

Date:

Funding Agreement for an R&D Student Fellowship Grant

between

Callaghan Innovation

and

**[Company Name]
[Education Institution Name]
[Student Name]**

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 **[Company Name]**:

Signature: _____

Date: _____

Name: _____

Title: _____

In the presence of:

Signature: _____

Name: _____

Title: _____

Signed for and on behalf of **[Education Institution Name]**:

Signature: _____

Date: _____

Name: _____

Title: _____

In the presence of:

Signature: _____

Name: _____

Title: _____

Signed by **[Student Name]**:

Signature: _____

Date: _____

Name: _____

Title: _____

In the presence of:

Signature: _____

Name: _____

Title: _____

This Agreement is made on [Date]

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

and

("Company")

"Education Institution")

("Student")

("the Other Parties")

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

BACKGROUND

- A. Callaghan Innovation invests in research, development, and commercialisation activities, including through Student Grants to support New Zealand postgraduate students to gain and develop their technical skills in a commercial research environment, and thereby to increase New Zealand businesses' investment in research and development to support long term economic growth.
- B. The Company has applied to Callaghan Innovation for a funding grant to engage a student to participate in a research and development project ("**Project**"). The Project is referred to in the schedule to this Agreement ("**Schedule**") and described in detail in the Company's application ("**Application**"). The anticipated objectives of the Project are also described in the Application (except as modified in the Schedule) ("**Objectives**").
- C. The Education Institution has a student enrolled at the institution who is suitable to work with the Company to achieve the Objectives of the Project.
- D. The Company and the Education Institution want the Student to be involved in the Project. The Student's involvement in the Project is to be facilitated by the Education Institution, which will ensure that the Student participates in the Project as part of completing the Student's masters/PhD degree ("**Degree**") described in the Application.
- E. The Company's Application has been approved and Callaghan Innovation will provide the funding specified in the Schedule ("**Funding**") to support the Student's participation in the Project and for the Other Parties to pursue the achievement of the Objectives.
- F. The Funding comprises a stipend to the Student as specified in the Schedule ("**Stipend**") and the Education Institution's fee specified in the Schedule ("**Host Fee**").
- G. The purpose of this Agreement is to govern the investment of the Funding by:
 - (a) setting out Callaghan Innovation's expectations and requirements as to the use of the Funding;
 - (b) acknowledging that we have a mutual interest in ensuring, and being able to demonstrate, that the Project is aligned with priorities established by the government from time to time, achieves the Objectives, 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.
- H. 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, the Student's Degree, and the achievement of the Objectives.

1. THE COMPANY'S OBLIGATIONS

1.1 The Company must:

- (a) in collaboration with the Education Institution, ensure that the Student participates in the Project as set out in the Application, from the contract start date specified in the Schedule ("**Contract Start Date**") to the contract end date specified in the Schedule ("**Contract End Date**");
- (b) provide a mentor for the Student, and support the Student's professional development, in accordance with the Application and the Schedule;
- (c) provide a suitable commercial research and development environment and any of the Company's facilities required for the Project in accordance with the Application;
- (d) meet all Project costs that are not covered by the Funding, including any travel and accommodation costs incurred by the Student when undertaking work on the Project (which for the avoidance of doubt excludes travel between the Company's premises and the Education Institution as covered by the Stipend);
- (e) carry out the Project in accordance with all legal requirements;
- (f) for the duration of this Agreement, be one of the following entity types:
 - (i) a company registered under the Companies Act 1993;
 - (ii) a limited partnership registered under the Limited Partnerships Act 2008; or
 - (iii) 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 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;
- (g) in collaboration with the Education Institution, ensure that the activities under the Project will be sufficient to contribute to the completion of the Student's Degree;
- (h) ensure that it undertakes the Project in accordance with the Application;

- (i) comply with the Health and Safety at Work Act 2015 and notify Callaghan Innovation, as soon as reasonably possible, of any notifiable events related to the Student or the Project that occur under that Act during this Agreement.
- (j) Ensure that at all times none of its directors are persons who are prohibited from being a director by any applicable law;
- (k) notify Callaghan Innovation as soon as reasonably possible after becoming aware of any breach of clause 1.1(j); and
- (l) notify Callaghan Innovation as soon as reasonably possible if any changes in its business could adversely affect New Zealand or Callaghan Innovation's reputation.

