

# Guidelines

## Career Grant Funding Agreement



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Date > October 2017

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**CallaghanInnovation**

BUSINESS TECHNOLOGY SUCCESS

## Contents

1.	Introduction .....	3
1.1.	Purpose .....	3
2.	Agreement .....	3
2.1.	Requirements .....	3
2.1.1.	Funding .....	4
2.1.2.	Business project and operation .....	4
2.1.3.	Government requirements .....	4
2.1.4.	Suspending, terminating or changing .....	5
	Appendix: Example of Funding Agreement for R&D Career Grant .....	6

## 1. Introduction

Callaghan Innovation manages the Business Research and Development (R&D) Grants scheme on behalf of Government. The objective of Business R&D Student Grants is to support New Zealand undergraduate and postgraduate students to gain and develop their technical skills in a commercial research environment, while bringing capability into New Zealand businesses.

The R&D Career Grant is designed to:

- > Support recent master's and PhD graduates into R&D business by bridging the first six months of employment-gaining work experience.

### 1.1. Purpose

This document provides a high-level summary of the funding agreement for Career Grants to:

- > Assist businesses and account managers understand the intent of the agreement
- > Identify major implications for businesses applying for a Career Grant.

The specific contractual issues are detailed in the funding agreement which account managers and businesses should refer to as needed.

## 2. Agreement

The funding agreement is a legal contract between Callaghan Innovation and the business seeking a Career Grant. The agreement:

- > Sets out responsibilities and how the programme is governed
- > Comprises a series of standard clauses
- > Includes a schedule relevant to the specific project detailed in the application and tailors the standard clauses to this project by;
  - Including details of the business and the student
  - Including details of the approval - the funding amount; start and end dates, etc.
  - Merging the business application for a Career Grant with the funding agreement
  - Containing special contract conditions added by Callaghan Innovation to mitigate any perceived risks

### 2.1. Requirements

The funding agreement addresses several matters including:

- > Use of funding
- > Sound project management and business operation
- > Meeting government's requirements as laid out in the ministerial direction
- > Suspending or terminating the funding agreement

The funding agreement along with the schedules is the entire agreement between the business and Callaghan Innovation.

Callaghan Innovation is a Crown agency and must act consistently and equally with all our grant recipients. Our funding agreements therefore remain standardised and we do not make changes to the terms and conditions.

### 2.1.1. Funding

The use of funding from Callaghan Innovation is outlined in the table below.

- > The funding is for the salary of the student and not for any project or business-related costs
- > You are responsible for paying all taxation liabilities, kiwi saver employer contributions, ACC and other levies payable in relation to the Funding
- > The business must employ the student (the student must be on the payroll, not a contractor) for a minimum period of 6 months and ensure the student participates in the project as set out in the application.
- > The funding cannot be used for costs incurred before the contract start-date or after the contract end date
- > The business must provide evidence of how the funding has been used (e.g. payslips) and complete a short report when claiming for funding

### 2.1.2. Business project and operation

The requirements for sound project management and business operation are outlined in the table below:

- > Intellectual property developed in the R&D project belongs to the business
- > The business must comply with all relevant legal, regulatory and compliance requirements
- > The business must immediately advise Callaghan Innovation of any significant risks that impact the project or student, including;
  - The business's ability to undertake the project
  - The student is no longer working on the project as identified in the application or is no longer employed
  - The student or project is involved in a notifiable event as defined in the Health and Safety at Work Act 2015
- > The business must also advise Callaghan Innovation of any changes in the business, ownership, operation, or products/services that may result in the business no longer being eligible for funding or could adversely affect New Zealand or Callaghan Innovation's reputation.
- > If the agreement is breached by the business Callaghan Innovation may require remediation (e.g. repayment of funding) or negotiate a variation and/or termination of the agreement

### 2.1.3. Government requirements

There is a requirement to meet the Government's requirements as laid out in the Ministerial Direction as outlined in the table below.

