MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Date:

Funding Agreement for a New to R&D Grant between Ministry of Business, Innovation and Employment and [ ]

Contract number:

EXAMPLE ONLY

Signed for and on behalf of **the Sovereign in right of New Zealand acting by and through the Secretary for Business, Innovation & Employment and Chief Executive, te Tumu Whakarae mō Hīkina Whakatutuki or their authorised delegate** :

Signature:

Name:

Date:

Title:

Signed for and on behalf of **[ ]:**

Signature:

Name:

Date:

Title:

Unless your company constitution requires it, signatures are not required to be witnessed.

In the presence of:

Signature:

Name:

Date:

EXAMPLE ONLY

Funding Agreement dated

between the Sovereign in Right of New Zealand acting by and through the Secretary for Business, Innovation & Employment and Chief Executive, Te Tumu Whakarae mō Hīkina Whakatutuki ("Ministry")

("**we**", "**us**", **or** "**our**")

and [ ] ("Grant Recipient")

("**you**" or "**your**")

BACKGROUND

A. The Ministry 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 New to R&D Grant Scheme aims to support long term economic growth in New Zealand by increasing the number of New Zealand businesses engaging in R&D.

C. In particular, the New to R&D Grant Scheme's purpose is to provide support to businesses that are new to R&D for a limited time to build their capabilities to perform R&D on a systematic basis over the longer term. The intention is for each grant recipient to continue to perform R&D but transition onto the R&D Tax Incentive at the end of the Grant Period.

D. The New to R&D Grant Scheme provides recipients with Funding for 40% of their Total Eligible R&D Costs (up to a maximum of NZ$400,000) which includes costs for both R&D and Capability Development.

E. This Agreement sets out the terms on which the Ministry agrees to provide funding for Approved Eligible Costs.

AGREEMENT

1 INTRODUCTION

1.1 You have applied to us for a grant under the New to R&D Grant Scheme to provide funding towards the Total Eligible Costs described in your Application.

1.2 Your Application has been approved. By signing this Agreement, you agree to comply with the terms set out in this Agreement.

2 DEFINITIONS AND INTERPRETATION

2.1 In this agreement:

"**Agreement**" means this funding agreement, which includes these terms, the terms in the Schedule, and any variation or additional schedule as agreed by the Parties from time to time.

"**Application**" means your application for a grant under the New to R&D Grant Scheme, completed and submitted through our online portal or in such other manner as we may specify or permit from time to time.

"**Approved Eligible Costs**" means the amount of your Total Eligible Costs that we have agreed to fund.

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"**Capability Development**" means the development of capabilities within your business to perform R&D on a systematic basis over the longer term.

"**Capability Development Change Request** " has the meaning in clause 8.1 of this agreement.

"**Change in Control**" means an event or series of events which result in any person (acting alone) or group of persons (acting in concert) acquiring or ceasing to have the ability:

a. to control more than 50% percent of your voting shares;
b. to appoint and/or remove the majority of the members of your governing body;
c. to otherwise control or having the power to control your affairs and policies; or
d. to be in a position to derive the whole or a majority of your benefit.

"**Contract End Date"** means the contract end date set out in the Schedule.

"**Contract Start Date**" means the contract start date set out in the Schedule.

"**Claim**" means a claim for Funding made in accordance with this Agreement, and "**Claims**" and "**Claimed**" have similar meanings.

"**Conflict of Interest**" in relation to the Grant Recipient means any conflict of the Grant Recipient's interest or obligations with its responsibilities under this Agreement. A conflict of interest means that the Grant Recipient's independence, objectivity or impartiality can be called into question. A conflict of interest may be:

a. actual: where the conflict actually exists; or
b. potential: where the conflict is about to happen, or could happen; or
c. perceived: where other people may reasonably think that a person is compromised;

"**Cost Template**" means the costs template completed by you, in the form set out in the template provided by us (and attached to this Agreement), to be reviewed and assessed by us.

"**Eligible Entity**" means one of the following:

a. a company incorporated and registered in New Zealand under the Companies Act 1993;
b. a limited partnership registered under the Limited Partnerships Act 2008; or
c. a Māori incorporation or a trust established under Te Ture Whenua Māori Act 1993 or a similar organisation managing Māori assets under multiple ownership.

