

# Guidelines

## Project Grant Funding Agreement



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Version > V01

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Date > October 2015

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**CallaghanInnovation**

BUSINESS TECHNOLOGY SUCCESS

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## 1. Introduction

Callaghan Innovation manages the Business Research and Development (R&D) Grants scheme on behalf of Government. The objective of these grants is to increase investment by New Zealand businesses in research and development to support long term economic growth.

The Project Grant is designed to:

- > Develop recipients in to stable and substantial R&D performers
- > Develop recipients' R&D expertise and understanding aimed at development of new or substantially improved devices, products, processes, systems or services

### 1.1. Purpose

This document provides a high level summary of the funding agreement for Project Grants:

- > To businesses and account managers
- > To assist businesses and account managers understand the intent of agreement
- > To identify major implications for businesses applying for a Project Grant

Detail on specific contractual issues is detailed in the funding agreement which should be referred to by Account Managers and businesses as needed.

## 2. Agreement

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

The agreement:

- > Sets out responsibilities and how the program is governed.
- > Comprises a series of standard clauses
- > Includes a schedule relevant to the particular Project application which tailors the standard clauses to a particular Project application by
  - Including details of the business
  - Including details of the approval - the funding amount; start and end dates, etc.
  - Merging the business application for a Project 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 a number of issues including:

- > Use of Project funding
- > Sound project management
- > 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.

### 2.1.1. Project funding

The use of project funding and co-funding from the business is outlined in the table below.

- > The business is required to complete the Research and Development (R&D) project by the contract end date
- > The funding cannot be used for any project costs incurred before the contract start-date or after the contract end date or for any R&D undertaken outside of New Zealand unless expressly permitted
- > Intellectual property developed in the R&D project belongs to the business
- > The maximum amount paid is the per cent funding rate and the total amount of funding available for the project specified in the schedule, along with any modifications to the project plan, eligible costs or project outcomes
- > This funding and the business's co-funding can only be used to undertake the R&D project
- > You must acknowledge Callaghan Innovation when reporting publically results and outputs of the R&D project

### 2.1.2. Project management

The requirements for sound project management are outline in the table below:

- > The business must employ sound project management techniques to manage the Research and Development (R&D) project and deliver the results identified in their application for Project funding
- > There must be formal arrangements with all parties involved in the R&D project; including ownership of IP
- > The business must comply with all relevant legal, regulatory and compliance requirements
- > The business is required to inform Callaghan Innovation of any changes relating to the project from that disclosed in the application, including:
  - Funding arrangements
  - Results including commercialisation
- > The business must record how the funding has been used on the project (e.g. payslips, invoices and receipts). This is to allow Callaghan Innovation to audit the use of funds under the funding agreement and an audit can be undertaken at any time during the project and up to two years after the contract end date
- > If the agreement is breached by the business Callaghan Innovation may require remediation (e.g. repayment of funding) or in more serious situations, negotiate a variation or termination of the agreement

- > The business must immediately advise Callaghan Innovation of any significant risks that impact on the business's ability to:
  - Undertake the R&D project
  - Deliver the results
- > And / or realise the anticipated benefits to NZ including on-going R&D activity in NZ.

### 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 a business's R&D Project and conduct this during the contract or up to two 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 Project 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 two months' notice. If either party breaches the agreement, the other party can terminate the agreement immediately
- > If the funding provided to Callaghan Innovation for the Project Grant, is materially altered then Callaghan Innovation may reduce or suspend funding or terminate the agreement
- > 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 business enters into a contract that materially reduces the benefits to NZ without approval from Callaghan Innovation (Benefits to NZ are reduced when the business is unlikely to develop an on-going Research and Development (R&D) activity in NZ, the scale of the R&D program reduces, or the R&D is undertaken overseas)
- > If the agreement is terminated the business may be required to repay some, or all, of the funding
- > A change event occurs 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
- > Callaghan Innovation will attempt to negotiate a variation to the agreement, otherwise either party may terminate the agreement where benefit to NZ is reduced, the business may have to repay the Grant Funding.

