

Date:

Funding Agreement for 2022/23 R&D Experience Grant

between

Callaghan Innovation

and

[IMS Organisation name]

Contract number: [IMS Contract ID]

Signed for and on behalf of **Callaghan Innovation** by its duly authorised officer:

Signature:

Name:

Date:

Title:

Signed for and on behalf of **[IMS Organisation name]** by its duly authorised officer:

Signature:

Date:

Name:

Title:

This Agreement is made between:

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

and [IMS Organisation name] [contracting organisation]
("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 an R&D Experience funding grant for someone engaged in undergraduate or postgraduate study at a New Zealand university or polytechnic ("**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**").
- C. Your application has been approved, and subject to you complying with the terms of this Agreement, Callaghan Innovation will provide the funding described in the Schedule to facilitate the Student's involvement in the Project ("**Funding**").
- D. The purpose of this Agreement is to set out Callaghan Innovation's expectations and requirements as to the Student's involvement in the Project and your use of the Funding.

1. YOUR BUSINESS, THE STUDENT, AND THE PROJECT

1.1 Your Business

- a) You must:
 - i) have an active R&D programme within your Business (i.e work must not be outsourced or performed by a third party provider) for the Student to participate in
 - ii) employ the student (the student must be on your payroll and not a contractor) for the purpose of working on the Project
 - iii) pay the Student employed for this Project at the approved hourly rate of at least \$23.65 per hour (gross/before deductions) to undertake the project, up to the Funding maximum specified in the Payments Schedule;
 - iv) in accordance with clause 2 below; provide evidence of the payments made to the Student by way of payslips, which clearly display the hours and hourly rate at the time of claiming the Funding. Callaghan Innovation will not pay any Funding until satisfactory evidence of the Student's payslips has been received; and;

- v) comply with any special conditions set out in the Schedule.
- vi) For the duration of this Agreement, be a company incorporated and registered in New Zealand under the Companies Act 1993); or a limited partnership registered under the Limited Partnerships Act 2008; or 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.
- b) You must 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; or a company that was incorporated in another country but is registered to do business in New Zealand (registered on the Overseas Register – ASIC or NON-ASIC).
- c) You must not, and ensure that the Student does not, in the reasonable opinion of Callaghan Innovation, be likely to bring the reputation of Callaghan Innovation or the R&D grants programme into disrepute.

1.2 Your Student

You must ensure that at the time of Application and throughout the term of the Agreement, the Student;

- a) is studying Science, Technology, Engineering, Design or Business at a New Zealand tertiary education institution;
- b) is studying at NZQA level 7-10; Doctoral Degree; Master's Degree; Bachelor's Degree; Bachelor Honours Degree; Graduate Diploma; Graduate Certificate; Postgraduate Certificate, Postgraduate Diploma;
- c) or if study has been completed, then the Student must have been studying towards one of the qualification types listed in clause 1.2 (b) and the closing date of the last semester must be less than 12 months ago.
- d) has the appropriate immigration status to work in New Zealand;
- e) has not been previously employed by your business in a full time position; and
- f) has not undertaken more than two Experience Grant internships with your Business.

1.3 The Project

You must:

- a) ensure the Student participates in the Project;
 - (i) physically at your Business's premises, unless Callaghan Innovation provides prior written consent to remote participation; and

- (ii) as set out in the Application; and
- b) comply, and ensure that the Student participating in the Project complies, with all applicable laws, policies and procedures, regulations, rules and professional codes of conduct, including all applicable employment and health and safety legislation; and
- 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 in accordance with clause 9.

2. FUNDING AND PAYMENT

2.1 Funding

- a) Subject to your compliance with your obligations under this Agreement, Callaghan Innovation will pay you the Funding in accordance with the payment schedule set out in Schedule ("**Payments Schedule**") and this clause 2.
- b) You must use the Funding to pay the Student as specified in the Schedule and as set out in your Application. You must not use the Funding to cover any costs relating to the Student's involvement in the Project incurred before the Contract Start Date or after the Contract End Date, and you may not invoice Callaghan Innovation for any such costs.

2.2 Payment preconditions

Callaghan Innovation is not required to make any payment under this Agreement until the following conditions have been satisfied (at Callaghan Innovation's sole discretion):

- a) you have provided Callaghan Innovation with satisfactory evidence of payments made to the Student by way of payslips, which clearly display the hours and hourly rate at the time of claiming the Funding;
- b) you have provided Callaghan Innovation with the Final Report on the Student's involvement in the Project as set out in clause 5(c) ;
- c) you have provided Callaghan Innovation with a Valid Tax Invoice in accordance with clause 2.3 (b) below;
- d) you are not in breach of any provision of this Agreement; and
- e) Callaghan Innovation is satisfied that the Project is progressing as approved.