"**Final Claim**" has the meaning in clause 5.3 of this Agreement.

"**Funding**" means the money provided, or to be provided, to you under this Agreement in the amount set out in the Schedule.

"**Grant Period**" has the meaning in clause 11 of this Agreement.

"**Independent Trustee**" means a trustee that is a solicitor, accountant, professional adviser or other person acting in an independent role that is not a beneficiary or settlor of the trust (and whose relatives, spouse or partner, direct or indirect shareholders, directors or other members are not beneficiaries or settlors of the trust).

"**Intellectual Property Rights**" includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity.

"**Invoice**" means a single document that includes all Taxable Supply Information.

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"**IR**" means Inland Revenue.

"**New to R&D Grant Scheme**" means the R&D grant scheme administered by us under which we provide grants to provide support to businesses that are New to R&D for a limited time to build their capabilities to perform R&D on a systematic basis over the longer term.

"**Parties**" means the Ministry and the Grant Recipient and their respective successors and permitted assigns.

"**Personnel"** of any person, means all individuals directly or indirectly engaged by that person. Examples include directors, employees, specialists, support staff and co-opted or seconded staff;

"**R&D**" means research and development.

"**R&D Change Request**" has the meaning in clause 7.1 of this Agreement.

"**RDTI**" means the R&D tax incentive operationalised by us and IR.

"**Required Co-Funding**" has the meaning in clause 3.3 of this Agreement.

"**Schedule**" means the schedule to this Agreement.

"**Taxable Supply Information**" has the meaning given to that term in section 19E of the GST Act.

"**Total Eligible Costs**" means the eligible costs set out in the guidance document "Eligible Costs for New to R&D Grant" published on our website as at the date of this Agreement and is the total cost for the eligible activities as set out in your Costs Template.

"**we**", "**us**", "**our**" and related terms mean the Ministry.

"**you**" and "**your**" means the Grant Recipient set out in the Schedule.

2.2. In addition, in this Agreement and unless the context requires otherwise:

a. headings and examples are for reference only;
b. the singular includes the plural and vice versa;
c. a reference to any document or agreement, including this Agreement, includes that document or agreement as amended, assigned, novated, supplemented, restated or substituted from time to time, except to the extent prohibited by this Agreement;
d. a reference to any monetary amount is to New Zealand currency;
e. a party to this Agreement or another agreement includes its successors and its permitted assignees and transferees;
f. any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;
g. a reference to "in writing" (or equivalent) includes provision by email or through online services operated by us (including the online grants portal); and
h. if you are the trustees of a trust or otherwise do not have separate legal personality, the terms "you" or "your" (unless the context requires otherwise) also include each of your trustees or members jointly and severally, and you are still bound by this Agreement despite any changes to your membership or formation, including by death, incapacity, or retirement of any trustee or member, the admission of any new trustee or member, or in any other way.

3 FUNDING

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3.1 We will make the Funding available to you following receipt of valid Claims submitted in accordance with this Agreement.

3.2 The Funding is only available to you, and you must use the Funding:

a. in accordance with the declarations, representations and statements made in your Application;
b. to fund Approved Eligible Costs incurred during the Grant Period; and
c. for no other purpose.

3.3 In addition, and separate to the Funding, you must invest an amount into your Total Eligible Costs ("**Required Co-Funding**") which is sufficient to ensure that the amount of the Funding that is used to fund your Approved Eligible Costs is no more than 40% of your Total Eligible Costs.

Example:
- Your Total Eligible Costs NZ$1,000,000.
- You may make Claims for up to NZ$400,000 for Approved Eligible Costs.
- Your Required Co-Funding is at least NZ$600,0000 (i.e. 60%) of your own money to fund the remaining Total Eligible Costs.

3.4 Your Required Co-Funding must not be funded by funding provided by any public sector agency or entity.

4 CAPABILITY DEVELOPMENT ACTIVITIES

4.1 Your Costs Template must include at least 2 Capability Development activities selected from the 7 Capability Development categories set out in the guidance document "Eligible Costs for New to R&D Grant" published on our website as at the date of this Agreement.

