

Date: 3 September 2014

Agreement for a Business Incubator Award

between

Callaghan Innovation

and

Powerhouse Ventures Limited

Signed for and on behalf of Callaghan Innovation:

Signature: s9(2)(a) s9(2)(a)
Name: s9(2)(a)
Date: 3 September 2014
Title: s9(2)(a)

In the presence of:

Signature: s9(2)(a)
Name: s9(2)(a)
Title: s9(2)(a)

Signed for and on behalf of Powerhouse Ventures Limited

Signature: s9(2)(a)
Date: 9/10/14
Name: s9(2)(a)
Title: s9(2)(a)

In the presence of:

Signature: s9(2)(a)
Name:
Title:

CONTENTS

1. THE INCUBATOR INITIATIVE AND YOUR OPERATION	3
2. CONDITIONS TO FUNDING	5
3. FUNDING	6
4. INTELLECTUAL PROPERTY	6
5. AUDIT	6
6. REPORTING	8
7. REVIEW	9
8. CONFIDENTIALITY	9
9. CHANGE EVENTS	10
10. TERMINATION AND REDUCTION OR SUSPENSION OF FUNDING	11
11. RETURN AND REPAYMENT OF THE FUNDING	12
12. INDEMNITY	13
13. ENTIRE AGREEMENT	13
14. NOTICES	13
15. SURVIVAL OF CLAUSES	14
16. FORCE MAJEURE	14
17. NATURE OF RELATIONSHIP	14
18. VARIATIONS	14
19. ASSIGNMENT & TRANSFER	14
20. GOVERNING LAW	15
21. WAIVER	15
22. PARTIAL INVALIDITY	15
23. COUNTERPARTS	15
SCHEDULE AGREEMENT DETAILS – BUSINESS INCUBATOR AWARD GRANT	16

This Agreement is made on 3 September 2014

between Callaghan Innovation, a Crown entity established under the Callaghan Innovation Act 2012 ("Callaghan Innovation")

and Powerhouse Ventures Limited ("you" or "your")

together referred to as "we", "us", or "our".

BACKGROUND

- A. Callaghan Innovation invests in research, development, and commercialisation activities and capabilities to increase New Zealand businesses' investment in research and development to support long term economic growth.
- B. Callaghan Innovation runs a Business Incubator Award Programme that provides funding to incubators to work with businesses with high growth potential to speed up their path to market.
- C. You have applied to Callaghan Innovation for a funding grant to assist you with operating expenditure to enable you to work with businesses as a Technology-Focused Incubator to develop them into businesses with high-growth potential ("Incubator Initiative"). The Incubator Initiative is referred to in the schedule to this Agreement ("Schedule") and described in detail in your presentation and written proposal ("Application") as modified in the Schedule.
- D. Your Application has been approved, and Callaghan Innovation will provide the funding specified in the Schedule ("Funding") to enable you to carry out the Incubator Initiative.
- E. The purpose of this Agreement is to govern the investment of the Funding in the Incubator Initiative by:
 - (a) setting out Callaghan Innovation's expectations and requirements as to your use of the Funding;
 - (b) acknowledging that we have a mutual interest in ensuring, and being able to demonstrate, that the Incubator Initiative provides value for money, is aligned with priorities established by the Government from time to time and enhances New Zealand's economic position through increasing research and development activity in New Zealand; and
 - (c) setting out the circumstances in which Callaghan Innovation may suspend payment of the Funding or reduce the amount of Funding paid to you.

F. Capitalised terms in this Agreement that are not otherwise defined shall have the meaning given to them in the Schedule.

1. THE INCUBATOR INITIATIVE AND YOUR OPERATION

1.1 You are appointed as a Technology-Focused Incubator and shall be entitled to apply for Pre-Incubation Grants and Repayable Grants under the Incubator Support Programme. You shall not be entitled to undertake the activities of a Founder-Focused Incubator.