- > Callaghan Innovation is required to release publicly, information relating to the agreement, including:
  - The business name
  - Contract ID
  - Title of the project
  - The type of funding provided
  - The relevant sector
  - Amount of funding
  - Year of approval

- > Aggregated statistics relating our portfolio of contracts
- > Callaghan Innovation may release information to its appointed agents and advisors, MBIE and NZTE, on an as-required basis. Callaghan Innovation may also be legally required to release information, parliamentary questions and ministerial requirements (e.g. under the Official information Act (OIA)). Callaghan Innovation will consult the business before responding to an OIA request.
- > Callaghan Innovation may review the student's involvement in a business's R&D project and conduct this during the contract or up to three years after the contract has ended:
  - To determine the performance of the grants-scheme
  - To identify potential improvements
- > Callaghan Innovation may also ask a business to complete a survey. These are used to determine:
  - The impact of the Career Grant on the business which assists Callaghan Innovation report on performance of the grants scheme.

#### 2.1.4. Suspending, terminating or changing

The funding agreement can be suspended, terminated or changed under the conditions set out in the table below.

- > The funding agreement can be terminated by either party at any time by giving one month's notice. If either party breaches the agreement, the other party can terminate the agreement immediately
- > Callaghan Innovation may terminate this agreement if:
  - The funding is not used correctly
  - Dishonest claims are made
  - False information is provided
  - The business is bankrupt or insolvent
  - The student is no longer working for you or working on the project identified in the application
  - The student or project is involved in a notifiable event as defined in the Health and Safety at Work Act 2015
- > If the agreement is terminated the business may be required to repay some, or all, of the funding
- > A change event may occur when
  - Either party cannot meet their obligations
  - The ownership of the business changes which reduces the benefits to NZ including future R&D activities in NZ
  - Changes in the business, ownership, operation, or products/services that may bring the reputation of Callaghan Innovation or the R&D Grants Programme into disrepute e.g. business activities become contrary to NZ policy or law.
  - A notifiable event is triggered under the Health and Safety at Work Act 2015 involving the student or project.
- > Callaghan Innovation will attempt to negotiate a variation to the agreement or a resolution the matter, otherwise either party may terminate the agreement, the business may have to repay the funding.

## Appendix: Example of Funding Agreement for R&D Career Grant

**Date:**

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### Funding Agreement for an R&D Career Grant

between

Callaghan Innovation

and

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**Contract number:**

Signed for and on behalf of **Callaghan Innovation**:

Signature:

Name:

Date:

Title:

**In the presence of:**

Signature:

Name:

Title:

Signed for and on behalf of

Signature:

Date:

Name:

Title:

**In the presence of:**

Signature:

Name:

Title:



## **This Agreement is made on**

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

**and** ("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. You have made an application to Callaghan Innovation for a R&D Career funding grant to employ a Masters or PhD graduate ("Student") to work on a research and development project ("Application"). The project is referred to in the schedule in this Agreement ("Schedule") and described in detail in your Application ("Project"). The anticipated outcomes of the Project ("Outcomes") are also described in your Application (except as modified in the Schedule).
- C. Your Application has been approved, and Callaghan Innovation will provide the funding specified in the Schedule to enable you to carry out the Project and pursue the achievement of the Outcomes ("**Funding**").
- D. The purpose of this Agreement is to govern the investment of the Funding in the Student's involvement in the Project by:
  - (a) setting out Callaghan Innovation's expectations and requirements as to the Project and your use of the Funding; and
  - (b) acknowledging that we have a mutual interest in ensuring, and being able to demonstrate, that the Project provides value for money, is aligned to priorities established by the Government from time to time, achieves the Outcomes and enhances New Zealand's economic position through increasing research and development activity in New Zealand.

## **1. THE STUDENT, THE PROJECT, AND YOUR OPERATION**

1.1. You must be one of the following entity types:

- (a) a company registered under the Companies Act 1993;
- (b) a limited partnership registered under the Limited Partnerships Act 2008;
- (c) a Maori incorporation or a trust established under the Te Ture Whenua Maori Act 1993, a trust established on behalf of Maori claimants to receive and manage assets as part of the settlement of a claim under the Treaty of Waitangi, a Maori statutory body, or a business that is controlled by one or more of these types of Maori entities,
- (d) but may not be an entity that is:
  - (i) listed in Schedule 1 of the State Owned Enterprises Act 1986, Schedule 4A of the Public Finance Act 1989, or an entity established under or governed by the Education Act 1989, Crown Research Institutes Act 1992, Local Government Act 2002, Local Government (Auckland Council) Act 2009, the New Zealand Public Health and Disability Act 2000, or the Crown Entities Act 2004; or an entity that is 50 per cent or more owned by one or more of those types of entities; or



- (ii) in the opinion of Callaghan Innovation, likely to bring the reputation of Callaghan Innovation or the R&D grants programme into disrepute.