1.2 The Company:

- (a) warrants that it has not, and will not, include costs of the Student in any other funding applications or arrangements; and
- (b) acknowledges that the Stipend is for the personal use and benefit of the Student and to support the Student's attendance at the Education Institution and involvement in the Project, including contributing to the Student's living costs and expenses incurred by the Student when travelling between the Company's premises and the Education Institution as a consequence of the Student's involvement in the Project.

2. THE EDUCATION INSTITUTION'S OBLIGATIONS

2.1 The Education Institution must:

- (a) in collaboration with the Company, ensure that the Student participates in the Project from the Contract Start Date to the Contract End Date;
- (b) provide an academic supervisor for the Student;
- (c) in collaboration with the Company, ensure that the activities under the Project will be sufficient to contribute to the completion of the Student's Degree;
- (d) provide any of the Education Institution's research facilities that are required for the Project to be carried out and completed, as agreed with the Company; and
- (e) ensure that all invoices submitted by the Education Institution to Callaghan Innovation under this Agreement will have been certified correct by a duly authorised officer of the Education Institution.

2.2 The Education Institution acknowledges that the Stipend supports the Student's attendance at the Education Institution and involvement in the Project, and the Student will work on the Project in the course of the completion of the Student's Degree.

3. THE STUDENT'S OBLIGATIONS

3.1 The Student must:

- (a) commence work on the Project by the Contract Start Date and work responsibly on the Project, using the Student's best endeavours, towards achieving the Objectives by the Contract End Date;

- (b) use the Stipend for the Student's personal needs and benefit, and to support the Student's attendance at the Education Institution and involvement in the Project;
- (c) ensure work on the Project is done in the course of the completion of the Student's Degree;
- (d) not be, and will not be or deemed to be, registered for GST at any time during the term of this Agreement;
- (e) be a tax resident of New Zealand at all times during the term of this Agreement and acknowledges that the Student is responsible for taxation liabilities in relation to the Stipend and should consult with the New Zealand Inland Revenue Department regarding these liabilities; and
- (f) while working on Company premises, comply with the Company's internal policies and requirements and, in particular, the Company's health and safety policies and requirements as if the Student were an employee of the Company.

4. FUNDING

- 4.1 Callaghan Innovation will pay the Education Institution the Funding in accordance with the payment schedule set out in the Schedule ("**Payment Schedule**").
- 4.2 The Funding is comprised of:
 - (a) the Stipend, which assists the Student to attend the Education Institution and work on the Project in the course of completing the Student's Degree; and
 - (b) the **Host Fee**, which is payable to the Education Institution for the cost incurred by the Education Institution for the oversight and support of the Student and other administrative support in relation to the Project.
- 4.3 Callaghan Innovation will pay the following, in accordance with the manner prescribed under the Payment Schedule:
 - (a) the Host Fee to the Education Institution; and
 - (b) the Stipend to the Education Institution, for the Education Institution to pay to the Student in accordance with clause 4.4.
- 4.4 The Education Institution will:
 - (a) receive the Stipend as a bare trustee for the sole purpose of distributing the Stipend to the Student; and
 - (b) distribute the Stipend to the Student, as soon as practicable after receiving those amounts from Callaghan Innovation.
- 4.5 Callaghan Innovation may suspend any payments of the Funding if any of the Other Parties has not complied with this Agreement.
- 4.6 The amount of the Funding is exclusive of GST (if any).
- 4.7 The Other Parties must acknowledge, as appropriate and as requested by Callaghan Innovation, provision of Funding by Callaghan Innovation.

4.8 For the avoidance of doubt, Callaghan Innovation is not responsible for any of the Education Institution's fees associated with the Student's Degree programme.

5. INTELLECTUAL PROPERTY

5.1 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.

