Act 4 of 2013;
  - 15.3.2. to treat the Personal Data as confidential information Information in accordance with this Agreement;
  - 15.3.3. not to use or knowingly permit any third Party to use, or have access to, the Personal Data for any purpose other than as is expressly permitted by this Agreement; and
  - 15.3.4. that it shall not use Personal Data held by it under this Agreement for any purpose that is inconsistent with those purposes notified to the relevant data subject (as defined by the Data Protection Legislation) on or before the time of collection of that Personal Data.

- 15.3.5. Each Party shall promptly inform the other of any actual or suspected unauthorised access, use or other abuse of the Data and/or any information technology systems relating thereto (“Unauthorised Use”) of which it or any of its contractors becomes aware.
- 15.4. Each Party shall, at its cost, provide at the other Party’s request all reasonable assistance to the requesting Party in relation to the preparation and presentation of the relevant information to the regulators or as otherwise required by the applicable legislation for the purpose of prosecuting those individuals responsible for an incident of Unauthorised Use for any legal actions that the requesting Party may bring against third Parties responsible for an incident of Unauthorised Use or co-operate with any inquiry from any regulator or authority.

## **16. ANTI-CORRUPTION**

- 16.1. The Parties and each of its owners, affiliates, officers, directors, employees and agents acting under its instructions and/or influence and taking actions in furtherance of this Agreement, shall comply with all applicable anti-corruption laws, including the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 of the Republic of South Africa, and to the extent that they are applicable, the Parties also agrees to adhere to any other applicable anti-bribery and anti-corruption laws and regulations applicable in the Republic of South Africa (collectively, the “Applicable Anti-Corruption Legislation”).
- 16.2. Should there be a breach of the Applicable Anti-Corruption Legislation by either Party, the aggrieved Party may demand that any monies already paid under this Agreement be paid back.

## **17. BREACH AND TERMINATION**

- 17.1. Without prejudice to any of its other rights or remedies, either Party may by notice in writing to the other Party terminate this Agreement if the other Party (“Defaulting Party”) commits a material breach of any term, condition or

provision of this Agreement and fails to remedy such breach within 14 (fourteen) days of written notice to this effect.

17.2. It is expressly agreed that innobiz DUT is entitled to terminate this Agreement on the basis of exiting the Incubatee from the Incubation programme in terms of Clause 10.2.1, including due to the occurrence of a Material Adverse Event.

17.3. For the avoidance of doubt, in the event of this Agreement being terminated as a result of a Material Adverse Event or a breach of any other provision of this Agreement by the Incubatee, the Incubatee shall remain liable for all its respective obligations which have accrued at the date of termination of this Agreement.

## **18. DISPUTE RESOLUTION**

18.1. In the event of any dispute arising from this Agreement, the Parties shall make every effort to settle such dispute amicably.

18.2. If the dispute is not capable of being settled between the Parties amicably, such dispute shall be elevated to the Senior Management of the Parties or their duly designated representatives for mediation purposes. For purposes of this Clause, "Senior Management" shall mean the President or Chief Executive Officer of the Parties.

18.3. Should the dispute - despite such mediation - remain unresolved for a period of 30 (thirty) days after being so referred, either Party may declare such dispute a formal intergovernmental dispute by notifying the other Party of such declaration in writing, in which event the Parties will follow the procedure as outlined in Section 42 of the Intergovernmental Relations Framework Act, Act No 13 of 2005.

18.4. Should the dispute still remain unresolved, the dispute shall be referred to arbitration by the Arbitration Foundation of Southern Africa ("AFSA") under its expedited rules.

- 18.5. Notwithstanding the provisions of this Clause, any Party shall be entitled to institute any proceedings for urgent interim relief arising out of or in connection with this Agreement in the High Court of South Africa having jurisdiction.

**19. RIGHTS & OBLIGATIONS UPON TERMINATION OF AGREEMENT**

- 19.1. Upon the expiration, termination or cancellation of this Agreement, the Parties shall promptly refrain from using any of the Confidential Information relating to the Service/s, including any know-how, trade secrets, data or information developed or collated by the other Party.
- 19.2. Neither Party shall, by reasons of the expiration or termination of this Agreement for just cause, be liable to the other for loss of goodwill, anticipated profits, expenditures, investments and the like.
- 19.3. The acceptance of any order for the supply by the Incubatee after the expiration or termination of this Agreement shall, unless otherwise expressly specified, be subject to all the pertinent terms of this Agreement but shall not be construed as a renewal or extension of this Agreement nor as a waiver of termination thereof.

**20. CESSION AND ASSIGNMENT**

- 20.1. The rights and obligations of the Incubatee are personal and may not be ceded, assigned, transferred, let or otherwise disposed of in any manner whatsoever.

