

Date:

Funding Agreement for [Investment process name]

between

Callaghan Innovation

and

[IMS Organisation name]

Contract number: [IMS Contract ID]

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

Signature:

Name:

Date:

Title:

In the presence of:

Signature:

Name:

Title:

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

Signature:

Date:

Name:

Title:

In the presence of:

Signature:

Name:

Title:

This Agreement is made on:

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

and [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 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. THE STUDENT, THE PROJECT AND YOUR OPERATION

1.1 You must:

- a) have an active R&D programme;
- b) ensure that the student:
 - i. is studying Science, Technology, Engineering, Design or Business at a New Zealand tertiary education institution;
 - ii. is studying at NZQA level 7-10: Doctoral Degree, Master's Degree, Bachelor's Degree; Bachelor Honours Degree; Graduate Diploma; Graduate Certificate, Postgraduate Certificate or Postgraduate Diploma; (Note: Diploma level 7 only); or if study has been completed the closing date of the last semester should be less than 12 months ago.
 - iii. has appropriate immigration status to work in New Zealand.
 - iv. has not been previously employed by your business in a full-time position; and
 - v. has not undertaken more than two Experience Grant internships with your business.

- c) ensure the Student participates in the Project as set out in the Application;
 - d) pay the Student employed for this project the approved hourly rate of at least \$21.15 per hour to undertake the Project;
 - e) notify Callaghan Innovation as soon as practicable if the Student ceases to be employed or contracted by you, or there is a material change to the Project or the Student's work on the Project;
 - f) comply with the law;
 - g) comply with the Health and Safety at Work Act 2015 and will advise Callaghan Innovation of any notifiable events in relation to the Student that occur under the Act during the contract period.
 - h) be a company registered 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.
- 1.2 You 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;
- 1.3 You may not, in the opinion of Callaghan Innovation, be likely to bring the reputation of Callaghan Innovation or the R&D grants programme into disrepute.

2. FUNDING

- 2.1 Callaghan Innovation will pay you the Funding in accordance with the payment schedule set out in Schedule ("**Payments Schedule**") on receipt of an invoice(s) that meets the requirements specified in Schedule.
- 2.2 You must use the Funding to pay the Student as specified in the Schedule.
- 2.3 You are responsible for all taxation liabilities, payments for annual holidays (but not public or statutory holidays), kiwi saver employer contributions, ACC, recruitment fees and other levies payable in relation to the Funding or employment of the Student.
- 2.4 You may 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.

3. INTELLECTUAL PROPERTY

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

4. REPORTING

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

5. REVIEW

- 5.1 Callaghan Innovation may at any time between the Contract Start Date and the date that is 3 years after the Contract End Date, carry out a review of the 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 1.1(b).
- 5.2 If a Review is carried out before the Contract End Date and is not satisfactory to Callaghan Innovation, the matter may be considered and managed in accordance with the Change Event provisions of this Agreement.

6. CONFIDENTIALITY

- 6.1 You acknowledge that Callaghan Innovation is required to release information relating to this Agreement, its investments in the Project, the progress of the Project, and the benefits to New Zealand from the Project, from time to time.
- 6.2 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
- 6.3 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).
- 6.4 Except as provided for in clauses 6.2 and 6.3, 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.
- 6.5 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.

7. CHANGE EVENTS

- 7.1 A change event ("**Change Event**") occurs if, during the term of the Project, either of us receives new information, or an event occurs 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, including 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 1.1(b);
 - c) an event that may bring the reputation of 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.

7.2 If a Change Event occurs:

- a) we will immediately advise each other by notice of the Change Event; and
- b) we will discuss our options to resolve the Change Event in good faith, which may include taking no action, negotiating a variation to this Agreement, or terminating this Agreement; 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.

7.3 In discussing our options to resolve a Change Event:

- a) we will act in good faith and in a way that is consistent with the mutual 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.

7.4 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.

7.5 If we are unable to resolve a Change Event by 1 month after the date of the notice given under clause 7.3a), either of us may immediately terminate this Agreement by notice.

8. TERMINATION AND REDUCTION OR SUSPENSION OF FUNDING

8.1 Either of us may terminate this Agreement immediately by notice to the other Party if the other Party is in breach of its obligations under this Agreement.

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

- a) You breach this Agreement, including claiming ineligible expenditure;
- b) The Student does not meet the eligibility criteria set out in clause 1.1(b);
- c) the Student ceases to be employed with or contracted by you;
- d) the Student ceases working on the Project as specified in this Agreement;
- e) the Project ends or is put on hold;
- f) you use some or all of the Funding for purposes other than as set out in this Agreement, including misappropriation or fraud;
- g) you give any information, representation, or statement to Callaghan Innovation that is misleading or inaccurate in any material respect; or
- h) 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.

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

9. ENTIRE AGREEMENT

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

10. NOTICES

10.1 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.

10.2 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 11529, Manners Street, Wellington 6142; or
- b) by email, to the Manager, Operations – Funding and Contract Management, at GrantsOperations@callaghaninnovation.govt.nz

11. SURVIVAL OF CLAUSES

11.1 Expiry or termination of this Agreement for any reason does not affect the validity and enforceability of this clause, clause 4 (Reporting), clause 5 (Review), clause 6 (Confidentiality), clause 9 (Notices), clause 14 (Governing Law) and the provisions of the Payment Schedule.

12. NATURE OF RELATIONSHIP

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

13. VARIATIONS

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

13.2 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.

14. ASSIGNMENT & TRANSFER

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

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

15. GOVERNING LAW

15.1 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 \$21.15 per hour worked by the Student up to a maximum of 400 hours (\$8,460 GST excl.) 2. The Funding must only be applied to the Student's wages (including payment for any public holidays falling in the period of the Student's employment).
Contract Start Date	[IMS Contract start date]
Contract End Date	[IMS Contract end date]
Payment Schedule	<ol style="list-style-type: none"> 1. You must, no later than 2 months after the Contract End Date, provide Callaghan Innovation with: <ol style="list-style-type: none"> a. a valid GST invoice from the contracting business that specifies the amount of Funding claimed and includes evidence of the payments that you have made to the Student; that clearly shows the hours and hourly rate for the claim period; b. the details of your student(s), name, email address, tertiary education institute and confirmation of the eligibility criteria for each student. c. a final report on the Student's involvement in the Project as set out in the Reporting Schedule. 2. If the invoice and final report are satisfactory to Callaghan Innovation in all respects, Callaghan Innovation will pay the invoice within 20 Business Days after receipt of an acceptable invoice and report. 3. If you do not provide the invoice and final report in accordance with this Payment Schedule, within two months after the Contract End Date, Callaghan Innovation is not liable to pay any Funding and the contract will be closed.
Reporting Schedule	You must provide a report on the Student's involvement in the Project, together with your invoice as set out in the Payment Schedule, in a form and manner specified by Callaghan Innovation through the online portal.
Final Report Date	You must provide a final report with the final invoice on the Project in a form and manner specified by Callaghan Innovation no later than 2 months after the Contract End Date.

Project and Student Details:

Project Title	No. of Students

Special Conditions:

	Condition	Date Due
1		

EXAMPLE AUG2020