5.2 Each of the Other Parties must have an intellectual property agreement in place in respect of the Project that:

- (a) allows the Company access to the Project intellectual property for the purposes of commercialising it;
- (b) allows the Education Institution and the Student to publish research papers and to continue research in the Project area; and
- (c) allows the Student to publish their thesis.

6. REPORTING

6.1 Each of the Other Parties 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.

6.2 Each of the Other Parties must advise Callaghan Innovation of any significant issues and risks relating to the Project or this Agreement that put the Project, or the Student's participation in the Project, at serious risk.

6.3 All reports and information provided 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 the Funding provided by Callaghan Innovation in relation to the Student's involvement in the Project ("**Review**").

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. RELEASE OF INFORMATION

8.1 Each of the Other Parties acknowledges that Callaghan Innovation is required to release information relating to this Agreement, the Funding, the progress of the Project, the delivery of Objectives and the benefits to New Zealand from the Project, from time to time.

8.2 Each of the Other Parties agrees that Callaghan Innovation may release the following information relating to this Agreement, the Project, and the Objectives:

- (a) the name and contact details of the Company, the Education Institution, and the Student;
- (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; and
- (i) statistics relating to the Project in aggregated form.

8.3 Each of the Other Parties acknowledges 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 each of the Other Parties 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 each of the Other Parties before responding to the request.

9. CHANGE EVENTS

9.1 A change event ("Change Event") occurs if, during the term of the Project, any 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, the Project or the Student, 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 Student; or
 - (ii) the Company or the Student's ability to carry out and complete the Project and ensure the Outcomes are achieved, including changes to the Company's governance, senior management or business structure; or
- (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;

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 the ability of the Company or the Student 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 interests between us in achieving the Objectives of the Project and contributing towards the completion of the Student's Degree; 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 Objectives of the Project, the way in which the Objectives 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 9.3(a), any of us may immediately terminate this Agreement by notice.

9.6 Nothing in this clause prevents any of us from exercising our powers under clause 11.

10. TERMINATION AND REDUCTION OR SUSPENSION OF FUNDING

10.1 This Agreement may be terminated by any of us at any time by giving 2 months' notice to the other parties.

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 Any of us may terminate this Agreement immediately by notice to each of the other parties if any of us is in breach of our obligations under this Agreement.

10.4 Callaghan Innovation may terminate this Agreement immediately by notice to the Other Parties if:

- (a) the Student:
 - (i) is not, in Callaghan Innovation's reasonable opinion actively involved in the Project; or
 - (ii) is not enrolled in the Degree; or
- (b) one or more of the Other Parties:

- (i) uses 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;
- (ii) gives (or has given) any information, representation, or statement to Callaghan Innovation that is misleading or inaccurate in any material respect;
- (iii) claims Funding that it is not entitled to claim under this Agreement;
- (iv) enters 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;
- (v) becomes, or is presumed to be, bankrupt or insolvent, is wound up, has a receiver, manager or administrator appointed, or goes into liquidation or receivership; or

10.5 If Callaghan Innovation terminates this Agreement, Callaghan Innovation is not required to pay Funding suspended or withheld under this Agreement.

10.6 If Callaghan Innovation reduces or suspends any Funding under clause 10.2, any of the Other Parties may immediately by notice terminate this Agreement.

10.7 Termination of this Agreement is without prejudice to the rights and obligations of any 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 the Education Institution must return to Callaghan Innovation all Funding that has not been distributed to the Student or for which contractual liabilities have not yet been reasonably incurred as at the date of the notice of termination.

11.2 Callaghan Innovation may require any of the Other Parties to return any of the Funding that, in Callaghan Innovation's reasonable opinion, the Other Party was not entitled to under this Agreement, and that amount will be a debt due by the Other Party to Callaghan Innovation.

12. INDEMNITY

12.1 The Company indemnifies 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 an act or omission of the Company in relation to 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).

12.2 The Education Institution indemnifies Callaghan Innovation against any Loss brought or threatened against or incurred by Callaghan Innovation, arising from an act or omission of the Education Institution in relation to 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).