1.2. You must:

- (a) have an active R&D programme;
- (b) employ the student for a minimum period of 6 months and ensure the Student participates in the Project as set out in the Application;
- (c) notify Callaghan Innovation as soon as practicable if the Student ceases to be employed by you, or there is a material change to the Project or the Student's work on the Project;
- (d) ensure that all consents, approvals, licences and permits required to carry out the Project 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 Project) are obtained and kept up-to-date;
- (e) ensure that the terms and conditions of any agreements or other arrangements that you enter into with third parties to undertake the Project are consistent with this Agreement;
- (f) ensure that appropriate monitoring of the Project is undertaken;
- (g) comply with the law;
- (h) comply with the Health and Safety at Work Act 2015 and will notify Callaghan Innovation, as soon as reasonably possible, of any notifiable events related to the Student or Project that occur under the Act during the contract period;
- (i) procure that at all times none of your directors are persons who are prohibited from being a director by any applicable law;
- (j) notify Callaghan Innovation as soon as reasonably possible after becoming aware of any breach of clause 1.1 or 1.2(i); and
- (k) notify Callaghan Innovation as soon as reasonably possible if any changes in your business could adversely affect New Zealand or Callaghan Innovation's reputation.

1.3. You warrant that:

- (a) you have not entered into any contractual arrangements or negotiations for funding, exploitation, development or other similar matters in respect of the Project, the Outcomes, or any of the products, processes or services that may arise from the achievement of the Outcomes 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; all invoices submitted by you to Callaghan Innovation under this Agreement will have been certified correct by a duly authorised officer of your organisation.

## 2. FUNDING

- 2.1. Callaghan Innovation will pay you the Funding in accordance with the payment schedule set out in Schedule ("**Payments Schedule**") on receipt of an invoice(s) that meets the requirements specified in the Schedule.

- 2.2. You must use the Funding to pay the Student as specified in the Schedule.
- 2.3. You are responsible for all taxation liabilities, kiwi saver employer contributions, ACC and other levies payable in relation to the Funding.
- 2.4. You will acknowledge, as appropriate and as requested by Callaghan Innovation, provision of Funding by Callaghan Innovation.

### 3. INTELLECTUAL PROPERTY

- 3.1. Callaghan Innovation acknowledges that it is not the author of, or commissioning party for, any intellectual property arising from the Project, and that it has no claim to ownership of any intellectual property rights arising from the Project.

### 4. REPORTING

- 4.1. Callaghan Innovation needs to monitor its provision of Funding for the Student's involvement in the Project so that it can identify and report the benefits to New Zealand arising from the Student's involvement in the Project, and take appropriate action if you do not comply with this Agreement.
- 4.2. You must provide Callaghan Innovation or its authorised agents with the reports specified in the reporting schedule specified in the Schedule.
- 4.3. 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.

### 5. REVIEW

- 5.1. Callaghan Innovation may at any time between the Contract Start Date and the date that is 3 years after the Contract End Date, carry out a review of the Project and Callaghan Innovation's investment in the Project ("**Review**"). You must participate in any Reviews as reasonably required by Callaghan Innovation, including by providing information requested by Callaghan Innovation.
- 5.2. 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.

### 6. CONFIDENTIALITY

- 6.1. You acknowledge that Callaghan Innovation is required to release information relating to this Agreement, its investment in the Project, the progress of the Project, the delivery of Outcomes from the Project and the benefits to New Zealand from the Project, from time to time.
- 6.2. If you provide confidential information to Callaghan Innovation you must advise Callaghan Innovation in writing that the information is confidential information.
- 6.3. You agree that Callaghan Innovation may release the following information relating to this Agreement, the Project, and the Outcomes:
  - (a) your name and contact details;
  - (b) the Contract ID;

- (c) the title of the Project;
- (d) the fund from which Funding for the Student's involvement in the Project is provided;
- (e) the relevant sector;
- (f) the total amount of Funding paid in the current financial year and previous years;
- (g) the total amount of Funding payable over the duration of this Agreement;
- (h) the year Funding was approved;
- (i) statistics relating to the Student's involvement in the Project in aggregated form;
- (j) information about the Student specified in the Schedule; and
- (k) if Callaghan Innovation has terminated this Agreement pursuant to clause 8.3, a summary of the reasons for the termination.