2.3 Payment

- a) You must provide Callaghan Innovation with a Valid Tax Invoice at the invoicing dates set out in the Payments Schedule. If no due date for invoicing is specified in the Payments Schedule, you must provide the Valid Tax Invoice no later than 2 months after the Contract End Date
- b) You must ensure that each invoice:

- (i) is in the form of a tax invoice that complies with the requirements of the Goods and Services Tax Act 1985;
- (ii) specifies the payments made to the Student during the term of the Agreement, and
- (iii) includes all information reasonably required to enable Callaghan Innovation to establish the accuracy of the invoice,

(a Valid Tax Invoice)

- c) If Callaghan Innovation is satisfied with the Valid Tax Invoice and Final Report in all respects and the payment preconditions in clause 2.2 have been met, Callaghan Innovation will pay each Valid Tax Invoice at the next available payment date
- d) Payment will be made in one lump sum amount.
- e) If you do not provide Callaghan Innovation with a Valid Tax Invoice within two months of the Contract End Date, Callaghan Innovation is not liable to pay any Funding to you under this Agreement.

2.4 Tax

- a) The amount of Funding is exclusive of GST.
- b) You are responsible for all taxation liabilities, payments for annual holidays, kiwi saver employer contributions, ACC, recruitment fees and other levies payable in relation to the Funding or employment of the Student (Public and statutory holidays are supported, it is expected that the hours associated are within the 400 hours).

3. WARRANTIES AND REPRESENTATIONS

You represent and warrant to us that at the date of this Agreement:

- 3.1 all information (including declarations, attestations, representations, statements, consents, confirmations, evidence and other materials) provided by you or on your behalf in your Application or otherwise in connection with this Agreement are true, complete and accurate, and there are no facts or circumstances which have not been disclosed to us that would make that information untrue, inaccurate or misleading. You acknowledge that Callaghan Innovation is entering into this Agreement in reliance on such information; and
- 3.2 you are not aware of any information that has not been disclosed to Callaghan Innovation which may, if disclosed, materially adversely affect the decision of Callaghan Innovation to approve your Application and/or provide the Funding to you

4. INTELLECTUAL PROPERTY

- 4.1 Nothing in this Agreement confers on a party any right, title or interest in the other party's intellectual property, including any intellectual project arising from the Project. Callaghan Innovation acknowledges that it has no claim to ownership of any intellectual property rights arising from the Project.
- 4.2 You warrant that you have obtained (or will obtain, prior to creation of each relevant work) all rights and permissions necessary for intellectual property arising from the Project, and that the Project does not infringe the intellectual property rights of any third party

5. REPORTING

- 5.1 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.
- 5.2 You must provide Callaghan Innovation or its authorised agents with the reports specified in the reporting schedule specified in the Schedule.
- 5.3 In accordance with clause 2.2(c), you must provide Callaghan Innovation with a final report detailing the Student's involvement in the Project in the format specified by Callaghan Innovation (Final Report) no later than 2 months after the Contract End Date.

6. REVIEW

- 6.1 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 Student's involvement in the Project and Callaghan Innovation's investment in the Student's involvement in the Project ("**Review**"). You must participate in any Reviews as reasonably required by Callaghan Innovation, including by providing information requested by Callaghan Innovation. You must ensure you retain all relevant documentation pertaining to the Student's involvement in the Project including, but not limited to, evidence of the student's eligibility as set out in clause 1.2.
- 6.2 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.

7. CONFIDENTIALITY

- 7.1 You acknowledge that Callaghan Innovation is required to release information relating to this Agreement, its investments in the Project, the progress of the Project, and the benefits to New Zealand from the Project, from time to time.
- 7.2 You agree that Callaghan Innovation may release the following information relating to this Agreement, and the Project:
 - 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; and

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

7.4 Except as provided for in clauses 7.2 and 7.3, 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.

7.5 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.

8. INFORMATION

8.1 Personal information

- a) You agree that we may collect personal information about you and the Student in order to assess your Application and to administer, exercise our rights under, and enforce this Agreement. The sources for collecting that personal information may include your Application, our own records, other government agencies and (where reasonably necessary) other third party organisations.
- b) You must obtain the Student's consent to sharing their personal information, including, but not limited to, the student's payslips, with us for the purposes set out in this clause 8.1.
- c) You agree that we may share any information (including personal information) collected from your Application or otherwise obtained as described above with:
 - (i) our agents and advisers for the purposes of administering, exercising our rights under, and enforcing this Agreement;

- (ii) the Ministry of Business, Innovation and Employment, other government agencies, and New Zealand tertiary education institutions including for statistical and audit purposes;
 - (iii) with any debt recovery organisation or similar agency for the purposes of collection or enforcement, and with any credit reporting agency; and
 - (iv) to any other person as required by law or under any regulation, or to provide an answer to any parliamentary questions, meet any parliamentary requirements, or provide information to a Minister.
- d) Under the Privacy Act 2020, you have a right to access and request a correction to any personal information we hold about you.

8.2 Official information

- a) You acknowledge that we are subject to the Official Information Act 1982 and that we are obliged to disclose information under that Act if requested to do so and provided there are no grounds under that Act to withhold the information.
- b) Callaghan Innovation will advise you if it receives a request under the Official Information Act 1982 or the Privacy Act 2020 for any information relating to this Agreement, and except where the information is publicly available, will consult with you before responding to the request.