1.2 For the purposes of clause 1.1:

- (a) A "**Founder-Focused Incubator**" is an entity that typically works with entrepreneurs and provides access to support, networks and investments to help the entrepreneurs take a business idea, validate it in the market and, where there is potential, take that idea and build a business. The business idea may or may not have technology associated with it. A Founder-Focused Incubator operates a service model, providing similar sets of core business support and development services for business formation and growth. The equity stake for a Founder-Focused Incubator in an incubated business is typically small and not the Founder-Focused Incubator's primary means of funding.
- (b) A "**Technology-Focused Incubator**" is an entity that operates with a market-based, profit-driven focus to establish and nurture businesses based particularly on complex technologies, often derived from research and development. A Technology-Focused Incubator will identify a suitable intellectual property protected idea or technology that may not have an associated entrepreneur, and then work to build a business team around the intellectual property. The Technology-Focused Incubator will typically focus on building up a business to the stage where the business is attractive to "angel" or "venture capital" investors. A Technology-Focused Incubator is primarily funded from returns generated from equity stakes in successfully incubated companies.

1.3 You must:

- (a) undertake work in relation to the Incubator Initiative during the term of this Agreement, in order to maximise the returns and benefit to New Zealand from any products, processes or services or the like produced from the Incubator Initiative;
- (b) enter into any arrangements with government agencies, sector organisations, research organisations, third party research contractors, education institutes, students, third party investors, end-users or other individuals or organisations that are necessary to:
 - (i) carry out and complete the Incubator Initiative; and
 - (ii) ~~address issues relating to intellectual property ownership, confidentiality, access to resources or facilities or the like with other parties involved in the Incubator Initiative;~~
- (c) ensure that all consents, approvals, licences and permits required to carry out the Incubator Initiative lawfully, without foreseeable risk of litigation and without breaching New Zealand's international obligations, including, without limitation, any special ethical regulatory requirements, statutory consents, appropriate ethics committee approvals, Environmental Risk Management Authority approvals, Environmental Protection Agency approvals, and

informed consents (if a person is the subject of any research undertaken as part of the Incubator Initiative) are obtained and kept up-to-date;

- (d) ensure that the terms and conditions of any agreements or other arrangements that you enter into with third parties to undertake the Incubator Initiative are consistent with this Agreement;
- (e) ensure that:
 - (i) you have effective project management tools, processes and systems in place, including research plans, the assignment of roles and responsibilities, performance monitoring and reporting, and financial, intellectual property and risk management procedures, to carry out and complete the Incubator Initiative under this Agreement;
 - (ii) you have an appropriate and effective governance structure to manage the Incubator Initiative;
 - (iii) the purpose of the Incubator Initiative is clear and understood by your staff and any third parties involved in the Incubator Initiative;
 - (iv) critical personnel, identified in your Application, or suitably qualified replacements are available for the time specified in your Application, and take part in the Incubator Initiative as specified in your Application;
 - (v) appropriate monitoring of the Incubator Initiative is undertaken; and
 - (vi) you appropriately monitor and manage the performance and cost of third parties involved in the Incubator Initiative;
- (f) use your best endeavours to ensure the Incubator Initiative is carried out at the best possible price, or lowest possible cost, for high quality work;
- (g) ensure the Incubator Initiative is carried out using high standards of professional skill, efficiency and diligence and in accordance with this Agreement; and
- (h) carry out the Incubator Initiative in accordance with all legal requirements.

1.4 The Incubator must meet the requirements described as "Key Performance Indicators" in the Schedule ("KPIs").

1.5 You warrant that you have not entered into any contractual arrangements or negotiations for funding, exploitation, development or other similar matters in respect of the Incubator Initiative or any of the products, processes or services that may arise from the Incubator Initiative except as disclosed in your Application. If you enter into such contractual arrangements or negotiations before the Contract End Date, you must promptly advise Callaghan Innovation, who may deem the matter to be a Change Event.

1.6 You acknowledge that neither Callaghan Innovation nor the Crown (as defined in the Public Finance Act 1989) has given any representation in relation to the effect, or likely effect, of the Incubator Initiative and the Funding on your business.

- 1.7 You must have at least 1 director resident in New Zealand, and meet one of the following requirements:
- (a) you must be incorporated in New Zealand;
 - (b) you must have your centre of management based in New Zealand, to the satisfaction of Callaghan Innovation;
 - (c) you must have your head office in New Zealand; or
 - (d) Callaghan Innovation must be otherwise satisfied that you have a significant presence in New Zealand.