4.2 You must complete the Capability Development activities set out in your Costs Template and, if applicable, set out in your Capability Development Change Request by the end of the Grant period.

5 PAYMENT

5.1 You must submit a Claim at least once every quarter during the Grant Period. You may submit Claims more frequently, but not less frequently. Each Claim must be made in the form specified by us from time to time and must include the details set out in the Schedule.

5.2 If we find the Claim satisfactory in all respects, we will pay the Claim at the next available payment date. We are not obliged to make any payment under this Agreement until a claim that has complied with clause 5.1 has been received by us from you.

5.3 No later than 3 months after the end of the Grant Period, you must issue us with a final Claim that includes:

a. a final valid Invoice that sets out the outstanding Approved Eligible Costs for which you are claiming; and
b. a final report on your Total Eligible Costs as set out in the Schedule ("**Final Claim**").

5.4 The Claim must be submitted no later than 3 months after the Grant Period. We are not liable to pay any further amounts under this Agreement after that date.

6 REPORTING AND RECORD KEEPING

6.1 Monitoring your Total Eligible Costs enables us to:

a. identify and report on the benefits to New Zealand arising from your R&D and Capability Development; and
b. ensure we can take appropriate action if you do not comply with this Agreement.

6.2 You must provide us, or our authorised agents, with the reports in accordance with the Schedule, and at any other time upon request.

6.3 All reports must:

a. be accurate;

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b. be provided in a timely manner and no less than quarterly;
c. be in the form and manner specified by us from time to time; and
d. include all information specified in the Schedule, and any other information that we may request from time to time.

6.4 You must:
a. keep full, accurate and maintain up-to-date records in connection with the use of the Funding including of your Total Eligible Costs (including supporting documentation for all amounts payable by us), in accordance with recognised research and generally accepted accounting standards (and any other standards as notified by us from time to time) sufficient to enable us to meet our obligations under the Public Finance Act 1989;
b. retain such records for 7 years from the expiry or termination of this Agreement; and
c. on our request, and at no cost to us, provide us with copies of any such records and any information or materials as we may reasonably request in any format and on any medium reasonably required by us.

6.5 All Intellectual Property Rights in the reports provided under this clause 6 in accordance with the Schedule will be owned by the Ministry from the date the reports are created or developed.

7 R&D CHANGE REQUEST

7.1 You may submit a request to us for review to apply any unclaimed balance of your Approved Eligible Costs to R&D that is different to that described in your Application ("**R&D Change Request**").

7.2 A R&D Change Request will be approved at our sole discretion, and is subject to:
a. confirmation that you have submitted Claims for all Approved Eligible Costs incurred to date;
b. you having completed the Capability Development activities set out in your Costs Template and, if applicable set out in your Capability Development Change Request;
c. your completion of an application form, as prescribed by us from time to time; and
d. any other administrative requirements required by us.

8 CAPABILITY DEVELOPMENT CHANGE REQUEST

8.1 The New to R&D Grant Scheme is intended to build Capability Development in your business. You may submit a request to us for review to increase your Approved Eligible Costs in order to undertake Capability Development activities additional to those set out in your Costs Template ("**Capability Development Change Request**")

8.2 A Capability Development Change Request will be approved at our sole discretion, and is subject to:
a. Your Approved Eligible Costs not exceeding the maximum grant amount of NZ$400,000
b. your completion of an application form, as prescribed by us from time to time; and
c. any other administrative requirements required by us.

8.3 For the avoidance of doubt, your Approved Eligible Costs will not be increased for R&D.

9 CHANGE EVENT

9.1 A change event ("**Change Event**") occurs if either party receives new information, or an event occurs or is likely to occur, that materially affects or is likely to materially affect this Agreement, your R&D or Capability Development and includes without limitation the following:
a. an event that prevents, or is likely to prevent, either party from being able to meet its obligations under this Agreement, including any obligation relating to:
I. the Funding or any Required Co-funding; or
II. your ability to carry out and complete your R&D or Capability Development, including among other things changes to your governance, senior management or business structure;
b. a Change in Control of the Grant Recipient without our prior written consent;

