

Date: 21 October 2013

Funding Agreement for an R&D Student Fellowship Grant

between

Callaghan Innovation

and

**[IMS Full organisation name]
[IMS Contract Liaison organisation]
[IMS Student name]**

Contract number: [IMS Contract ID]

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 **[IMS Full organisation name]:**

Signature:

Date:

Name:

Title:

In the presence of:

Signature:

Name:

Title:

Signed for and on behalf of **[IMS Contract Liaison organisation name]:**

Signature:

Date:

Name:

Title:

In the presence of:

Signature:

Name:

Title:

Signed by **[IMS Student]:**

Signature:

Date:

Name:

Title:

In the presence of:

Signature:

Name:

Title:

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This Agreement is made on [Date contract print raised]

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

and

[IMS full organisation name] ("**Company**")

[IMS contract liaison organisation] ("**Education Institution**")

[IMS student name] ("**Student**")

("the Other Parties")

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. The Company intends to undertake the research and development project ("**Project**") referred to in the schedule to this Agreement ("**Schedule**") and described in detail in the Company's application ("**Application**"). The anticipated objectives and milestones of the Project are also described in the Application (except as modified in the Schedule) ("**Objectives and Milestones**").
- C. The Company and the Education Institution wish 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.
- D. The Application requests that a funding grant be provided by Callaghan Innovation to support the Student's participation in the Project.
- E. The Application has been approved, and Callaghan Innovation will provide the funding specified in the Schedule ("**Funding**").
- F. The purpose of this Agreement is to govern the investment of the Funding by setting out Callaghan Innovation's expectations and requirements as to the use of the Funding.

1. THE OTHER PARTIES' OBLIGATIONS

1.1 The Company must:

- (a) 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;

- (c) provide a suitable commercial 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;
- (e) carry out the Project in accordance with all legal requirements; and
- (f) have at least one director resident in New Zealand, and meet one of the following requirements:
 - (i) the Company must be incorporated in New Zealand;
 - (ii) the Company must have its centre of management based in New Zealand, to the satisfaction of Callaghan Innovation; or
 - (iii) the Company must have its head office in New Zealand.

1.2 The Company:

- (a) warrants that it has not entered into any contractual arrangements or negotiations for funding, exploitation, development or other similar matters in respect of the Project, the Objectives and Milestones, or any of the products, processes or services that may arise from the achievement of the Objectives and Milestones except as disclosed in the Application. If the Company enters into such contractual arrangements or negotiations before the Contract End Date, the Company must promptly advise Callaghan Innovation; and
- (b) acknowledges that the following amounts are for the personal use and benefit of the Student and support the Student's attendance at the Education Institution and involvement in the Project:
 - (i) the stipend specified in the Schedule ("**Stipend**"); and
 - (ii) the travel and accommodation allowance specified in the Schedule (if any), which contributes to the Student's travel and accommodation expenses incurred by the Student when travelling from the Company's premises to the Education Institution as a consequence of the Student's involvement in the Project ("**Allowance**").

1.3 The Education Institution must:

- (a) 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 in accordance with the Application;
- (c) provide any of the Education Institution's research facilities that are required for the Project to be carried out and completed, in accordance with the Application; and
- (d) 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.

1.4 The Education Institution acknowledges that the Stipend and the Allowance support 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.

- 1.5 The Student must commence work on the Project by the Contract Start Date and work responsibly on the Project, using his or her best endeavours, towards achieving the Objectives and Milestones by the Contract End Date.
- 1.6 The Student warrants that:
- (a) he or she, for the duration of this Agreement, is not and will not be an employee of any of the Other Parties;
 - (b) the Stipend and Allowance are for the Student's personal use and benefit, and support the Student's attendance at the Education Institution and involvement in the Project;
 - (c) the Student's work on the Project is undertaken in the course of the completion of the Student's Degree;
 - (d) the Student is not, and will not be or deemed to be, registered for GST at any time during the term of this Agreement; and
 - (e) the Student is a tax resident of New Zealand at all times during the term of this Agreement.

2. FUNDING

- 2.1 Callaghan Innovation will pay the Education Institution the Funding in accordance with the payment schedule set out in the Schedule ("**Payment Schedule**").
- 2.2 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;
 - (b) the Education Institution's fee specified in the Schedule ("**Host fee**"), which is payable to the Education Institution as consideration for making available the Education Institution's research facilities, providing mentor support for the Student and other administration support in relation to the Project; and
 - (c) the Allowance (if any).
- 2.3 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 and the Allowance (if any) to the Education Institution, for the Education Institution to pay to the Student in accordance with clause 2.4.
- 2.4 The Education Institution will:
- (a) receive the Stipend and the Allowance (if any) as a bare trustee for the sole purpose of distributing the Stipend and the Allowance to the Student; and
 - (b) distribute the Stipend and the Allowance (if any) to the Student, as soon as practicable after receiving those amounts from Callaghan Innovation.
- 2.5 Callaghan Innovation may suspend any payments of the Funding if any of the Other Parties has not complied with this Agreement.

- 2.6 The amount of the Funding is inclusive of GST (if any).
- 2.7 The Other Parties must acknowledge, as appropriate and as requested by Callaghan Innovation, provision of Funding by Callaghan Innovation.
- 2.8 To avoid doubt, Callaghan Innovation is not responsible for any of the Education Institution's fees associated with the Student's Degree programme.

