

KN4414/KT

AGREEMENT

between

THE EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH (CERN)

and

THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA

(2019)

Agreement KN4414/KT

Between

The European Organization for Nuclear Research ("CERN"), an Intergovernmental Organization having its seat at Geneva, Switzerland, represented by Martin Steinacher, Director for Finance and Human Resources,

on the one hand,

And

The Government of the Republic of Lithuania, represented by Virginijus Sinkevičius, the Minister of the Economy and Innovation,

on the other hand,

hereafter collectively and individually referred to as the "Parties" and the "Party" respectively;

WHEREAS

1. The Parties support the dissemination of technologies originating from the research field for the benefit of society;
2. CERN aims at enhancing the impact of such technologies by furthering knowledge and technology transfer to other disciplines through Business Incubation Centres ("BIC") in CERN's Member States and Associate Member States;
3. In this context, it is intended that a Business Incubation Centre of CERN technologies is set up in Lithuania (the "LITHUANIAN BIC OF CERN TECHNOLOGIES"), composed of two incubation sites: Vilnius Sunrise Valley Science and Technology Park and Kaunas Science and Technology Park (the "Incubators");
4. The Government of the Republic of Lithuania, through the Ministry of the Economy and Innovation, has mandated the Lithuanian Innovation Centre ("LIC"), a public organisation which provides innovation support services to enterprises, research institutions, industry associations and business support organisations and promotes innovation culture in Lithuania, to manage and operate the LITHUANIAN BIC OF CERN TECHNOLOGIES on its behalf;
5. LIC will act as the single-entry point and interlocutor for the LITHUANIAN BIC OF CERN TECHNOLOGIES and will be responsible for the overall management and operation of the LITHUANIAN BIC OF CERN TECHNOLOGIES, including the coordination between the Incubators;
6. The LITHUANIAN BIC OF CERN TECHNOLOGIES will support the development and exploitation of innovative ideas, including know-how, in

- technical fields broadly related to CERN activities in high energy physics such as, for example particle accelerators, detectors, vacuum technology, cryogenics, magnets, superconductors, RF, material science and high-end computing in Lithuania;
7. For CERN, the LITHUANIAN BIC OF CERN TECHNOLOGIES will allow to support businesses and entrepreneurs in taking innovative CERN technologies from technical concept to market reality thus allowing CERN to demonstrate the benefits arising from CERN activities for its Member States and Associate Member States;
 8. For Lithuania, the LITHUANIAN BIC OF CERN TECHNOLOGIES will help demonstrate the impact arising from the Lithuanian contribution to CERN, provide opportunities to further develop Lithuania as a centre for innovation, and increase Lithuania's capabilities in key technologies.

THE PARTIES HEREBY AGREE AS FOLLOWS:

ARTICLE 1 SCOPE

- 1.1 This Agreement sets out each Party's contribution to the LITHUANIAN BIC OF CERN TECHNOLOGIES and their role in the selection and support of the applicants to the LITHUANIAN BIC OF CERN TECHNOLOGIES.
- 1.2 LIC shall be exclusively responsible for the management and operation of the LITHUANIAN BIC OF CERN TECHNOLOGIES.
- 1.3 In consideration of the fact that the the Government of the Republic of Lithuania has entrusted the management and operation of the LITHUANIAN BIC OF CERN TECHNOLOGIES to LIC, the Government of the Republic of Lithuania shall guarantee the performance of any obligations stated in this Agreement as those of LIC. This is in addition to the responsibility of the Government of the Republic of Lithuania for the performance of those obligations that are stated in its own name.

ARTICLE 2 ELIGIBILITY, APPLICATIONS, AND SELECTION

- 2.1 CERN, LIC, and the Incubators shall each appoint one (1) representative who together shall form a steering committee (the "Steering Committee").
- 2.2 The Steering Committee shall meet at least once a year and at such other times as it is deemed needed. The Steering Committee may invite any other persons it deems necessary to attend the meetings as observers.
- 2.3 The Steering Committee shall define the rules of eligibility for participation in the LITHUANIAN BIC OF CERN TECHNOLOGIES call for proposals, the selection criteria, and the composition of the "Selection Panel".
- 2.4 The selection procedure for the applicants to the LITHUANIAN BIC OF CERN TECHNOLOGIES shall be based on the following elements:

- i. A contest to select appropriate projects, based on candidates' proposals describing a business idea and the required technological and know-how support from CERN. The contest may have one or more calls (cut-off dates) per year, as established by LIC after discussion with CERN;
 - ii. A Selection Panel, consisting in an odd number of up to 7 (seven) senior experts. CERN and LIC shall each have one (1) permanent seat. One (1) seat will be made available for a representative of Vilnius Sunrise Valley Science and Technology Park and one (1) seat will be made available for a representative of Kaunas Science and Technology Park. The additional members are selected for each call by LIC, after discussion with CERN, among key partners or professionals from industry, science, finance, academia, or the media sector, with expertise relevant for each specific call. The Selection Panel will meet as necessary, and at least once per call;
 - iii. A selection process, based on the evaluation of proposals and the interview of candidates. Depending on the number of applications, the evaluation of proposals and the interview of candidates can take place in one or more rounds (per call), as decided by LIC after discussion with CERN.
- 2.5 The decisions of the Selection Panel are taken by majority. All members of the Selection Panel have one vote, and the majority is defined as a simple majority of the voting members. Should no majority be reached, the decision will be taken by consensus of CERN and LIC. If neither a majority in the Selection Panel, nor a consensus among CERN and LIC is reached, no applicant will be selected for the incubation program for that call.
- 2.6 In case several rounds in the selection process are needed, LIC shall be in charge of the first selection round (pre-selection), based on the received proposals. The pre-selection is done in cooperation with CERN, with the objective to select two (2) to five (5) projects for the final evaluation round. The selected projects will access the final evaluation round, where -based on the proposal and an interview of the candidates- the winner project(s) are selected by the Selection Panel.
- 2.7 Should it at any point in the process become apparent that a project does not require a significant level of CERN technologies or know-how, the project cannot be selected for the incubation program. The decision of admitting or excluding a project due to its technology and know-how requirements is taken by CERN. In case of exclusion, CERN shall inform LIC as soon as possible.
- 2.8 The call for proposals will be of an on-going nature (i.e. with cut-off dates, but applications possible any time), unless agreed otherwise by the Parties. The Selection Panel may select up to two (2) to five (5) applicants per year, for a participation of up to twenty-four (24) months in the LITHUANIAN BIC OF CERN TECHNOLOGIES.
- 2.9 The Steering Committee may agree to change the elements of the selection procedure. The agreed changes must be confirmed in writing.
- 2.10 As a precondition to integrating the LITHUANIAN BIC OF CERN TECHNOLOGIES, the selected applicants ("Incubatees") shall sign an incubation agreement with LIC or the Incubators setting out terms and conditions governing Incubatees' participation in the LITHUANIAN BIC OF CERN TECHNOLOGIES.

Such agreement shall include a clause stipulating that CERN has no liability to the Incubatee, who shall hold CERN free and harmless from any loss or damage. In addition, the Incubatees shall each sign a lease agreement with LIC or the relevant Incubator for premises, and an agreement with CERN concerning access to CERN technologies, which shall always be for non-military use.

ARTICLE 3 CONTRIBUTIONS BY CERN

- 3.1 CERN's contribution to the LITHUANIAN BIC OF CERN TECHNOLOGIES shall be of technological nature through transfer of the CERN technologies and related support in the manner described hereunder.
- 3.2 CERN agrees to receive up to two (2) days technical visits to CERN per year for up to five (5) prospective applicants, in order to determine the technological compatibility of their project with CERN technologies or know-how. The travel costs related to such visits shall be borne by LIC and/or the Incubators or paid from any other source available excluding CERN and the applicants.
- 3.3 CERN agrees to offer Incubatees a licence on CERN technologies at preferential rates, on the terms and conditions generally applicable to licences granted by CERN.
- 3.4 CERN agrees to provide each Incubatee with up to forty (40) hours of support related to the CERN technologies over a twenty-four (24) months period corresponding to their participation in the LITHUANIAN BIC OF CERN TECHNOLOGIES programme, subject always to availability of CERN experts and infrastructure.
- 3.5 CERN agrees to provide Incubatees with other general support in relation to the use and exploitation of the CERN technologies as may be available at CERN, subject always to the availability of CERN experts.
- 3.6 Should there be an applicant that does not qualify for entering the LITHUANIAN BIC OF CERN TECHNOLOGIES incubation program and thus is not selected as an Incubatee under this Agreement, but who, upon consensus of the Parties, is nevertheless deemed to have high-potential, CERN agrees to discuss with LIC about possible in-kind support and preferential access to know-how and intellectual property, however not at the same conditions as for the Incubatees.