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c. an actual or likely change in your ownership or sale of any of your assets, which materially adversely affects, or is likely to materially adversely affect the anticipated benefits for New Zealand of your R&D, including any planned R&D activity in New Zealand, and the timing of those benefits; or

d. any significant issues or risks relating to your R&D, Capability Development or this Agreement, which may include:

I. loss of critical resources (including loss of people, loss of co-funding, or infrastructure);

II. the scientific or technical approach changing significantly;

III. scientific, technical or financial fraud;

IV. material changes to your organisation, including changes to your organisation's core strategy/directions; or

V. anything that puts your ability to undertake your R&D or Capability Development at serious risk.

9.2 If we have grounds to believe that a Change Event may have occurred, while we are determining whether a Change Event has occurred we may:

a. advise you by notice that we believe a Change Event may have occurred and that we are in the process of determining whether a Change Event has in fact occurred; and

b. suspend payment of the Funding while we make that determination (if, in our reasonable opinion, your ability to carry out your R&D or Capability Development may be adversely affected if the relevant Change Event has occurred).

9.3 If a Change Event occurs:

a. the Party with knowledge of the Change Event must immediately advise the other Party of the Change Event by written notice;

b. the Parties will discuss together the 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;

c. we may suspend payment of the Funding if in our reasonable opinion your ability to carry out the R&D specified in your Application or Capability Development specified in your Capability Development Plan is adversely affected; and

d. we may undertake an investigation of your situation to help us decide how to respond to the Change Event.

9.4 When discussing options to resolve a Change Event under clause 9.3(b), each Party will act in good faith and consistently with:

a. the value for money of the R&D specified in your Application or Capability Development activities set out in your Costs Template; and

b. the anticipated benefit to New Zealand from your R&D and maintaining research capability critical to New Zealand.

9.5 If the Parties are unable to resolve a Change Event by one month after the date of the notice given under clause 9.3(a), either Party may immediately terminate this Agreement by written notice.

9.6 Nothing in this clause prevents either Party from exercising its powers under clause 12.

10 INVESTIGATION

10.1 We are entitled at any time to investigate:

a. your compliance with this Agreement; and

b. whether you met the criteria to be eligible to participate in the New to R&D Grant Scheme at the time you made your Application.

10.2 In conducting an investigation under clause 10.1, we may give you written notice requiring you to provide us or our authorised agent with:

a. any information we reasonably require, including reasonable access to your staff, third parties and third party research contractors, premises and equipment used; and

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b. such copies of your books, records and accounts, and any other information, that are relevant to your participation in the New to R&D Grant Scheme, including your compliance with this Agreement, the R&D specified in your Application and the Capability Development activities set out in your Costs Template.

10.3 You must:

a. take all reasonable steps to co-operate with us or our authorised agent if we carry out an investigation under clause 10.1 and otherwise take all reasonable steps to facilitate that investigation, including (but without limitation) by permitting us or our authorised agent to have access to and to inspect the premises at which the R&D specified in your Application, or the Capability Development specified in your Capability Development Plan, is carried out; and

b. comply with a notice given under clause 10.2 above.

10.4 If the investigation reveals a breach by you, we may advise you of our decision to do one or more of the following at our sole discretion:

a. take no further action;

b. provide you with notice of the remedial actions you must take to address any issues identified by the investigation (whether or not those issues constitute a breach of this Agreement), and any reports or information you must provide to us about those actions;

c. give you notice that we consider a Change Event has occurred pursuant to clause 9;

d. terminate this Agreement; and/or

e. recover all or part of the Funding pursuant to clause 13.

10.5 We may suspend payment of the Funding from the date of the notice provided under clause 10.2 if we consider that you may have breached this Agreement. In such case:

a. we will give notice specifying that payment of the Funding has been suspended; and

b. if the investigation shows that you have not breached this Agreement, we will pay any unpaid approved Claims. If there has been a material delay to your R&D or Capability Development as a result of the suspension of Funding under this clause, the matter will be deemed to be a Change Event, to be resolved in accordance with clause 8.