12.3 The liability of the Education Institution to Callaghan Innovation under the indemnity given in clause 12.2 will not exceed an amount that is two times the total Funding (exclusive of GST) payable by Callaghan Innovation under 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 6142; or
- (b) by email, to the Manager, at GrantsOperator@callaghaninnovation.govt.nz.

14.5 A notice to any of the Other Parties 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 6 (*Reporting*), clause 7 (*Review*), clause 8 (*Release of Information*), 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 their nature, continue to be relevant (or expressly survive termination).

16. FORCE MAJEURE

16.1 None of us is responsible to the others 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 any party is unable to perform its obligations under this Agreement because of an event of the type described in clause 16.1 for a period of 2 months or more, any of the other parties may terminate this Agreement immediately by notice.

17. NATURE OF RELATIONSHIP

17.1 This Agreement does not create a relationship between any of the parties 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 each of us.

19. ASSIGNMENT & TRANSFER

19.1 A party may not assign or otherwise transfer its rights and obligations under this Agreement to a third party.

19.2 Any change affecting the control of the Company 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 any 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 any 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.

SCHEDULE

Company's Details:

Name	
Address	
Contact person	
Contact phone	
Contact fax	

Approval Details

Approval Reference	
Contract No.	
Application No.	
Investment Process	
Project Name	
Funding	\$ (GST exclusive) Stipend \$ (GST exclusive) Host Fee \$ (GST exclusive)
Payment Schedule	<p>Stipend</p> <ol style="list-style-type: none"> 1. The Stipend will be paid by Callaghan Innovation to the Education Institution in equal monthly instalments 2. Each instalment will be paid on the 1st of the month. 3. Callaghan Innovation will not pay the final monthly instalment of the Stipend until it has received a final report as set out in this Schedule. <p>Host Fee</p> <ol style="list-style-type: none"> 4. The Host Fee will be paid by Callaghan Innovation to the Education Institution in equal 6-monthly instalments, provided that a valid tax invoice (as defined in section 24 of the Goods and Services Tax Act 1985) in a form that is satisfactory to Callaghan Innovation in all respects, is issued by the Education Institution to Callaghan Innovation in respect of each instalment.
Contract Start Date	
Contract End Date	
Reporting Schedule	<p>The Other Parties must provide a 6-monthly report that includes progress of the Project and progress of the Student's professional development in the form and manner specified by Callaghan Innovation on dates set out in Special Conditions.</p> <p>The Company must submit each report through the online portal.</p> <p>Payment of the Funding may be suspended if reports are not received by Callaghan Innovation or are unacceptable to Callaghan Innovation.</p> <p>Each of the Other Parties must, if requested by Callaghan Innovation, complete a survey about the Project, which may require the Other Parties to provide information about the benefits to New Zealand arising from the Project.</p>
Final Report Date	The Other Parties must provide a final report on the Project in the form and manner specified by Callaghan Innovation no later than 2 months after the Contract End Date.

Objectives	The Objectives of the Project, as set out in the Application, are as follows: [Objectives]
Professional Development Plan	The Student's Professional Development Plan, as set out in the Application, is as follows: [Professional Development Plan]

The Project:

The Company must undertake the Project as outlined in the Application, except as modified below.

Objectives:

The Objectives of the Project are as set out in the Application and this Schedule except as modified below:

Application Objective	Modified Objective
[Not applicable]	

Notice Details:

Nominated person for Notices	
Callaghan Innovation	Name: Grants Operations Team Address: Callaghan Innovation, PO Box 11529, Manners Street, Wellington 6142 Email: GrantsOperations@callaghaninnovation.govt.nz
Company	Name: Address: Email:
Education Institution	Name: Address: Email: University academic name:
Student	Name: Address: Email:

Special Conditions

	Condition	Type	Date Due	Date Satisfied
1	A final report is required to be submitted and approved to the satisfaction of Callaghan Innovation prior to the final student Stipend payment being released.	Final report	[2 months after the Contract End Date]	
2	A 6-monthly report is required to be submitted and approved to the satisfaction of Callaghan Innovation for the duration of the Project.	Progress report	6-monthly after [Contract Start Date]	
3	[Enter details from Application]			