

## CO-FUNDING AGREEMENT

### PARTIES

Content Limited, company number 2163431 of Level 13, Grand Arcade Complex, 16 Willis Street, Wellington, 6011, New Zealand (BusinessDesk)

and

Callaghan Innovation, a Crown agent established under the Callaghan Innovation Act 2012 (Callaghan Innovation)

### BACKGROUND

- A. BusinessDesk runs an independent news services that provides business and economic news to New Zealand media outlets. Their focus on business and economic news, coupled with the breadth of their clients, means that BusinessDesk holds a unique position within the New Zealand media landscape.
- B. Callaghan Innovation is a Crown agent whose role is to accelerate the commercialisation of innovation. As part of its role Callaghan Innovation receives public good funding to build New Zealand's innovation potential. One focus for that funding is to motivate current innovators to create, and grow, innovative business.
- C. Callaghan Innovation has identified media as an important channel and forum to build the awareness and understanding that can help contribute to the motivation of current innovators.
- D. The current breadth and depth of innovation related material in the New Zealand media is limited. This is due largely to the comparatively specific focus of innovation journalism in the context of New Zealand's small market and changing economics of the media industry.
- E. Callaghan Innovation and BusinessDesk are working together to help improve coverage of innovation related issues.
- F. This agreement records the terms of this co-funding arrangement.

### SPECIFIC TERMS

Funding Outputs	Production and distribution of innovation related media material as further described in section 5.
Callaghan Innovation Contribution	Cash [REDACTED] (plus GST) per annum, pro rata over the term of the agreement.
BusinessDesk Contribution	In-kind, journalists and other personnel.
Start date	1 <del>July</del> 2014. August

End date 31 December 2015 subject to the terms of this agreement.

Reports Every three months, [and not less than five Working Days before each scheduled three monthly meeting], BusinessDesk will provide a report of Funding Outputs provided in the immediately preceding three month period including reporting against the baseline set out in Schedule 1.

Meetings The parties will meet every three months to discuss the Funding Outputs and Reports provided under this agreement.

BusinessDesk address for notices Level 13, Grand Arcade Complex, 16 Willis Street, Wellington, 6011, New Zealand.

Callaghan Innovation contact person Justin Brownlie, Group Manager Communications  
[Justin.Brownlie@Callaghaninnovation.govt.nz](mailto:Justin.Brownlie@Callaghaninnovation.govt.nz)  
04 932 3315  
PO Box 31310, Lower Hutt 5040.

Callaghan Innovation address for notices  
  
69 Gracefield Road, Lower Hutt, 5040, New Zealand or fax +64 4 931 3718.

## GENERAL TERMS

### 1. Term

- 1.1 This agreement starts on the Start Date and, subject to the terms of this agreement, will remain in force until the End Date.
- 1.2 Not less than three months' prior to the End Date, Callaghan Innovation will give BusinessDesk notice of whether or not Callaghan Innovation intends to seek an extension of this agreement. The parties will negotiate the terms of any such extension. BusinessDesk acknowledges that Callaghan Innovation reserves the right to make any future funding for outputs the same or similar to those provided under this agreement subject to a contestable process.

### 2. Statement of Intent – Deeper Innovation Media Coverage

- 2.1 The parties agree that the intent of this co-funding agreement is to deepen New Zealand media coverage of the innovation sector, consistent with the requirement identified by both parties for BusinessDesk to operate with editorial independence.
- 2.2 The parties agree that to achieve the intent of clause 2.1 they each will:
- (a) commit to operational and administrative excellence in respect of performance of their respective obligations under this agreement.
  - (b) communicate openly and regularly with each other to facilitate the best interests of the parties in this agreement.



- (c) if any issues arise between the parties, raise such issues with the other party and seek a constructive outcome.
- (d) take a pro-active, open and honest approach to the relationship.

### **3. Contributions**

- 3.1 The parties shall provide their Contributions in accordance with the timeframes (if any) set out in the Specific Terms.
- 3.2 If any party is unlikely to be able to provide its Contribution (in-kind or in cash), or any part thereof, it shall:
  - (a) Notify the other party as soon as possible.
  - (b) Use its best endeavours to overcome the issue that may cause a delay in the provision of the Contribution.
  - (c) Use its best endeavours to minimise loss to the other party; and
  - (d) Continue to perform its obligations as far as practicable.

### **4. Duties and responsibilities of BusinessDesk**

- 4.1 BusinessDesk will:
  - (a) perform the Funding Outputs using suitably qualified and experienced journalists and other personnel.
  - (b) exercise reasonable care and skill in performing the Funding Outputs consistent with standards generally accepted in the media industry or profession in New Zealand and so as to promote and further the interests of Callaghan Innovation.