11 GRANT PERIOD

11.1 The grant period starts on the date set out in the Schedule ("**Contract Start Date**") and ends on the earlier of:

a. the date 2 calendar years after the Contract Start Date; or

b. the date this Agreement is terminated under any of clauses 9.5, 10.4 or 12, ("**Grant Period**").

12 TERMINATION, REDUCTION AND SUSPENSION OF FUNDING

12.1 We may terminate this Agreement immediately by giving notice to you, if you:

a. are in breach of your obligations under this Agreement and that breach is not capable of being remedied;

b. fail to remedy any breach of your obligations under this Agreement within 5 business days of receipt of notice of the breach from us;

c. do or omit to do something, or any matter concerning you comes to our attention which in our opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;

d. have given or give any information to the Ministry which is misleading or inaccurate in any material respect;

e. becomes insolvent, bankrupt or subject to any form of insolvency action or administration; or

f. has any Conflict of Interest that:

i. in our opinion is so material as to impact adversely on your participating in the New to R&D Grant Scheme, the Ministry or the New Zealand Government;

ii. you fail to notify us of; or

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iii. in our opinion you are unable or unwilling to resolve or deal with as required by us acting reasonably.

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12.2 If funding allocated to us for the New to R&D Grant Scheme is reprioritised, reduced, suspended or terminated, for any reason, or exhausted, we may give you notice of our decision to:

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

12.3 We may terminate this Agreement at any time by giving at least 10 business days written notice to you.

12.4 Termination of this Agreement is without prejudice to the rights and obligations that the Parties have accrued up to and including the date of termination.

12.5 On termination of this Agreement, we may (without limiting any of our other rights or remedies):

a. require you to provide evidence of how the Funding has been spent; and/or
b. require you to refund to us:
   iv. any of the Funding that has not been spent or committed by you. For the purposes of this clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out your R&D or Capability Development and you, after using reasonable endeavours, are unable to secure a refund or release from that promise (as the case may be); or
   v. the proportion of the Funding that equates to the uncompleted part of your R&D or Capability Development, as reasonably determined by the Ministry; and/or
c. if the Funding has been misused, or misappropriated, by you, require you to refund all Funding paid up to the date of termination.

13 RETURN AND REPAYMENT OF FUNDING (CLAWBACK)

13.1 You must return all or some of the Funding (as determined by us) if:

a. you fail to complete the Capability Development activities set out in your Approved Costs Template by the end of the Grant Period;
b. you misappropriate or misuse the Funding;
c. you provide us with incorrect information;
d. you Claim and receive Funding for which you were not eligible (including receiving Funding for an expense that you have already received Funding for);
e. this Agreement is terminated (provisions in clause 12.5 apply);
f. you otherwise breach this Agreement; or
g. enter into a contract or arrangement (including a Change in Control) that materially reduces your current or future capability to carry out planned R&D activity in New Zealand.

13.2 Unless otherwise agreed by us, you must return any unspent Funding to us within 10 business days of the Contract End Date.

13.3 This clause 13 continues to apply after the end of the Grant Period.

14 INDEMNITY, LIABILITY, AND INSURANCE

14.1 You indemnify us against any claim, liability, loss or expense, including without limitation, legal fees on a solicitor own client basis, brought or threatened against or incurred by us, arising from or in connection with a breach of this Agreement by you, or from the negligence or wilful misconduct of you or your Personnel.

14.2 To the maximum extent permitted by law, the maximum liability of the Ministry under or in connection with this Agreement, whether arising in contract, tort (including negligence), or otherwise, is the total amount which would be payable under this Agreement.

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14.3 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.

14.4 Where any person has entered into this Agreement as an independent trustee of the trust and are identified as an independent trustee, the Ministry acknowledges that provided the independent trustee has no interest in any of the assets of the trust other than as trustee and, except where the independent trustee acts fraudulently, they are liable under this Agreement only to the extent of the value of the assets of the trust available to meet your liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the independent trustee's wilful default or dishonesty.

14.5 Where any person enters into this Agreement as a trustee of a trust, then (in addition to their warranty in clause 14) they warrant that:

a. they have signed this Agreement in accordance with the terms of the trust;
b. they have the right to be indemnified from the assets of the trust; and
c. all trustees of the trust have approved entry into this Agreement.