2. CONDITIONS TO FUNDING

2.1 Condition Precedent:

- (a) This Agreement is subject to and conditional on you providing evidence to Callaghan Innovation, in a form that is satisfactory to it in its sole and absolute discretion, that your organisation is 51% privately owned.
- (b) Other than clauses 2 (*Conditions*), 8 (*Confidentiality*) and 12 (*Indemnity*), no clause of this Agreement will be of any force or effect until the condition in clause 2.1(a) is satisfied.
- (c) If the condition set out in clause 2.1(a) has not been satisfied within one month of the Contract Start Date or such later date as is agreed in writing by Callaghan Innovation and you, then this Agreement may be terminated by notice given by Callaghan Innovation and if so shall be of no further force or effect and no party will have any claim against the other arising under or in connection with that termination other than in respect of any breach of this clause 2 or any breach of clause 8 (*Confidentiality*).

2.2 Condition Subsequent:

- (a) This Agreement is subject to and conditional on you providing Callaghan Innovation with a business plan (including a balance sheet, profit and loss statement and cashflow statement) for the period 1 July 2014 to 30 June 2017. The business plan must be in a form that is satisfactory to Callaghan Innovation in its sole and absolute discretion.
- (b) If the condition set out in clause (a)2.2(a) has not been satisfied within one month of the Contract Start Date or such later date as is agreed in writing by Callaghan Innovation and you, then this Agreement may be terminated by Callaghan Innovation in accordance with clause 10.3(a).

2.3 You must use reasonable endeavours to fulfil the conditions set out in clauses 2.1 and 2.2.

2.4 The conditions in clauses 2.1 and 2.2 are for the benefit of Callaghan Innovation and may be waived only by Callaghan Innovation.

3. FUNDING

- 3.1 Callaghan Innovation will pay you the Funding in accordance with the terms and conditions in this Agreement, including the special conditions set out in the Schedule.
- 3.2 You must:
- (a) use the Funding solely for operating expenditure incurred in undertaking the Incubator Initiative;
 - (b) complete the Incubator Initiative by the Contract End Date; and
 - (c) have in place, and maintain, the financial systems and controls necessary to ensure that the Funding is used solely for operating expenditure incurred in undertaking the Incubator Initiative.
- 3.3 Subject to clause 9, Callaghan Innovation shall transfer the amount of the Funding to you in accordance with the payment schedule set out in the Schedule ("**Payments Schedule**").
- 3.4 The amount of the Funding is exclusive of GST.
- 3.5 You are responsible for all taxation liabilities and any other levies payable in relation to the Funding.
- 3.6 You must acknowledge, as appropriate and as requested by Callaghan Innovation, provision of the Funding by Callaghan Innovation.

4. INTELLECTUAL PROPERTY

- 4.1 Callaghan Innovation acknowledges that it is not the author of, or commissioning party for, any intellectual property arising from the Incubator Initiative, and that it has no claim to ownership of any intellectual property rights arising from the Incubator Initiative.
- 4.2 You must have in place intellectual property management practices and procedures in respect of the Incubator Initiative that will ensure that you maximise the benefits arising from the Incubator Initiative.

5. AUDIT

- 5.1 You must keep appropriate accounting and other records of the use of the Funding (including ~~payslips, invoices, and receipts~~) and manage the Funding in accordance with recognised research and accounting best practice standards, so as to enable Callaghan Innovation to carry out an audit to determine whether you are complying or have complied with this Agreement ("**Audit**").
- 5.2 Callaghan Innovation may undertake an Audit at any time between the Contract Start Date and the date that is 2 years after the Contract End Date.
- 5.3 If Callaghan Innovation undertakes an Audit, you must provide Callaghan Innovation or its authorised agents with any information that Callaghan Innovation reasonably requires to determine

whether you are complying, or have complied, with this Agreement, including reasonable access to your staff, third parties and third party research contractors involved in the Incubator Initiative, and premises and equipment used in respect of the Incubator Initiative.