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

**Date:**

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### Funding Agreement for an R&D Project 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:

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## **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 applied to Callaghan Innovation for a funding grant for a research and development project ("**Project**"). The Project is referred to in the schedule to this Agreement ("**Schedule**") and described in detail in your application ("**Application**"). 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 Project by:
  - (a) setting out Callaghan Innovation's expectations and requirements as to your use of the Funding and your investment of Co-funding;
  - (b) acknowledging that we have a mutual interest in ensuring, and being able to demonstrate, that the Project provides value for money, is aligned with 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; and
  - (c) setting out, amongst other things, the circumstances in which Callaghan Innovation may audit, review, suspend, reduce or terminate payment of the Funding paid to you.
- E. We intend, acting reasonably and in good faith, to work together in order to satisfy and meet the requirements of this Agreement and to ensure the greatest possibility of success of the Project and the achievement of the Outcomes.

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

1.1. You must:

- (a) pursue the achievement of the Outcomes by carrying out and completing the Project by the contract end date specified in the Schedule ("**Contract End Date**"), in order to maximise the

returns and benefit to New Zealand from any products, processes or services or the like produced from the Project;

- (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 Project;
  - (ii) achieve the Outcomes; and
  - (iii) address issues relating to intellectual property ownership, confidentiality, access to resources or facilities or the like with other parties involved in the Project;
- (c) 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;
- (d) 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;
- (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 Project and deliver the Outcomes under this Agreement;
  - (ii) you have an appropriate and effective governance structure to manage the Project;
  - (iii) the purpose of the Project and the Outcomes are clear and understood by your staff and any third parties involved in the Project;
  - (iv) critical personnel, or suitably qualified replacements identified in your Application, are available for the time specified in your Application, and take part in the Project as specified in your Application;
  - (v) appropriate monitoring of the Project is undertaken; and
  - (vi) you appropriately monitor and manage the performance and cost of third parties involved in the Project;

- (f) carry out the Project in accordance with all legal requirements.
- (g) Procure that at all times none of your directors are persons who are prohibited from being a director by any applicable law.
- (h) Notify Callaghan Innovation as soon as reasonably possible after becoming aware of any breach of clause 1.1(g); and
- (i) Notify Callaghan Innovation as soon as reasonably possible if any changes in your business could adversely affect New Zealand or Callaghan Innovation's reputation.

1.2. 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;
- (b) you are not currently eligible for, or simultaneously receiving, a R&D Growth Grant from Callaghan Innovation unless it is a collaborative project involving another business; and
- (c) all invoices submitted by you to Callaghan Innovation under this Agreement will have been certified correct by a duly authorised officer of your organisation.

1.3. 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 2003; or
- (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,

but may not be an entity that is:

- (d) 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;

- (e) in the opinion of Callaghan Innovation, likely to bring the reputation of Callaghan Innovation or the R&D grants programme into disrepute; or
- (f) eligible to receive, or simultaneously receiving an R&D Growth Grant, unless the entity is undertaking a “collaborative R&D project”.

1.4. For the purpose of clause 1.3(f), a “collaborative R&D project” means a project for which:

- (a) At least two independent businesses are undertaking a joint project for mutual benefit;
- (b) Each business is contributing substantially to both the financial and technical requirements of the project; and
- (c) The project structure indicates that project has shared responsibility and decision-making.

## 2. FUNDING

- 2.1. Callaghan Innovation will pay you the Funding in accordance with the payment schedule set out in the Schedule (“**Payments Schedule**”).
- 2.2. You must use the Funding to carry out the Project and meet the Project costs specified in the Schedule (“**Project Costs**”).
- 2.3. Callaghan Innovation may suspend any payments of the Funding if you have not complied with this Agreement.
- 2.4. The amount of the Funding is exclusive of GST.
- 2.5. You are responsible for all taxation liabilities, ACC and other levies payable in relation to the Funding.
- 2.6. You must acknowledge, as appropriate and as requested by Callaghan Innovation, provision of Funding by Callaghan Innovation.
- 2.7. You may not use the Funding to cover any Project Costs incurred before the Contract Start Date.
- 2.8. Callaghan Innovation is not liable for any Project Costs incurred after the Contract End Date, and you may not invoice Callaghan Innovation for any such costs.