6.4. 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, New Zealand Trade and Enterprise, and to New Zealand host tertiary education institution(s).

6.5. Except as provided for in clauses 6.3 and 6.4, 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.

6.6. 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.

## 7. CHANGE EVENTS

7.1. A change event ("Change Event") occurs if, during the term of the Project, either of us receives new information or an event occurs that materially affects this Agreement, the Project or the Student, including, but not limited to, that the information or event:

- (a) prevents, or is reasonably likely to prevent, either of us from being able to meet our obligations under this Agreement, including our obligations relating to:
  - (i) the Funding or the Student; or
  - (ii) your ability to carry out and complete the Project and ensure that the Outcomes are achieved;
- (b) may bring the reputation of Callaghan Innovation or the R&D Grants Programme into disrepute;
- (c) constitutes a "notifiable event" under the Health and Safety at Work Act 2015.

7.2. If a Change Event occurs:

- (a) we will immediately advise each other by notice of the Change Event; and
- (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.

7.3. 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 achieving the Outcomes of the Project, the value for money of the Project, the anticipated benefit to New Zealand from the Project and maintaining research capability critical to New Zealand; and
- (b) we, or Callaghan Innovation on its own account, may undertake a Review of the Project to help Callaghan Innovation decide how to respond to the Change Event.

7.4. If we are unable to resolve a Change Event within one month of the date of Notice in clause 7.2(a) either of us may immediately terminate this Agreement by notice.

7.5. Nothing in this clause prevents either of us from exercising our powers under clause 8.

## **8. TERMINATION AND REDUCTION OR SUSPENSION OF FUNDING**

8.1. This Agreement may be terminated by either of us at any time by giving one months' Notice to the other Party.

8.2. 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.

8.3. Callaghan Innovation may terminate this Agreement immediately by Notice to you if:

- (a) the Student ceases to be employed with or contracted by you;
- (b) the Student ceases working on the Project as specified in this Agreement;
- (c) the Project ends or is put on hold;
- (d) you use some or all of the Funding for purposes other than as set out in this Agreement, including misappropriation or fraud;
- (e) you give any information, representation, or statement to Callaghan Innovation that is misleading or inaccurate in any material respect;
- (f) you become or are presumed to be bankrupt, insolvent, are wound up, have a receiver, manager, or administrator appointed, or go into liquidation or receivership; or
- (g) a notifiable event (as defined in the Health and Safety at Work Act 2015) occurs in connection with the Student or Project.

8.4. If Callaghan Innovation terminates this Agreement, Callaghan Innovation is not required to pay the Funding to you.

## **9. RETURN AND REPAYMENT OF FUNDING**

9.1. 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.

9.2. If this Agreement is terminated pursuant to clauses 8.3(d), (e) or (f) (unless termination occurred as a result of a breach by Callaghan Innovation) Callaghan Innovation may by notice require you to, and in such event you must, repay some or all of the Funding for the Programme, such amount to be determined by Callaghan Innovation, together with interest on that amount calculated at the Official Cash Rate of the Reserve Bank of New Zealand plus 5%, from the date you were paid the Funding to the date you repay the amount determined by Callaghan Innovation.

## 10. INDEMNITY

10.1. You indemnify Callaghan Innovation against any claim, liability, loss or expense, including, without limitation, damages, legal fees, costs, and disbursements, brought or threatened against or incurred by Callaghan Innovation ("Loss"), caused by an act or omission by you and 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 Funding by Callaghan Innovation). If any third party makes a claim or notifies an intention to make a claim against Callaghan Innovation ("Claim Made"), or Callaghan Innovation incurs a Loss that may reasonably be considered likely to give rise to a liability under this indemnity:

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

Provided that compliance by Callaghan Innovation with the above requirements is not a condition of your liability under this indemnity.

10.2. Your liability under this indemnity is limited to the maximum Funding amount specified in the Schedule to this Agreement.

## 11. ENTIRE AGREEMENT

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

## 12. NOTICES

12.1. Any notice given under this Agreement ("**Notice**") will be given by post or by email. Notices given by email will be deemed to have been given one Business Day after sending and Notices given by post will be deemed to have been given 3 Business Days after posting.