14.6 You must effect and maintain for the term of this Agreement:

a. adequate insurance to cover standard commercial risks; and
b. other insurance reasonably required by the Ministry.

14.7 You must, upon request by the Ministry, provide the Ministry with evidence of your compliance with clauses 14.5 and 14.6.

15 WARRANTIES AND REPRESENTATIONS

15.1 You represent and warrant to us that:

a. all information (including declarations, 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 is true and accurate, and there are no facts or circumstances which have not been disclosed to us which would make that information untrue, inaccurate or misleading;
b. any person completing your Application and/or signing this Agreement and delivering it to us on your behalf has authority to do so;
c. (if you are not a natural person) you are duly established, registered (to the extent applicable) and existing under the laws of New Zealand, and your board or committee or equivalent has been correctly and validly appointed;
d. (if you are a natural person acting as a trustee of a trust) you have full mental capacity, are not a minor and are physically located and legally working in New Zealand (allowing for temporary absences);
e. no action has been taken for or with a view to:
    i. (if you are not a natural person) your dissolution, termination, disestablishment, deregistration, winding up or other end;
    ii. (if you are a limited partnership) removing your general partner; or
    iii. the appointment of a liquidator, statutory manager, administrator, receiver, bankruptcy official or similar officer in respect of you or any of your assets;
f. (if you are the trustee(s) of a trust) you have not lost, limited or prejudiced your right to be re-imbursed from the trust property;
g. you have the power to enter into and perform your obligations under this Agreement, have taken all necessary action, to authorise that entry and performance, and hold all necessary authorisations and consents for that entry and performance; and

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h. your entry into, and the performance of your obligations, under this Agreement, do not and will not breach any agreement or instrument binding upon you or any of your assets (including any other agreement).

15.2 The representations made above are deemed to be repeated by you on each day during the Grant Period and until any Final Claim is made under clause 5.3.

16 UNDERTAKINGS

16.1 You must undertake the R&D and Capability Development as described in your Application Costs Template and this Agreement.

16.2 In undertaking the R&D and Capability Development, you must comply with all applicable laws, regulations, rules and professional codes of conduct or practice.

16.3 You undertake to us that, during the Grant Period and until any Final Claim is issued under clause 5.3, you will:

a. be an organisation that meets the definition of an Eligible Entity under this Agreement;
b. promptly obtain, comply with and do everything needed to maintain any authorisations required to enable you to perform your obligations under this Agreement;
c. promptly notify us if:
    I. any Change Event occurs; or
    II. you cease to carry on the business in connection with which the Total Eligible Costs were carried out; and
d. comply with each declaration, statement, agreement and undertaking made in your Application and this Agreement including in relation to (without limitation):
    I. use of the Funding (including restrictions as to application and distribution of proceeds); and
    II. keeping of evidence, materials or other records, and provision to us for audit purposes (as required).

17 CONFIDENTIALITY, PRIVACY AND OFFICIAL INFORMATION ACT

17.1 You acknowledge that we will collect information relevant to the administration, enforcement, monitoring and evaluation of the New to R&D Grant Scheme, policy development more generally, analysis of business performance, and other related research, including business-level information on all applicants for funding under the New to R&D Grant Scheme. For these purposes we may obtain personal information about you from your Application, our own records, and other government departments and government agencies and (where reasonably necessary) from third party organisations.

17.2 You consent and agree to us sharing the information described in clause 17.1 and any other information collected or generated as a consequence of administering the New to R&D Grant Scheme to:

a. our authorised agents and advisers for the purposes of administering this Agreement;
b. enable us to monitor and evaluate the New to R&D Grant Scheme and policy development more generally;
c. Statistics New Zealand, on an annual basis, for the purpose of making it available to researchers on a de-identified basis through its longitudinal business database (for business-level information) or the integrated data infrastructure (for individual-level information);
d. IR, for the purposes of onboarding to the RDTI;
e. other government departments or agencies for the purposes of achieving wider government policy objectives;
f. with any debt recovery organisation or similar agency for the purposes of collection or enforcement, and with any credit reporting agency;
g. or to any other person as required at law, under any regulation or to provide an answer to any parliamentary questions, meet any parliamentary requirements, or provide information to a Minister.