### 3. CO-FUNDING

- 3.1. You must invest any co-funding amount (“**Co-funding**”) specified in the Schedule in the Project.
- 3.2. You must use the Co-funding solely and specifically to undertake and meet the costs of the Project as specified in your Application, unless otherwise specified in the Schedule.
- 3.3. You must invest the Co-funding in the Project within any timeframes specified in this Agreement.

### 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 Project, and that it has no claim to ownership of any intellectual property rights arising from the Project.
- 4.2. You must have in place intellectual property management practices and procedures in respect of the Project that will ensure that you maximise the benefits arising from the Project.

### 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 and the Co-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 staff, third parties and third party research contractors involved in the Project, and premises and equipment used in respect of the Project.
- 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. To avoid doubt, Callaghan Innovation may continue to exercise its rights under this Agreement (including any termination rights and any rights to seek repayment) despite commencing an Audit, and is not required to wait until the Audit is complete before doing so.
- 5.8. After the Audit report is finalised, if the Audit report has revealed a breach by 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;
  - (c) try to negotiate a variation of this Agreement with you;
  - (d) give you notice that Callaghan Innovation considers a Change Event has occurred pursuant to clause 9;
  - (e) terminate this Agreement; or
  - (f) recover all or part of the Funding pursuant to clause 11.
- 5.9. Subject to clause 5.10 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 5.8(b).
- 5.10. If you, acting reasonably, object to, or disagree with, all or any part of the remedial action required under clause 5.8 your objection or disagreement will be deemed a Change Event and managed in accordance with the Change Event provisions of this Agreement.
- 5.11. 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 Project 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 its provision of Funding for the Project so that it can identify and report the benefits to New Zealand arising from the Project, 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 3 years after the Contract End Date, with the reports specified in the reporting schedule specified in the Schedule and such other reports as are requested by Callaghan Innovation from time to time.
- 6.3. You must advise Callaghan Innovation of any significant issues and risks relating to the Project or this Agreement as they arise, which may include:
  - (a) loss of critical resources (including loss of people, loss of co-funding, or infrastructure); or
  - (b) the scientific or technical approach changing significantly; or
  - (c) consents, approvals, licences and permits required by you cannot be obtained, have expired or are revoked; or
  - (d) significant issues with, or changes to, end-user engagement; or
  - (e) changes that materially reduce the benefit to New Zealand from the Project (e.g. contracts or arrangements with third parties offshore); or
  - (f) scientific, technical or financial fraud; or
  - (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 Project or achieve the Outcomes at serious risk.
- 6.4. 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 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.
- 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 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.
- 8.2. 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 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 Project in aggregated form; and
  - (j) if Callaghan Innovation has terminated this Agreement pursuant to clause 10.3 or 10.4, a summary of the reasons for the termination.
- 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, the Ministry for Primary Industries 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 Project, and includes without limitation the following:
- (a) an event that prevents, or is 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 Co-funding; or
    - (ii) your ability to carry out and complete the Project and ensure the Outcomes are achieved, including changes to your governance, senior management or business structure; or
  - (b) an event, including an actual or likely change in your ownership or sale of any of your assets, which materially adversely affects, or is likely to materially adversely affect:
    - (i) the anticipated benefits for New Zealand of the Project, including planned research and development activity in New Zealand, and the timing of those benefits; or
    - (ii) arrangements with third parties necessary to achieve the Outcomes.
- 9.2. 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; 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 Project 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 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.

9.4. If we agree to negotiate in good faith a variation to this Agreement, the variation may include, without limitation, changes to the Project, the Outcomes of the Project, the way in which the Outcomes will be achieved, the duration of the Project, 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. This Agreement may be terminated by either of us at any time by giving 2 months' notice to the other party.

10.2. 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 do any of the following:

- (a) reduce the Funding;
- (b) suspend the Funding; or
- (c) terminate this Agreement.