12.2. For the purposes of this clause, "**Business Day**" means any day not being a Saturday, a Sunday, or a public holiday as the term public holiday is defined in the Holidays Act 2003.

12.3. Notices to Callaghan Innovation will be sent to the following addresses, or any other address advised by Callaghan Innovation from time to time:

- (a) by post, to Callaghan Innovation, PO Box 11529 Manners Street, Wellington 6142; or
- (b) by email, to the Manager at GrantsOperations@callaghaninnovation.govt.nz.

12.4. Notices to you will be sent to the person and to the address set out in the Schedule.

## 13. SURVIVAL OF CLAUSES

13.1. Expiry or termination of this Agreement for any reason does not affect the validity and enforceability of this clause, clause 4 (Reporting), clause 5 (Review), clause 6 (Confidentiality),

clause 10 (Indemnity), clause 12 (Notices), clause 18 (Governing Law) and clause 19 (Waiver) and the provisions of the Payment Schedule and any Special Conditions set out in the Schedule, which that, by their nature, continue to be relevant (or expressly survive termination).

#### **14. FORCE MAJEURE**

- 14.1. Neither of us is responsible to the other for delay or failure in performance of any of the obligations imposed by this Agreement, provided such failure is caused by an event beyond the reasonable control and without the fault or negligence of the delayed or failed Party.
- 14.2. If either Party is unable to perform its obligation under this Agreement because of an event described in clause 14.1 for a period of 2 months or more, the other Party may terminate this Agreement immediately by Notice.

#### **15. NATURE OF RELATIONSHIP**

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

#### **16. VARIATIONS**

- 16.1. The terms of this Agreement are varied as set out in the Schedule (if applicable)
- 16.2. 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.

#### **17. ASSIGNMENT & TRANSFER**

- 17.1. You may not assign or otherwise transfer your rights and obligations under this Agreement to a third party.
- 17.2. Any change affecting the control of your organisation will be deemed a transfer and an assignment.

#### **18. GOVERNING LAW**

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

#### **19. WAIVER**

- 19.1. 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.

#### **20. PARTIAL INVALIDITY**

- 20.1. 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.
- 20.2. 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.



**SCHEDULE**  
**Agreement Details – R&D Career Grant**

**Contractor's Details:**

Name	
Address	
Contact person	
Contact phone	
Email	

**Student Details:**

Name	
Email	

**Approval Details:**

Contract ID	
Application ID	
Project Title	
Funding	Callaghan Innovation will contribute up to a maximum of \$##,### (excluding GST) as set out in the Payment Schedule. You must pay the student the funding as a salary over a six-month period. You can top-up the salary.
Contract Start Date	
Contract End Date	
Variations to this Agreement	There are no variations to the general terms set out in this Agreement.
Payment Schedule	<ol style="list-style-type: none"> <li>1. The Funding will be paid upon receipt of a valid GST invoice, issued by you, in the name of Callaghan Innovation:             <ol style="list-style-type: none"> <li>i. monthly;</li> <li>ii. quarterly; or</li> <li>iii. together with the final report on the Project, no later than 2 months after the Contract End Date.</li> </ol> </li> <li>2. The invoice must specify the amount of Funding claimed and include:             <ol style="list-style-type: none"> <li>i. evidence of the wage/salary/fee payments you have made to the Student; and</li> <li>ii. a report as specified in the reporting schedule.</li> </ol> </li> <li>3. If the invoice and report is satisfactory to Callaghan Innovation in all respects, Callaghan Innovation will pay the invoice within 20 Business Days after receipt of the invoice and report.</li> <li>4. A final invoice and report must be issued to Callaghan Innovation no later than 2 months after the contract end date</li> <li>5. If you do not provide a final invoice and report in accordance with this Payment Schedule, within 2 months after the Contract End Date, Callaghan Innovation is not liable to pay any Funding.</li> </ol>
Reporting Schedule	<p>You must provide a report on the Student's involvement in the Project in the form and manner specified by Callaghan Innovation, through the online portal.</p> <p>A report must accompany an invoice as detailed in the Payments Schedule.</p> <p>You must provide a final report on the Project, together with your final invoice, no later than 2 months after the Contract End Date.</p>

**Special Conditions:**

Condition	Type	Due Date	Date Satisfied
A final report is required to be submitted and approved to the satisfaction of Callaghan Innovation, prior to the final payment being made.	Final report		