ARTICLE 4 CONTRIBUTIONS BY LIC AND THE INCUBATORS

- 4.1 LIC shall use its relations, contacts and infrastructure necessary to promote the LITHUANIAN BIC OF CERN TECHNOLOGIES activities among local administrations, universities, selected industrial organizations, Chamber of Commerce and Industry, and promotion organizations. For this purpose, LIC shall appoint a dedicated liaison officer, with good technical understanding of CERN technologies, who shall give a minimum of thirty percent (30%) full time equivalent (FTE) to feature the LITHUANIAN BIC OF CERN TECHNOLOGIES work and explore new opportunities.
- 4.2 Contribution from LIC and from the Incubators to the Incubatees shall be of business support nature, through funding, infrastructure, and consultancy over a

twenty four (24) months period corresponding to their stay at the LITHUANIAN BIC OF CERN TECHNOLOGIES in the manner described hereunder.

- 4.3 The Incubators agree to make available space for incubation (offices/workshops), and when required and if available, also laboratories on their premises or other location as may be decided by the Incubators. Incubatees will pay for the accommodation under standard lease conditions.
- 4.4 LIC, either directly, through the Incubators or through other funding mechanism, agrees to provide Incubatees with a financial contribution of € 40,000 (forty thousand euros), paid in one instalment within the first six (6) months of their stay at the LITHUANIAN BIC OF CERN TECHNOLOGIES. Possibly, additional contributions will be paid in-kind by LIC and/or the selected Incubator or third parties as services, which are normally not offered for free to the companies incubated or resident in the LITHUANIAN BIC OF CERN TECHNOLOGIES. LIC and the Incubators reserve the right to offer these additional services at their own discretion, either in-house or through services and programs offered by their key partners.
- 4.5 LIC and the Incubators agree to provide each Incubatee with business support for up to two hundred (200) hours over a twenty four (24) months period (which may include advice on business planning, team building, additional governmental funds, private equity like VC and business angels, marketing, and finding collaborative partners using LIC and the Incubators's networks in science and industry), subject always to the availability of LIC and the Incubators's experts.

ARTICLE 5 CONFIDENTIALITY

- 5.1 The Parties shall collaborate openly and shall, except as provided in article 5.2 hereunder, be free to disclose any information resulting from their collaboration.
- 5.2 Each Party shall keep confidential and shall not without prior written approval by the other Party use for any other purpose than in relation to the operation of the LITHUANIAN BIC OF CERN TECHNOLOGIES or disclose to any third party any information received from the other Party which is marked as confidential or restricted or which can reasonably be understood to be confidential. The content of the applicants' proposals shall be treated as confidential information. Each Party shall continue to comply with this obligation for a period of five years from the disclosure.
- 5.3 Notwithstanding Article 5.2 above, a Party is entitled to disclose information which it is required by law to disclose or which, in a lawful manner, it has obtained from a third party without any obligation of confidentiality, or which it has developed independently from any confidential information received under this Agreement, or which has become public knowledge other than as a result of a breach on its part of Article 5.2 above.

ARTICLE 6 PROPRIETARY RIGHTS AND COMMUNICATION

- 6.1 Information disclosed by a Party to the other Party shall not create any proprietary right in respect of that information for the Party receiving the