- 5.4 Callaghan Innovation will give you reasonable notice that an Audit is to be undertaken. The notice will specify who will conduct the Audit and the information and access that is required. Callaghan Innovation may request additional information and access from you during the Audit, and you must provide any information and access reasonably requested.
- 5.5 Responsibilities for meeting the costs of an Audit are as follows:
- (a) Callaghan Innovation is responsible for meeting the costs to Callaghan Innovation of carrying out the Audit; and
 - (b) you are responsible for meeting the costs to you of providing access and information.
- 5.6 You will be given the opportunity to comment on the draft Audit report within a reasonable timeframe. Callaghan Innovation will finalise the draft Audit report after receiving and considering your comments (if any), and provide a copy of the final Audit report to you.
- 5.7 After the Audit report is finalised, if the Audit report has revealed a breach by you, and following discussion with you, Callaghan Innovation may do one or more of the following:
- (a) take no further action;
 - (b) provide you with notice of the remedial actions you must take to address any issues identified in the Audit report (whether or not those issues constitute a breach of this Agreement), and any reports or information you must provide to Callaghan Innovation about those actions; or
 - (c) enter into negotiations to vary this Agreement with you;
 - (d) give you notice that Callaghan Innovation considers a Change Event has occurred pursuant to clause 9;
 - (e) if, in Callaghan Innovation's reasonable opinion, the breach is material, terminate this Agreement; and
 - (f) if, in Callaghan Innovation's reasonable opinion, the breach is material, recover all or part of the Funding pursuant to clause 11.
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- 5.8 You must carry out any remedial actions and provide any reports or information about those actions that are set out in the notice provided by Callaghan Innovation under clause 5.7(b).
- 5.9 If you, acting reasonably, object to, or disagree with, all or any part of the remedial action required under clause 5.7(b), your objection or disagreement will be deemed a Change Event and managed in accordance with the Change Event provisions of this Agreement.
- 5.10 Callaghan Innovation may suspend payment of the Funding from the date of the notice of Audit if Callaghan Innovation considers that you may have breached this Agreement. In such case:

- (a) Callaghan Innovation will give notice that specifies that payment of the Funding has been suspended; and
- (b) if the final Audit report shows that you have not breached this Agreement, Callaghan Innovation will recommence payment of the Funding, and provide an amount equivalent to the amount of Funding that would have accrued if the Funding had not been suspended. If there has been a material delay to the Incubator Initiative as a result of the suspension of Funding under this clause, the matter will be deemed to be a Change Event.

6. REPORTING

- 6.1 Callaghan Innovation needs to monitor the performance of the Incubator Initiative so that it can identify and report the benefits to New Zealand arising from the Incubator Initiative, and take appropriate action if you do not comply with this Agreement.
- 6.2 You must provide Callaghan Innovation or its authorised agents at any time between the Contract Start Date and the date that is 5 years after the Contract End Date, with the reports specified in the reporting schedule specified in the Schedule.
- 6.3 You must keep and, on request, provide to Callaghan Innovation information about the following:
 - (a) the use of the Funding;
 - (b) the Incubator Initiative;
 - (c) information supplied in connection with, or under, this Agreement; and
 - (d) your audited or otherwise approved financial statements.

This obligation shall continue for 7 years after the Contract End Date.

- 6.4 You must advise Callaghan Innovation of any significant issues and risks relating to the Incubator Initiative or this Agreement as they arise, which may include:
 - (a) loss of critical resources (including loss of people, loss of co-funding, or infrastructure);
 - (b) the scientific or technical approach changing significantly;
 - (c) consents, approvals, licences and permits required by you cannot be obtained, have expired or are revoked;
 - (d) significant issues with, or changes to, end-user engagement;
 - (e) changes that materially reduce the benefit to New Zealand from the Incubator Initiative (e.g. contracts or arrangements with third parties offshore);
 - (f) scientific, technical or financial fraud;
 - (g) material changes to your organisation, including changes to your organisation's core strategy/directions; or

(h) anything that puts your ability to undertake the Incubator Initiative at serious risk.