10.3. 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.

10.4. Callaghan Innovation may terminate this Agreement immediately by notice to you if you:

- (a) 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;
- (b) give (or have given) any information, representation, or statement to Callaghan Innovation that is misleading or inaccurate in any material respect;

- (c) claim Funding that you are not entitled to claim under this Agreement, including claiming for costs that are not Project Costs;
- (d) do not provide or use Co-funding in accordance with this Agreement;
- (e) 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 Project without the prior written approval of Callaghan Innovation;
- (f) 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; or
- (g) are in breach of your obligation under clause 1.2(g) and such breach is not remedied within 20 days of the breach occurring.

10.5. 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 Project Costs incurred by you before the date of the notice of termination for which Funding has not been paid by Callaghan Innovation.

10.6. If Callaghan Innovation reduces, suspends, or reprioritises any Funding under clause 10.2, you may immediately by notice terminate this Agreement.

10.7. 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 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 you are required to provide Co-funding and at the date of expiry or termination the ratio of the Funding to the Co-funding is not as required by this Agreement you must promptly pay to Callaghan Innovation an amount to make the ratio the ratio anticipated in this Agreement, after taking into account any payments that may have been made under clause 11.1.

11.3. If this Agreement is terminated for any reason (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 Project, 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.

- 11.4. 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 Project, Callaghan Innovation may by notice require you to, and in such event you must, repay some or all of the Funding for the Project, 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.
- 11.5. For the purpose of clauses 10.4(e) and 11.4, the benefit to New Zealand anticipated from the Project is deemed to be materially reduced if, in the reasonable opinion of Callaghan Innovation:
- (a) the likelihood of you developing a more stable and substantial New Zealand-based R&D programme is reduced;
  - (b) the size of or value of your R&D programme materially reduces; or
  - (c) your R&D programme is carried on outside of New Zealand.

## 12. INDEMNITY

- 12.1. 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; and
  - (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; and
  - (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.

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

### **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 given by email will be deemed to have been received 1 Business Day after sending and a notice given by post will be deemed to have been received 3 Business Days after posting.
- 14.3. For the purposes of this Agreement, "Business Day" means any day not being a Saturday, a Sunday, or a public holiday 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 11529 Manners Street, Wellington; or
  - (b) by email, to the Manager at [investmentsupport@callaghaninnovation.govt.nz](mailto:investmentsupport@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 6 (Reporting), clause 7 (Review), clause 8 (Confidentiality), clause 11 (Return and Repayment of Funding), clause 12 (Indemnity), clause 14 (Notices), clause 20 (Governing Law) clause 21 (Waiver), and the provisions of the Payment Schedule and any Special Conditions set out in the Schedule which that, by nature, continue to be relevant (or expressly survive termination).

## **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 its obligation 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.
- 20.2. Any legal action or proceeding arising out of or in connection with this Agreement that is commenced by Callaghan Innovation against you may be brought in the courts of New Zealand, or in any other country:
- (a) Under the laws of which you are legally established; or
  - (b) In which you have a place of business at the time the proceedings are commenced; or
  - (c) in which you have any property situated at the time the proceedings are commenced.

20.3. By your execution of this Agreement; you:

- (a) Accept, for yourself and your property, generally and unconditionally, the non-exclusive jurisdiction of such courts;
- (b) Irrevocably waive your rights of immunity which you or your property may have at the time;
- (c) irrevocably waive any objection you may have at any time to any action or proceeding in any such court on the grounds of venue or inappropriate or inconvenient forum; and
- (d) consent to service of process in any manner permitted by law.

20.4. Any legal action or proceeding arising out of or in connection with this Agreement that is commenced by you must be brought in the courts of New Zealand, unless Callaghan innovation has previously commenced proceedings against you in a court of another country, in which case your claim may be brought in that court.