- information. Use of proprietary information of a Party by Incubatees shall be the subject of a separate written agreement.
- 6.2 Without prejudice to the remainder of this Article 6, a Party shall not use or make reference to the logo(s) of the other Party without its prior written authorisation.
- 6.3 A Party shall not use or make reference to any of the names or acronyms under which the other Party is known without that Party's written permission, except where the name of that Party is used in a strictly factual manner and as an integral part of the communication in relation to the LITHUANIAN BIC OF CERN TECHNOLOGIES, provided that such communication is made with reasonable prior written notification to the concerned Party.
- 6.4 LIC is entitled to use the CERN labelling material set out in **Annex 1** strictly as an integral part of communication in relation to the LITHUANIAN BIC OF CERN TECHNOLOGIES and with reasonable prior written notification to CERN.
- 6.5 The LITHUANIAN BIC OF CERN TECHNOLOGIES flag set out in **Annex 1** may be used to identify the premises of the LITHUANIAN BIC OF CERN TECHNOLOGIES. In addition, each Party may use the LITHUANIAN BIC OF CERN TECHNOLOGIES flag for off-site promotional events related to the LITHUANIAN BIC OF CERN TECHNOLOGIES with reasonable prior written notification to the other Party.
- 6.6 Any web presence concerning the LITHUANIAN BIC OF CERN TECHNOLOGIES is subject to the prior written agreement of the Parties.
- 6.7 Notwithstanding the foregoing, any use of name, logo, branding material, or audio-visual media by a Party under this Article 6 shall be respectful, honest, and non-misleading, and for the sole purpose of giving a truthful indication of the contribution of the Parties to the LITHUANIAN BIC OF CERN TECHNOLOGIES. Such use shall in no event state or suggest an endorsement by CERN or LIC of the Incubatees or their products or services, nor shall it state or suggest a legal partnership or agency between the Parties or between CERN, LIC, and the Incubatee.
- 6.8 Conditions of use of the CERN branding material by an Incubatee will be set out in the agreement to be signed between CERN and the Incubatee.

ARTICLE 7 WARRANTY AND LIABILITY

- 7.1 The Parties provide no warranty, express or implied, of any kind to each other, including but not limited to that of fitness for a particular purpose and of the non-infringement of third party proprietary rights.
- 7.2 Except for liability by the Government of the Republic of Lithuania to CERN for any loss or damage related to the management or operation of the LITHUANIAN BIC OF CERN TECHNOLOGIES by LIC, neither Party shall have any liability to the other Party in relation to this Agreement, and in no event for consequential or indirect loss and damage, such as loss of income or revenue or loss of reputation, opportunities or customers.
- 7.3 Any grant of licence will be on an 'as-is' basis and without any liability and warranty, express or implied, being provided by CERN.

ARTICLE 8 APPLICABLE LAW AND DISPUTE RESOLUTION

- 8.1 The terms of this Agreement shall be interpreted in accordance with their true meaning and effect and independently of any national or other laws. Provided that if and insofar as this Agreement does not stipulate, or any of its terms are ambiguous or unclear, then, in those circumstances and solely in respect of those circumstances and not in respect of this Agreement as a whole, reference shall be made to Swiss substantive law.
- 8.2 Any dispute concerning this Agreement which cannot be settled amicably shall by virtue of CERN's status as an Intergovernmental Organization be decided by arbitration to be held in Geneva, Switzerland, in accordance with the procedure defined at <http://legal.web.cern.ch/procedures/arbitration>.

ARTICLE 9 DURATION AND AMENDMENT

- 9.1 This Agreement enters into effect on the date of its signature by the Parties and, except as may be otherwise agreed by the Parties, shall remain in effect for a period of four (4) years.
- 9.2 Either Party may terminate this Agreement with three (3) months prior notice in writing to the other Party.
- 9.3 Articles 1, 2, 5, 6, 7, 8 and this Article 9 of this Agreement shall survive its termination.
- 9.4 Termination of this Agreement shall be without prejudice to any agreement between CERN and the Incubatee or to the Incubatee's lease or incubation agreements.
- 9.5 Any amendment to this Agreement shall be made in writing only and shall be signed by authorised representatives of the Parties.

Thus agreed in Geneva, on 2019

The European Organization for Nuclear
Research (CERN)

The Government of the Republic of
Lithuania

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Martin Steinacher

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Virginijus Sinkevičius
Minister of the Economy and Innovation

Director for Finance and Human
Resources

ANNEX 1 BRANDING MATERIAL

- 1) The LITHUANIAN BIC OF CERN TECHNOLOGIES Flag, for use on the LITHUANIAN BIC OF CERN TECHNOLOGIES sites and for promotional events in accordance with Article 6:



BUSINESS INCUBATION CENTRE