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17.3 You acknowledge that we are subject to the Official Information Act 1982 and that we are obliged to disclose information under the Act if requested to do so and provided there are no grounds under that Act to withhold the information. You agree that we may release the following information relating to this Agreement:

a. your name and business location;
b. the Contract ID;
c. the short title of your Application;
d. the grant type; and
e. the Contract Start Date and the date the Grant Period ends.

17.4 When sharing your information under clauses 16.2 and 16.3, we will take reasonable steps to endeavour to protect your personal, confidential and/or commercially sensitive information, including where necessary, de-identifying and/or redacting information that is not necessary to share to meet our obligations.

18 HEALTH AND SAFETY

18.1 You must promptly notify us of any notifiable events under the Health and Safety at Work Act 2015 that occur in the performance of the Agreement or that have the potential to impact the performance of the Agreement.

18.2 We may suspend this Agreement immediately by giving written notice to you if we have what we consider are material concerns about your health and safety practices. Upon notice of the suspension, you will have an opportunity to rectify the health and safety issue(s) specified in the notice to the satisfaction of us. If the health and safety issue(s) specified in the notice are not rectified to our satisfaction within 20 business days, we may terminate the Agreement immediately under clause 12.1.

19 CONFLICT OF INTEREST

19.1 You must maintain a high standard of honesty and integrity at all times in the performance of this Agreement and must avoid Conflicts of Interest.

19.2 You warrant that, as at the Contract Start Date, you have no Conflict of Interest, other than any that you have declared to us and which we have accepted in writing on the basis that you have implemented an appropriate management plan for such Conflict of Interest.

19.3 Without limiting clause 0, you must:

a. immediately notify us in writing if a Conflict of Interest arises; and
b. take all actions reasonably required by us to manage any such Conflict of Interest.

20 FORCE MAJEURE

20.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("**Force Majeure Event**"). The Party affected ("**affected party**") must:

a. notify the other Party ("**non-affected party**") as soon as practicable after the Force Majeure Event occurs of the nature and expected duration of the Force Majeure Event and keep the non-affected party reasonably informed of the steps the affected party is taking to mitigate and remedy the Force Majeure Event;

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b. use reasonable endeavours to mitigate the effect of the Force Majeure Event; and

c. continue to perform its obligations under this Agreement to the extent reasonably practicable; and

d. resume full performance of its obligations under this Agreement as soon as reasonably practicable.

21 GENERAL

21.1 Notices:

a. Any communication to be made under this Agreement must be made in writing and shall be:
   I. provided through our online portal or any other online service as we may designate from time to time;
   II. delivered or sent to the address or email address of the relevant party, and marked for the attention of the person or office holder, set out in your Application (in the case of communications from us to you) or for that purpose on our website (in the case of communications from you to us); or
   III. such other address or email address as that party may from time to time designate to the other).

b. Any communication to be made under or in connection with this Agreement shall be deemed to have been made:
   I. if delivered through our online service or by hand, upon delivery;
   II. if sent by pre-paid post, 3 business days after posting; and
   III. if sent by email, when actually received in the recipient's inbox in readable form.

21.2 **Amendment**: This Agreement may only be varied by agreement in writing signed by the Parties.

21.3 **Independent Trustees**: The liability of any Independent Trustee under this Agreement is limited to the trust property available to meet that liability. However, this limitation does not apply if the relevant Independent Trustee loses its right to be indemnified out of the trust property, or diminishes the value of the trust property through its fraud or wilful breach of trust (in which case we can claim against that Independent Trustee personally to the extent we are unable to recover amounts due to us from the trust property).

21.4 **Publicity**:

a. Any media release or other public statements produced or contributed to by you that refers to us or includes quotes from our staff must be approved by us in writing prior to publication or release.
b. You must provide any such proposed media release or public statement to us for our written approval at least 48 hours before the proposed publication or release time.
c. Any media release or other public statement produced by you that refers or otherwise relates to the Total Eligible Costs must refer to your participation in the New to R&D Grant Scheme (unless you have good reason to exclude such a reference).
d. You must notify us of any enquiry made by the media to you or your staff relating to your R&D or Capability Development that is funded by your Funding.