6.5 All reports and information provided by you must be:

- (a) provided in the form and manner specified by Callaghan Innovation from time to time;
- (b) accurate; and
- (c) provided in a timely manner.

7. REVIEW

7.1 Callaghan Innovation may at any time between the Contract Start Date and the date that is 2 years after the Contract End Date, carry out a review of the Incubator Initiative and Callaghan Innovation's investment in the Incubator Initiative ("Review"). You must participate in any Reviews as reasonably required by Callaghan Innovation, including by providing information requested by Callaghan Innovation.

7.2 If a Review is carried out before the Contract End Date and is not satisfactory to Callaghan Innovation, the matter may be considered and managed in accordance with the Change Event provisions of this Agreement.

8. CONFIDENTIALITY

8.1 You acknowledge that Callaghan Innovation is required to release information relating to this Agreement, its investment in the Incubator Initiative, the progress of the Incubator Initiative and the benefits to New Zealand from the Incubator Initiative, from time to time and agree to any such required release.

8.2 You agree that Callaghan Innovation may release the following information relating to this Agreement and the Incubator Initiative:

- (a) your name and contact details;
- (b) the Contract ID;
- (c) the title of the Incubator Initiative;
- (d) the fund from which the Funding for the Incubator Initiative is provided;
- (e) the relevant sector;
- (f) the total amount of the Funding paid in the current financial year and previous years to you;
- (g) the total amount of the Funding payable over the duration of this Agreement;
- (h) the year the Funding was approved; and
- (i) statistics relating to the Incubator Initiative in aggregated form.

- 8.3 You acknowledge that Callaghan Innovation may release information relating to this Agreement to its duly appointed agents and advisors, the Ministry of Business, Innovation, and Employment, and New Zealand Trade and Enterprise.
- 8.4 Except as provided for in clauses 8.2 and 8.3, Callaghan Innovation will not release information relating to this Agreement unless Callaghan Innovation is obliged to release that information under the Official Information Act 1982, the Privacy Act 1993, at law, under any regulation or to provide an answer to any parliamentary questions, meet any parliamentary requirements, or provide information to a Minister.
- 8.5 Callaghan Innovation will advise you if it receives a request under the Official Information Act 1982 or the Privacy Act 1993 for any information relating to this Agreement, and will consult with you before responding to the request.

9. CHANGE EVENTS

- 9.1 A change event ("**Change Event**") occurs if either of us receives new information, or an event occurs or is likely to occur, that materially affects or is likely to materially affect this Agreement or the Incubator Initiative, and includes without limitation the following:
- (a) an event that prevents, or is likely to prevent, you from being able to meet your obligations under this Agreement, including your obligations relating to:
 - (i) your ability to carry out and complete the Incubator Initiative, or
 - (ii) your presence in New Zealand under clause 1.7; or
 - (b) an event, including an actual or likely change in your ownership or sale of any of your assets, which materially affects, or is likely to materially affect:
 - (i) the anticipated benefits for New Zealand of the Incubator Initiative, including planned research and development activity in New Zealand, and the timing of those benefits; or
 - (ii) arrangements with third parties necessary to carry out the Incubator Initiative.
 - (c) any change in the directors or senior managers of the Incubator.
- 9.2 If a Change Event occurs:
- (a) we will immediately advise each other by notice of the Change Event;
 - (b) we will discuss our options to resolve the Change Event in good faith, which may include taking no action, negotiating a variation to this Agreement, or terminating this Agreement; and
 - (c) Callaghan Innovation may suspend payment of the Funding if, in the reasonable opinion of Callaghan Innovation, your ability to carry out and complete the Incubator Initiative is adversely affected.

- 9.3 In discussing our options to resolve a Change Event:
- (a) we will act in good faith and in a way that is consistent with the mutual interest between us in carrying out the Incubator Initiative, the value for money of the Incubator Initiative, the anticipated benefit to New Zealand from the Incubator Initiative and maintaining research capability critical to New Zealand; and
 - (b) we, or Callaghan Innovation on its own account, may undertake a Review of the Incubator Initiative to help Callaghan Innovation decide how to respond to the Change Event.
- 9.4 If we agree to negotiate in good faith a variation to this Agreement, the variation may include, without limitation, changes to the Incubator Initiative, the duration of the Incubator Initiative, or the Funding.
- 9.5 If we are unable to resolve a Change Event by 1 month after the date of the notice given under clause 9.2(a), either of us may immediately terminate this Agreement by notice.
- 9.6 Nothing in this clause prevents either of us from exercising our powers under clause 10.