### **5. Scope of Funding Outputs**

- 5.1 Material produced by BusinessDesk for the purposes of this agreement will concentrate exclusively on commercially focused innovation related information, trends and results. This could be in the context of:
  - (a) innovation performance and approaches of individual companies.
  - (b) innovation performance and trends in specific sectors. Examples of relevant sectors could include medical devices, agri-tech, ICT services.
  - (c) innovation impacts and opportunities arising from advances in technology, both as a driver of new products and firms or as a driver of efficiency in existing firms; e.g. robotics, cloud computing, 3-D printing.
  - (d) individuals – profiles on individuals with a specific emphasis on innovation and their approach/view/success.
- 5.2 Material that is out of scope under the agreement includes:
  - (a) scientific discovery or technology stories without clear market or commercial application.
  - (b) results of market reporting relating to NZX mainboard companies.



- (c) Non-commercial innovation, such as environmental, health or social related innovation, expect where there is clear potential for commercial impact and opportunity.

## **6. Funding Output Levels**

- 6.1 BusinessDesk currently produces some material that fits within the scope above. The co-funding provided will not be used to support the current activity of BusinessDesk. To ensure the co-funding is having an impact:
  - (a) BusinessDesk and Callaghan Innovation agree a baseline of activity currently undertaken by BusinessDesk within the targeted scope as set out in Schedule 1. Future output will be measured against that baseline to identify the marginal increase in coverage.
  - (b) BusinessDesk will employ an additional journalist to ensure increased innovation related reporting. That appointed journalist will not be solely responsible for the production of additional material. Rather, the appointment will allow the whole BusinessDesk team to contribute to deeper coverage of the innovation system.

## **7. Transparency**

- 7.1 Both readers of BusinessDesk copy and BusinessDesk wholesale customers need to be aware that Callaghan Innovation is co-funding part of BusinessDesk's journalistic effort. This will be achieved by:
  - (a) BusinessDesk informing its wholesale customers of this agreement.
  - (b) where an article is sourced from Callaghan Innovation, including a clear acknowledgement as follows: "Callaghan Innovation part-funds a BusinessDesk journalist.";
  - (c) the parties issuing a joint press statement announcing the arrangement as an innovation in itself, laying out the principles of editorial independence, news relevance, and transparency; and explaining Callaghan Innovation's positioning for this as public good rather than corporate communications.
  - (d) Callaghan Innovation publishing a copy of this agreement on the Callaghan Innovation website, with commercial terms remaining confidential.

## **8. Editorial independence, no adverse acts and compliance**

- 8.1 BusinessDesk will retain editorial independence and freedom over innovation related issues that it reports including as part of the Funding Outputs.
- 8.2 Nothing in this agreement limits in any way the reporting that BusinessDesk would otherwise have undertaken, including retaining freedom to be critical of Callaghan Innovation and its work.
- 8.3 The parties acknowledge that, as a Crown agent, Callaghan Innovation adheres to conventions of political neutrality. This reinforces the requirement that Callaghan Innovation will not seek to influence the nature or content material produced by BusinessDesk under the scope of this agreement.



- 8.4 Subject to clauses 8.1 to 8.3, Callaghan Innovation and BusinessDesk will not do, or cause anything to be done which is inconsistent with or detrimental to the good standing, reputation or brand positioning of the other party or its business.
- 8.5 BusinessDesk must ensure that both itself and the Funding Outputs comply with all relevant requirements of any government, regulatory authority, industry standards, licensing, permitting or sanctioning requirements which apply to the Funding Outputs and/or BusinessDesk.

## **9. Intellectual Property Rights**

- 9.1 BusinessDesk will own any innovation related material it produces as part of the Funding Outputs.
- 9.2 BusinessDesk grants Callaghan Innovation a perpetual, transferable, non-exclusive, worldwide and royalty free license to use any innovation related material BusinessDesk produces during the term of this agreement and will at Callaghan Innovation's request, to do all acts and things and to execute all documents necessary to give effect to this clause.

## **10. Payment of Funding**

- 10.1 BusinessDesk will provide Callaghan Innovation with an invoice monthly in arrears and upon receipt of a correctly rendered invoice, Callaghan Innovation will make any payment due to BusinessDesk by the 20<sup>th</sup> of the following month.
- 10.2 If Callaghan Innovation disputes any invoice it may delay payment of the amount in dispute until the earlier of BusinessDesk providing evidence to Callaghan Innovation that the invoice is correct or the matter is resolved pursuant to clause 14.
- 10.3 Any amounts recorded in this agreement are plus GST (if any).

## **11. Reviews, Reports and Meetings**

- 11.1 BusinessDesk will provide reports to Callaghan Innovation in accordance with the reporting requirements set out in the Specific Terms (if any).
- 11.2 The parties will meet to discuss the performance of the Funding Outputs and the parties obligations under this agreement, as set out in the Specific Terms.
- 11.3 Without limitation to any other rights of Callaghan Innovation under this agreement, six months after the Start Date Callaghan Innovation will review the scope and impact of the Funding Outputs provided by BusinessDesk and will decide, in its sole discretion, whether to terminate this agreement in accordance with clause 12.1(a).