8.3 Publicity

- a) Any media release or other public statement produced by you that refers or otherwise relates to your Project or the Student, must refer to your participation in the R&D Experience Grant scheme (unless you have good reason to exclude such a reference). However, you must:
 - (i) obtain our prior written approval to any such media release or other public statement; and
 - (ii) provide any proposed media release or public statement to us for our written approval at least 48 hours before the proposed publication or release time.
- b) You must notify us of any enquiry relating to your participation in the R&D Experience Grant scheme made by the media to you or your staff.

9. CHANGE EVENTS

9.1 A change event ("**Change Event**") occurs if, during the term of this Agreement, 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, 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 obligations relating to:

- (i) the Funding or the Student; or
 - (ii) your ability or the Student's ability to carry out and complete the Project; or
 - (iii) changes to the Company's governance, senior management or business structure; or
- b) an event that shows the Student is not eligible as set out in clause 1.2;
 - c) an event that may bring the reputation of the Government, Callaghan Innovation or the R&D Grants Programme into disrepute;
 - d) an event that constitutes a "notifiable event" under the Health and Safety at Work Act 2015;
 - e) an event, including an actual or likely change in the ownership or the sale of any of your assets, which materially adversely affects, or is likely to materially adversely affect:
 - (i) your ability or the ability of the Student to carry out and complete the Project; or
 - (ii) arrangements with third parties necessary to complete the Project.

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 or the ability of 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 completing Project and ensuring the Student continues to gain work experience in a New Zealand commercial R&D environment; 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 way in which the Project will be completed, 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, either of us may immediately terminate this Agreement by notice.

10. TERM AND TERMINATION

10.1 Term

This Agreement will commence on the Contract Start Date specified in the Schedule, and will end on the Contract End Date specified in the Schedule, unless terminated earlier in accordance with this Agreement.

10.2 Termination

- a) 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.
- b) Callaghan Innovation may terminate this Agreement immediately by Notice to you if:
 - (i) You materially breach this Agreement;
 - (ii) The Student does not meet the eligibility criteria set out in clause 1.2;
 - (iii) the Student ceases to be employed by you;
 - (iv) the Student ceases working on the Project as specified in this Agreement;
 - (v) the Project ends or is put on hold;
 - (vi) you use some or all of the Funding for purposes other than as set out in this Agreement, including misappropriation fraud, or claiming ineligible expenditure;
 - (vii) you give any information, representation, or statement to Callaghan Innovation that is misleading or inaccurate in any material respect; or
 - (viii) 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.

10.3 If Callaghan Innovation terminates this Agreement under clause 10.2, Callaghan Innovation is not required to pay the Funding to you.

11. ENTIRE AGREEMENT

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

12. NOTICES

12.1 Any notice given under this Agreement ("**Notice**") will be given by post or by email to the person and to the address nominated in the Schedule.

12.2 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 31310, Lower Hutt, Wellington ; or
- b) by email, to the Operations Lead – Funding and Contract Management, at FCMOperations@callaghaninnovation.govt.nz

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 5- (Reporting), clause 6 (Review), clause 7 (Confidentiality), clause 12 (Notices), clause 17 (Governing Law) and the provisions of the Payment Schedule.

14. NATURE OF RELATIONSHIP

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

15. VARIATIONS

15.1 The terms of the Schedule may be varied upon agreement between us.

15.2 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.

16. ASSIGNMENT & TRANSFER

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

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

17. GOVERNING LAW

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

SCHEDULE
Agreement Details – R&D Experience

Contractor's Details:

Name	[IMS Organisation name]
Address	[IMS organisation details]
Contact person	[IMS Contact person name]
Contact phone	[IMS Contact person details]
Email	[IMS Contact person details]

:

Approval Details:

Contract ID	[IMS Contract ID]
Proposal ID	[IMS Proposal reference key]
Project Title	[IMS Project title]
Funding	<p>\$ [IMS Total contract value] GST Exclusive</p> <ol style="list-style-type: none"> 1. Callaghan Innovation will contribute \$23.65 (gross/before deductions) per hour worked by the Student up to a maximum of 400 hours (\$9,460 GST excl.) 2. The Funding must only be applied to the Student's wages (including payment for any public or statutory holidays during the period of the Student's employment).
Contract Start Date	[IMS Contract start date]
Contract End Date	[IMS Contract end date]
Payment Schedule (Clause 2)	<ol style="list-style-type: none"> 1. <u>Payment will be in one lump sum and must be claimed using the Client Report function in the online portal</u> <p>You must confirm the student's eligibility, provide a Valid Tax Invoice and payslips for the Student via the online portal</p>
Final Report Date	<p>You must provide Callaghan Innovation with a final report via the online portal, detailing the Student's involvement in the Project in the format specified by Callaghan Innovation no later than 2 months after the Contract End Date.</p> <p>If the final report is not received by the due date, Callaghan Innovation is not liable to make the payment to you.</p>

Project and Student Details:

Project Title	No. of Students

Special Conditions:

	Condition	Date Due
1	[

EXAMPLE