**21. NOTICES**

- 21.1. All notices in terms of this Agreement shall be in writing addressed to the chosen address of the Party and shall be sent by prepaid registered post or shall be physically delivered.
- 21.2. Posted notices shall be deemed to have been received on the 14<sup>th</sup> (fourteenth) day following posting.

21.3. Each Party chooses as its address for citation, service of legal processes, execution or any other purpose connected with this Agreement, its address set out hereunder, which it shall be entitled to vary on notice provided that such address shall remain within the same magisterial district:

21.4. The facsimile numbers shown below may be chosen as an alternative address for the receipt of any notice connected with this Agreement and may be varied on notice, provided that such number shall remain within the telephone system of the respective countries of domicile of the Parties.

21.4.1. innobiz DUT address:

Milena Court, Steve Biko Campus, 79 Steve Biko Road, Durban, 4001.

And

Unit 1, 3201 FJ Sithole Rd, Imbali, Pietermaritzburg, 3201

21.4.2. The Incubatee's address:

[.....],

[.....],

[.....],

[.....].

## **22. GOVERNING LAW AND JURISDICTION**

The validity and interpretation of this Agreement will be governed by the laws of the Republic of South Africa.

## **23. ENTIRE AGREEMENT AND VARIATION**

23.1. This Agreement constitutes the whole Agreement between the Parties and supersedes all prior verbal, or written Agreements, or understandings, or

representations by or between the Parties regarding the subject matter of this Agreement and the Parties will not be entitled to rely upon, in any dispute regarding this Agreement, on any terms, conditions, or representations not expressly contained in this Agreement.

- 23.2. No variation of, or addition to this Agreement will be of any force, or effect unless reduced to writing and signed by or on behalf of the parties.

## **24. SEVERABILITY**

If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable, and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.

## **25. GENERAL**

- 25.1. Neither Party shall use the other Party's name, logo or other intellectual property rights in any advertising or publicity without the other Party's prior written consent.

- 25.2. Nothing in this Agreement shall be taken as any binding offer or Agreement by either Party to enter into any further Agreement with the other, whether relating to the manufacture of the Components or otherwise.