10. TERMINATION AND REDUCTION OR SUSPENSION OF FUNDING

- 10.1 If funding allocated to Callaghan Innovation to cover the Funding under this Agreement is reprioritised, reduced, suspended, or terminated (whether because funding to the relevant Government appropriation is altered, reprioritised, ceased or otherwise), Callaghan Innovation may immediately do any of the following:
- (a) reduce the Funding;
 - (b) suspend the Funding; or
 - (c) terminate this Agreement.
- 10.2 Either of us may terminate this Agreement immediately by notice to the other party if the other party is in breach of its obligations under this Agreement.
- 10.3 Callaghan Innovation may terminate this Agreement immediately by notice to you if you:
- (a) have not fulfilled the condition set out in clause 2.2 by the date set out in clause 2.2(b);
 - (b) use some or all of the Funding other than as set out in this Agreement, including that there is, in Callaghan Innovation's reasonable opinion, misappropriation or fraud in relation to the Funding;
 - (c) give (or have given) any information, representation, or statement to Callaghan Innovation that is misleading or inaccurate in any material respect;
 - (d) enter into a contract or an arrangement that, in the reasonable opinion of Callaghan Innovation, materially reduces the benefit to New Zealand anticipated from the Incubator Initiative without the prior written approval of Callaghan Innovation; or

- (e) become, or are presumed to be, bankrupt or insolvent, are wound up, have a receiver, manager or administrator appointed, or go into liquidation or receivership.

10.4 If Callaghan Innovation terminates this Agreement, Callaghan Innovation:

- (a) is not required to pay Funding suspended or withheld from you under this Agreement; and
- (b) may, at its discretion, pay an amount to you for costs incurred by you before the date of the notice of termination for which Funding has not been paid by Callaghan Innovation.

10.5 If Callaghan Innovation reduces, suspends, or reprioritises any Funding under clause 10.1, you may immediately by notice terminate this Agreement.

10.6 Termination of this Agreement is without prejudice to the rights and obligations of either of us that accrued up to the date of termination.

11. RETURN AND REPAYMENT OF THE FUNDING

11.1 If this Agreement is terminated for any reason you must return to Callaghan Innovation all Funding that has not been spent or for which contractual liabilities have not yet been reasonably incurred as at the date of the notice of termination.

11.2 If this Agreement is terminated for any reason (unless termination occurred as a result of a breach by Callaghan Innovation or in accordance with clauses 10.1 or 10.5) Callaghan Innovation may by notice require you to, and in such event you must, repay some or all of the Funding for the Incubator Initiative, such amount to be determined by Callaghan Innovation, together with interest on that amount calculated at the Bank of New Zealand Business Advantage Variable Rate (or its successor), from the date you were paid the Funding to the date you repay the amount determined by Callaghan Innovation.

11.3 If, within 3 years of the Contract End Date or the date of termination of this Agreement (whichever is the earlier), you enter into a contract or an arrangement that, in the reasonable opinion of Callaghan Innovation, materially reduces the benefit to New Zealand anticipated from the Incubator Initiative, Callaghan Innovation may by notice require you to, and in such event you must, repay some or all of the Funding for the Incubator Initiative, such amount to be determined by Callaghan Innovation, together with interest on that amount calculated at the Bank of New Zealand Business Advantage Variable Rate (or its successor) from the date you were paid the Funding to the date you repay the amount determined by Callaghan Innovation.

11.4 For the purpose of clauses 10.3(d) and 11.3, the benefit to New Zealand anticipated from the Incubator Initiative is deemed to be materially reduced if, in the reasonable opinion of Callaghan Innovation:

- (a) the likelihood of you developing start-ups with the potential to become high-growth is reduced; or
- (b) the majority of start-ups incubated by you are not based on complex intellectual property originating from public research organisations (PROs).