3. INTELLECTUAL PROPERTY

- 3.1 Callaghan Innovation acknowledges that it is not the author of, or commissioning party for, any intellectual property arising from the Project, and that it has no claim to ownership of any intellectual property rights arising from the Project.
- 3.2 Each of the Other Parties must have in place intellectual property management practices and procedures in respect of the Project that:
 - (a) will maximise the benefits arising from the Project; and
 - (b) are consistent with the intellectual property agreement between the Other Parties, as described in the Application.

4. REPORTING

- 4.1 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.
- 4.2 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.
- 4.3 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.

5. REVIEW

- 5.1 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.

6. RELEASE OF INFORMATION

- 6.1 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 Milestones and the benefits to New Zealand from the Project, from time to time.

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

- (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 the Funding 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 the Funding was approved; and
- (i) statistics relating to the Project in aggregated form.

6.3 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.

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 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.

7. TERMINATION AND REDUCTION OR SUSPENSION OF FUNDING

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

7.2 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.

7.3 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.

7.4 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; or
 - (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.

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

7.6 If Callaghan Innovation reduces or suspends any Funding under clause 7.2, any of the Other Parties may immediately by notice terminate this Agreement.

7.7 Termination of this Agreement is without prejudice to the rights and obligations of any of us that accrued up to the date of termination.

8. RETURN AND REPAYMENT OF FUNDING

8.1 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.

8.2 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.

9. INDEMNITY

9.1 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).

9.2 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).

10. ENTIRE AGREEMENT

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

11. NOTICES

11.1 Any notice given under this Agreement will be given by post or by email.

11.2 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.

11.3 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.

11.4 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 Group Manager Grants at R&DGrants@callaghaninnovation.govt.nz.

11.5 A notice to any of the Other Parties will be sent to the person and to the address set out in the Schedule.

12. SURVIVAL OF CLAUSES

12.1 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 (Release of Information), clause 8 (Return and Repayment of Funding), clause 9 (Indemnity), clause 11 (Notices), clause 17 (Governing Law), clause 18 (Waiver), and the provisions of the Payment Schedule.

13. FORCE MAJEURE

13.1 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.

13.2 If any party is unable to perform its obligations under this Agreement because of an event of the type described in clause 13.1 for a period of 2 months or more, any of the other parties may terminate this Agreement immediately by notice.

14. NATURE OF RELATIONSHIP

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

15. VARIATIONS

- 15.1 The terms of this Agreement are varied as set out in the Schedule (if applicable)
- 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 each of us.

16. ASSIGNMENT & TRANSFER

- 16.1 A party may not assign or otherwise transfer its rights and obligations under this Agreement to a third party.
- 16.2 Any change affecting the control of the Company 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.

18. WAIVER

- 18.1 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.

19. PARTIAL INVALIDITY

- 19.1 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.
- 19.2 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	[IMS full organisation name]
Address	[Shared contracts d/b – courier and postal address]
Contact person	[IMS Contact person name]
Contact phone	[IMS contact person phone number]
Contact fax	[IMS contact person email]

Approval Details

Approval Reference	[IMS meeting reference]
Contract No.	[IMS contract ID]
Application No.	[IMS Reference key]
Investment Process	[IMS Investment process name]
Project Name	[IMS title]
Funding	<p>[Total Contract value] (GST inclusive (if any))</p> <p>Stipend \$[IMS Student stipend] (GST inclusive (if any))</p> <p>Host fee \$[IMS host fee] (GST inclusive (if any))</p> <p>Allowance \$[IMS travel allowance] (GST inclusive (if any))</p>
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 annual 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. <p>Allowance</p> <ol style="list-style-type: none"> 5. The Education Institution will issue to Callaghan Innovation a notice requesting payment of any reasonable travel and accommodation costs incurred by the Student when travelling from the Company's premises to the Education Institution as a consequence of the Student's involvement in the Project ("Notice"). 6. On satisfaction that the travel costs were reasonably incurred by the Student, Callaghan Innovation will pay such sum set out in the Notice.

Contract Start Date	[IMS Contract start date]
Contract End Date	[IMS Contract end date]
Reporting Schedule	<p>The Company must provide an end of quarter report that includes progress of the Project and progress of the Student's professional development.</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 Company must provide a final report on the Project no later than 2 months after the Contract End Date.

The Project:

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

Objectives:

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

Application Objective	Modified Objective

Notice Details:

Nominated person for Notices	
Callaghan Innovation	<p>Name: Grants and Investments Administration and Management Team</p> <p>Address: Callaghan Innovation, C/- Ministry of Business, Innovation and Employment, PO Box 1473, Wellington</p> <p>Email: investments@msi.govt.nz</p>
Company	<p>Name: [IMS contact person name]</p> <p>Address: [Shared contacts d/b organisation address-courier and postal]</p> <p>Email: [IMS Contract liaison contact email]</p>
Education Institution	<p>Name: [IMS Contract liaison name]</p> <p>Address: [IMS Contract liaison address]</p> <p>Email: [IMS Contract liaison contact email]</p> <p>University academic name: [IMS University academic name]</p>
Student	<p>Name: [IMS Student name]</p> <p>Address: [IMS Student address if available]</p> <p>Email: [IMS Student email]</p>

Special Conditions

	Condition	Type	Date Due
1	[Enter details from IMS]		
2			
3			