## **12. Termination**

- 12.1 This agreement will terminate on the earlier of:
- (a) either party giving one month's written notice to the other party.
  - (b) the End Date or, the date to which this agreement is extended pursuant to clause 1.2 (if any).
  - (c) delivery of written notice by Callaghan Innovation to BusinessDesk that BusinessDesk is in breach of any of the terms of this agreement, or



- (d) immediately if BusinessDesk ceases trading and/or commences winding up (otherwise than for the purposes of a solvent reconstruction) or a receiver, or similar is appointed over any of the assets of BusinessDesk, or any action is taken to have BusinessDesk declared insolvent or bankrupt.

### **13. Liability**

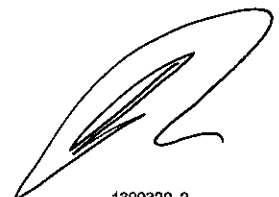
- 13.1 Neither party will be liable for any consequential or indirect loss, liability or damage of the other.
- 13.2 Notwithstanding any other provision in this agreement, the liability of Callaghan Innovation (whether in agreement, tort including negligence, or otherwise) to BusinessDesk for any loss, liability or damage suffered by BusinessDesk (howsoever arising), will be limited to the value of the Funding.

### **14. Dispute resolution**

- 14.1 If any dispute arises as to the terms of this agreement, then any party may give notice to the other party of that dispute. The parties will endeavour to resolve it quickly and fairly in good faith.
- 14.2 If the dispute or difference cannot be settled by good faith negotiation between the parties within five working days of the dispute or difference arising, such dispute or difference may be referred by either party to the mediation of a single mediator agreed to by both parties, or failing that, appointed by the President for the time being of the New Zealand Law Society or his/her nominee.
- 14.3 If the dispute or difference cannot be settled within 15 working days of the dispute or difference being referred to mediation pursuant to clause 13.2, either party may commence court proceedings and will be entitled to exercise all rights and remedies available to it at law.
- 14.4 Nothing in this clause 10 will prevent either party from commencing court proceedings for the purposes of seeking urgent interlocutory relief.

### **15. General**

- 15.1 A failure by a party to enforce a provision of this agreement will not constitute a waiver of any right to future enforcement of that or any other provision.
- 15.2 If any part of this agreement is unenforceable, invalid or illegal, the other terms will remain in force.
- 15.3 No party will be liable for any default in its obligations under this agreement if that default arises from any cause reasonably beyond its control.
- 15.4 All clauses of this agreement that are intended to continue after termination, including clauses 8 (Intellectual Property Rights), 11 (Termination), 12 (Liability), 13 (Dispute Resolution) and 14 (General) will continue in full force and effect.
- 15.5 Any notice to a party under this agreement will be deemed to have been delivered three working days after posting to the address of that party specified in the Specific Terms of this agreement or immediately on receipt by the sender of evidence the notice has been successfully faxed to the number specified in the Specific Terms of this agreement.



- 15.6 BusinessDesk may not transfer or assign any of its liabilities or rights under this agreement to any other person without the prior written consent of Callaghan Innovation. Callaghan Innovation and its successors or assigns may in its absolute discretion without the consent of or notice to BusinessDesk, transfer or assign all or any of its rights or obligations under this agreement to any other person.
- 15.7 This agreement records the entire understanding and agreement between the parties regarding its subject matter and supersedes and extinguishes all prior agreements, statements, correspondence and undertakings, whether written, oral or both made between the parties relating to the same subject matter. The parties agree that in entering this agreement, they have not relied on any representation (including pre-contractual representations) other than those which are set out in this agreement.
- 15.8 Working Day means any day other than a Saturday, Sunday, public holiday in Wellington, Auckland or Christchurch, New Zealand, and any day from 24 December to 5 January inclusive in any year.
- 15.9 This agreement may be signed in counterparts, including by facsimile or email, all of which, when taken together, will constitute one and the same document
- 15.10 This agreement will be governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 15.11 The date of this agreement will be the date that the last party signed.

Signed by **Callaghan Innovation**

M. P. Quinn  
Signature  
Mary P. Quinn  
Name of authorised signatory  
CEO  
Position  
12/6/13  
Date

Signed by **Content Limited**

[Signature]  
Signature  
Patrick Snellire  
Name of authorised signatory  
Director  
Position  
12/6/13  
Date

## **Schedule 1**

Current baseline activity. Over the 3 months February to April 2014, BusinessDesk has produced and distributed 16 stories on innovation subjects.

***This baseline will be used to report marginal increase in material produced during the term of this agreement.***