12. INDEMNITY

12.1 You indemnify Callaghan Innovation against any claim, liability, loss or expense, including without limitation, damages, legal fees, costs, and disbursements ("Loss"), brought or threatened against or incurred by Callaghan Innovation, arising from this Agreement, except to the extent that the Loss was caused by an act or omission of Callaghan Innovation (other than the provision of the Funding by Callaghan Innovation), provided that:

- (a) Callaghan Innovation will give notice to you of any Loss for which indemnification is sought;
- (b) Callaghan Innovation will provide any reasonable assistance which you may request for the defence of any claim for Loss for which indemnification is sought;
- (c) you have the right to control the defence or settlement of any such claim at your cost; and
- (d) Callaghan Innovation has the right to participate in, but not control, any litigation in respect of the claim with counsel of its choosing, such counsel to be at Callaghan Innovation's expense.

13. ENTIRE AGREEMENT

13.1 We agree that this Agreement, including the schedules, and any documents incorporated by reference, represents the entire agreement between us.

14. NOTICES

14.1 Any notice given under this Agreement will be given by post or by email.

14.2 A notice under this Agreement is deemed to be received:

- (a) if it is posted, three Business Days after the date of posting; and
- (b) if it is sent by email:
 - (i) there is produced a delivery receipt email which indicates that the email was delivered to the email address of the recipient and no error message or out of office message is received to indicate that the email did not reach its intended destination or that the intended recipient is out of the office;
 - (ii) if no delivery receipt email has been produced but the recipient has replied to the ~~email, at the time the reply is received; or~~
 - (iii) if an out of the office message is received to indicate that the intended recipient is out of the office, on the date indicated in the out of office email that the recipient will return to the office,

provided that any notice deemed received after 5 pm on a Business Day or on a non-Business Day shall be deemed to have been received on the next Business Day.

- 14.3 For the purposes of this Agreement, "**Business Day**" means any day not being a Saturday, a Sunday, or a public holiday anywhere in New Zealand under the Holidays Act 2003.
- 14.4 A notice to Callaghan Innovation must be sent to the following address, or to any other address advised by Callaghan Innovation from time to time:
- (a) by post, to Callaghan Innovation, PO Box 31310, Lower Hutt, 5040; or
 - (b) by email, to the Incubator team at Callaghan Innovation at incubator.support@callaghaninnovation.govt.nz.
- 14.5 A notice to you will be sent to the person and to the address set out in the Schedule.

15. SURVIVAL OF CLAUSES

- 15.1 Expiry or termination of this Agreement for any reason does not affect the validity and enforceability of this clause, clause 5 (Audit), clause 5.9 (Reporting), clause 7 (Review), clause 8 (Confidentiality), clause 11 (Return and Repayment of the Funding), clause 12 (Indemnity), clause 14 (Notices), clause 20 (Governing Law) and clause 21 (Waiver) or any other provisions that are by their nature intended to survive.

16. FORCE MAJEURE

- 16.1 Neither of us is responsible to the other for delay or failure in performance of any of the obligations imposed by this Agreement if such failure is caused by an event that is beyond the reasonable control and occurs without the fault or negligence of the delaying or failing party.
- 16.2 If either party is unable to perform obligations under this Agreement because of an event of the type described in clause 16.1 for a period of 2 months or more, the other party may terminate this Agreement immediately by notice.

17. NATURE OF RELATIONSHIP

- 17.1 This Agreement does not create a relationship between us of employer and employee, principal and agent, partners, or joint venturers.

18. VARIATIONS

- 18.1 The terms of this Agreement are varied as set out in the Schedule (if applicable)
- 18.2 No modification, variation, extension, or waiver of this Agreement, including any schedule, will be effective and binding on us unless made in writing and signed by both of us.

19. ASSIGNMENT & TRANSFER

- 19.1 You may not assign or otherwise transfer your rights and obligations under this Agreement to a third party.