20.5. If you are not a company or other legal entity established under New Zealand law:

- (a) You shall maintain an agent or representative in New Zealand to accept service of any document required to be served on you in relation to proceedings under or in connection with this Agreement which are commenced in the courts of New Zealand, or in the courts of any other country;

- (b) You appoint

Name:

Whose address is:

as its agents for service and undertakes to notify Callaghan Innovation promptly of any change of address of a current agent or representative and of the name and address of any substitute agent or representative; and

- (c) Any document shall be sufficiently served on you if delivered to the most recently notified agent or representative at its notified address.

20.6. Any document required to be served on you in relation to proceedings under or in connection with this Agreement which are commenced in the courts of New Zealand, or in the courts of any other country, may also (if permitted under the law of that country) be served by:

- (a) Delivering the document to the deliver address specified in the Schedule; or
- (b) Sending the document by email to the email address specified in the Schedule.

20.7. The methods of service set out in this clause 20.6 are in addition to, and do not limit or restrict, any other lawful manner in which documents may be served you.

## **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.

SAMPLE

## SCHEDULE

### Agreement Details – R&D Project Grant

#### Contractor's Details:

Name	
Address	
Contact person	
Contact phone	
Email	

#### Approval Details:

Contract ID	
Application ID	
Project Title	
Project Costs	<p>The costs set out in your Application, up to a maximum total of \$</p> <p>The following costs included in your Application are not part of the Project Costs (and therefore you cannot claim Funding for them):</p> <ul style="list-style-type: none"> <li>• Unless expressly permitted by Callaghan Innovation, any research and development undertaken outside of New Zealand.</li> </ul> <p style="text-align: center;">OR</p> <p style="text-align: center;">Not applicable</p>
Funding	Callaghan Innovation will pay you up to a maximum of (excluding GST) as set out in the Payment Schedule
Co-Funding Amount	You will pay a minimum of (excluding GST).
Funding Rate	X which is the percentage of any Project Costs incurred by you that Callaghan Innovation will pay
Contract Start Date	
Contract End Date	
Variations to this Agreement	<p>[There are no variations to the general terms set out in this Agreement.]</p> <p style="text-align: center;">or</p> <p>[The general terms of this Agreement are varied as set out below:</p>
Payment Schedule	<ol style="list-style-type: none"> <li>1. If you wish to claim Project Costs incurred by you, you must provide Callaghan Innovation with 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 actual Project Costs incurred by you and the amount of Funding you are claiming. The Funding claimed by you must be calculated at the Funding Rate specified in this Schedule.</li> <li>3. If your invoice is satisfactory to Callaghan Innovation in all respects, Callaghan Innovation will pay the invoice within 20 Business Days after receipt of the invoice.</li> <li>4. You must issue Callaghan Innovation with a final valid GST invoice that sets out the outstanding Project Costs for which you are claiming and Funding payable by Callaghan Innovation,</li> </ol>

	<p>which must be calculated at the Funding Rate, no later than 2 months after the Contract End Date.</p> <p>5. If any invoice, including the final invoice, is not provided within 2 months after the Contract End Date, you agree that Callaghan Innovation is not liable to pay any further amounts.</p>
Reporting Schedule	<p>With each invoice you must provide a report that includes the following:</p> <ol style="list-style-type: none"> <li>1. details of your performance of the Project, the Project Costs incurred by you to date, your progress towards completing the Project and achieving the Outcomes, and any matter that may affect your ability to complete the Project and achieve the Outcomes; and</li> <li>2. an up-to-date Project Costs schedule setting out the Project Costs that you expect to incur.</li> </ol> <p>You must, if requested by Callaghan Innovation, complete a survey about the Project, which may require you to provide information about the benefits to New Zealand arising from the Project.</p>
Final Report Date	You must provide a final report on the Project, together with your final invoice, no later than 2 months after the Contract End Date.

**The Project:**

- You must undertake the Project as outlined in your Application, except as below.

**Project Costs:**

The Project costs are as described in the attached Project Cost Summary.

**Changes to Scope:**

The changes to the scope of the Project are as set out in your Application except as modified below:

<b>Modification</b>
[Not modified]
or
•

**Special Conditions:**

	Condition	Condition type	Due date	Date satisfied
1				
2				
3				