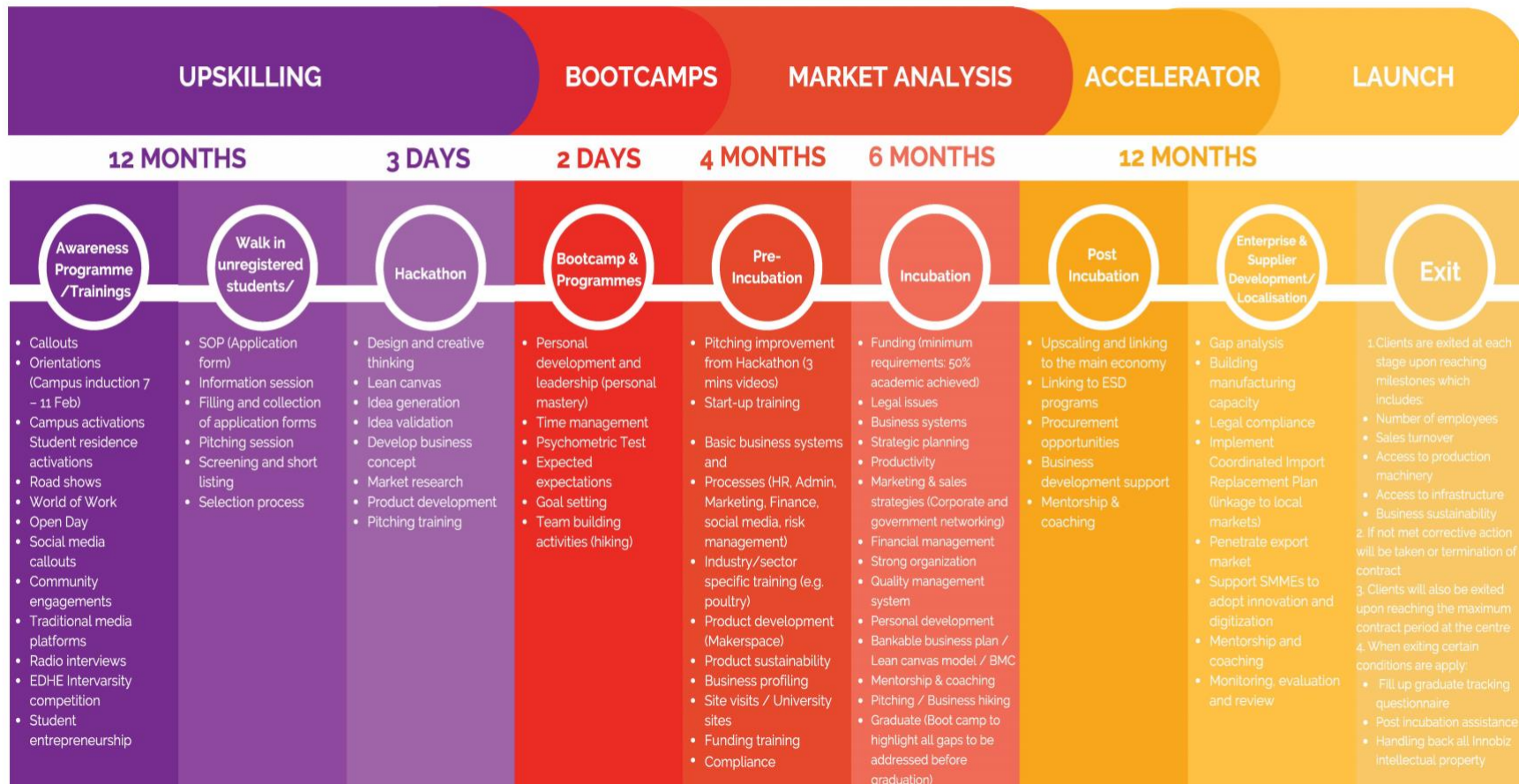
## **26. EXECUTION**

By executing this Agreement, the Incubatee confirms Agreement to the terms and conditions stipulated under the Agreement.

**ANNEXURE A: innobiz DUT Incubation Programme workflow**



# innobiz DUT CENTRE FOR ENTREPRENEURSHIP AND INNOVATION - SERVICE FLOW



**ANNEXURE B: Incubation Programme: Milestones and Stage gate output**

Stage	Hackathon	Boot camp & programmes.	Pre-Incubation.	Incubation.	Post-Incubation.
Duration	3 Days	1 Day	3 Months	6 Months	1 year
<b>Milestone</b>	<ul style="list-style-type: none"> <li>Design and creative thinking training.</li> <li>Lean canvas.</li> <li>Idea generation.</li> <li>Idea validation.</li> <li>Develop a business concept.</li> <li>Market research.</li> <li>Product development.</li> <li>Pitching training.</li> </ul>	<ul style="list-style-type: none"> <li>Personal development and leadership (personal mastery).</li> <li>Time management.</li> <li>Psychometric test.</li> <li>Expected expectations.</li> <li>Goal setting.</li> <li>Teambuilding activities (hiking).</li> </ul>	<ul style="list-style-type: none"> <li>Pitching improvement from Hackathon (3 minutes videos).</li> <li>Start-up training.</li> <li>Basic business systems and processes (HR, Admin, Marketing, Finance, Social media, Risk management).</li> <li>Industry/sector-specific training.</li> <li>Product development (Marketspace).</li> <li>Product sustainability.</li> <li>Business profiling.</li> <li>Site visits/University sites.</li> <li>Funding training.</li> <li>Compliance.</li> </ul>	<ul style="list-style-type: none"> <li>Funding (minimum requirements 50% academic achieved).</li> <li>Legal issues.</li> <li>Business system.</li> <li>Strategic planning.</li> <li>Productivity.</li> <li>Marketing and sales strategies (Corporate and government networking).</li> <li>Financial management.</li> <li>Strong organisation.</li> <li>Quality management system.</li> <li>Personal development.</li> <li>Bankable business plan/lean canvas model/BMC.</li> <li>Pitching/business hiking.</li> <li>Graduate (boot camp to highlight all gaps to be addressed before graduation).</li> </ul>	<ul style="list-style-type: none"> <li>Upscaling and linking to the main economy.</li> <li>Linking to ESD programs.</li> <li>Procurement opportunities.</li> <li>Business development support.</li> <li>Mentorship &amp; coaching.</li> </ul>
<b>Output</b>	<ol style="list-style-type: none"> <li>Actionable business idea/ Prototype</li> <li>The method used: PowerPoint/ Canva video presentation developed and submitted.</li> </ol>	<ol style="list-style-type: none"> <li>Productivity (mastering the art of achieving planned goals)</li> <li>Personal mastery/ self-identity.</li> </ol>	<ol style="list-style-type: none"> <li>Compliant Business</li> <li>Operational business</li> <li>Exposure</li> <li>DUT Seed funding and external funding</li> <li>Industry-specific skill</li> <li>Marketing strategy</li> </ol>	<ol style="list-style-type: none"> <li>Market Access</li> <li>DUT Seed funding and external funding</li> <li>Profitable business</li> <li>Bankable business plan</li> <li>Business systems</li> <li>12-24 months project plan and a minimum of R5 000. 00, monthly turnover.</li> </ol>	<ol style="list-style-type: none"> <li>Business Systems and process</li> <li>Market access and marketing strategy</li> <li>12- 36 months project plan and a minimum of R10 000. 00, monthly turnover.</li> <li>Number of employees</li> <li>ESD Registration (DUT Database)</li> </ol>