19.2 Any change affecting the control of your organisation will be deemed a transfer and an assignment.

20. GOVERNING LAW

20.1 This Agreement will be interpreted in accordance with the laws of New Zealand.

21. WAIVER

21.1 Failure or omission by either of us at any time to enforce or require strict or timely compliance with a term or condition of this Agreement will not affect or impair the term or condition in any way or any rights or remedies either of us may have in respect of any breach of the term or condition.

22. PARTIAL INVALIDITY

22.1 The illegality, invalidity, or unenforceability of a provision of this Agreement under any law, does not affect the legality, validity, or enforceability of any other provision of this Agreement.

22.2 If any clause of this Agreement is held to be unenforceable or in conflict with the law, the invalid or unenforceable clause will be replaced with a clause, which as far as possible, accomplishes the original purpose of the clause.

23. COUNTERPARTS

23.1 This Agreement may be executed in any number of counterparts (including any facsimile or scanned PDF counterpart), each of which shall be deemed an original, but all of which together shall constitute the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.

SCHEDULE

Agreement Details – Business Incubator Award Grant

Incubator's Details:

Name	Powerhouse Ventures Limited
Address	Building DG7, Dovedale Village, Dovedale Ave, Ilam, Christchurch, 8041
Contact person	Stephen Hampson
Contact phone	027 227 9854
Email	Stephen.Hampson@powerhouse-ventures.co.nz

Approval Details:

Funding	Callaghan Innovation will pay you \$3,050,000.
Contract Start Date	01.07.14
Contract End Date	30.06.14
Variations to this Agreement	There are no variations to the general terms set out in this Agreement.

Payment Schedule

On receipt of invoice, Callaghan Innovation will pay the Funding quarterly in advance to coincide with the payment run during the first week of July, October, January and April each year during the term of this Agreement as follows:

Year one (1 July 2014 – 30 June 2015):
 Four payments of \$387,500 +GST

Year two (1 July 2015 – 30 June 2016):
 Four payments of \$250,000 +GST

Year three (1 July 2016 – 30 June 2017):
 Four payments of \$125,000 +GST

Reporting Schedule

You will provide to Callaghan Innovation:

1. Service and performance reports for start-ups under incubation
 These are to be prepared for each quarter ending 30 September, 31 December, 31 March and 30 June in accordance with the template for the report provided by Callaghan Innovation from time to time. Each service and performance report is to be provided within one month of the end of the quarter to which the report relates;
2. Graduate exit reports for each start-up that successfully graduates from you in accordance with the template for the report provided by Callaghan Innovation from time to time.
 Alumni reports for companies that have graduated from your incubator within the last 5 years and that are still trading. Reports are to be submitted to Callaghan Innovation by the end of June each year in accordance with the template for the report provided by Callaghan Innovation from time to time.

The Incubator Initiative:

- You must undertake the Incubator Initiative as outlined in your Application, except as modified below.

Incubator Initiative:

The Incubator Initiative is as described in your Application except as modified below:

Modification
Not modified

Special Conditions:

	Condition	Condition type	Due date	Date satisfied
1	You must provide Callaghan Innovation with an updated business plan (including a balance sheet, profit and loss statement and cashflow statement) for the period from 1 July in the year the updated business plan is due to 30 June 2017. The business plan must be in a form that is satisfactory to Callaghan Innovation in its sole and absolute discretion.	Annual (for each year you receive Funding)	30 May 2015 30 May 2016	

Key Performance Indicators (KPIs)

	KPI	Due date
1	Eight complex intellectual property based new companies entering into the Incubator Initiative (with the aim that the majority of them originated from PROs)	June 2015
2	Ten complex intellectual property based new companies entering into the Incubator Initiative (with the aim that the majority of them originated from PROs)	June 2016
3	Five companies in the Incubator Initiative receive an External Commercial Validation or reach a Significant Milestone	June 2016
4	Twelve complex intellectual property based new companies entering into the Incubator Initiative (with the aim that the majority of them originated from PROs)	June 2017
5	Five companies in the Incubator Initiative receive an External Commercial Validation or reach a Significant Milestone	June 2017
6	Additional KPIs might be agreed on in a workshop involving Callaghan Innovation and all appointed technology-focused incubators	TBD