21.5 **Assignment**:

a. You are not permitted to assign or transfer any of your rights or obligations under this Agreement without our prior written consent.
b. We may:
   I. assign or transfer any of our rights, powers and obligations under this Agreement without your consent; and
   II. disclose to any potential assignee or transferee such information (including personal information) about you and this Agreement as we consider appropriate. Any assignee or transferee may use such information for the same purposes and in the same manner as we can.

EXAMPLE ONLY

21.6 **No waiver**: No failure on our part to exercise and no delay in exercising, any right under this Agreement operates as a waiver of that right, nor shall any single or partial exercise of any right under this Agreement prevent any other or further exercise thereof or the exercise of any other right. The remedies provided under this Agreement are cumulative and not exclusive of any remedies provided by law.

21.7 **Partial invalidity**: The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision.

21.8 **Governing law**: This Agreement will be governed by and construed in accordance with the laws of New Zealand and the Parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts.

21.9 **Survival of clauses**: Expiry or termination of this Agreement for any reasons does not affect the validity or enforceability of this clause 18.10, clause 6 (*Reporting and Record Keeping*), clause 10 (*Investigation*), clause 13 (Return and Repayment of Funding (*Clawback*)), clause 14 (*Indemnity and Liability*), clause 17 (*Confidentiality, Privacy and Official Information Act*), clause 21.1 (*Notices*), clause 21.6 (*No waiver*) and clause 21.8 (*Governing Law*).

21.10 **Entire Agreement:** This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

EXAMPLE ONLY

SCHEDULE
Agreement Details – New to R&D Grant

YOUR DETAILS:

Organisation name	
Physical Address	
Address for Notices	
Contact person	
Contact phone	
Contact Email	

APPROVAL DETAILS:

Application Reference	**Application**:	
Grant Period (clause 11)	**Contract Start Date:**	
	Contract End Date: (*ie the date that is 2 years from the Contract Start date, unless the Agreement is terminated earlier*)	
Funding (clause 3)	**Contract ID**:	
	Eligible Costs	
	Co-funding rate	%
	Funding	
	Required Co-funding	

EXAMPLE ONLY

	Unless expressly permitted by Callaghan Innovation and stated within your approved Cost Template, any research and development undertaken outside of New Zealand will not be considered part of your Total Eligible Costs.

REPORTING:

Reporting (clauses 5.1 and 6)	With each Claim and Invoice (minimum quarterly), you must provide a report (in the form specified by Callaghan Innovation via the online portal) that includes the following: • your performance of the R&D or Capability Development specified in your Application to date; • the costs incurred by you to date within the approved Costs Template, and must be in an excel format; • your GST Invoice must be accompanied by all Invoices for any expenditure over NZ$2,500 and all international Invoices or Invoices in foreign currencies in respect of overseas labour (regardless of value). If your Invoice is for items that are all below NZ$2,500, please provide a listing of expenses incurred; • for all international Invoices or Invoices in foreign currencies (including, but not limited to, those for overseas labour costs), proof of payment showing a NZ$ transaction (e.g. a bank statement) so that we can validate the NZ$ amount being Claimed; • any matter that may affect your ability to complete your R&D or Capability Development; and • such other information that we may request from time to time.	
	Due date	No less than quarterly
Additional Reporting (clause 6.2)	You must, if requested by Callaghan Innovation, provide the following (included as examples): • a financial report/statements at the end of each financial year during the Grant Period and for the two financial years after the Grant Period; • a completed survey response about your R&D and Capability Development, which may require you to provide information about the benefits to New Zealand arising from your R&D and Capability Development; or • a remedial report, as part of remedial action sought following an investigation (refer clause 10).	
	Due date	Upon request
Final Report (clause 5.3)	You must provide a final report, together with your Final Claim and Invoice, no later than 3 months after the end of the Grant Period. If the final report is not received by the due date or you have not completed the required Capability Development activities by the end of the Grant Period, Callaghan Innovation is not liable to make the payment to you.	
	Due date	No later than 3 months after the Contract End Date (the end of the Grant Period)
Amendments (clause 18.2)		

SPECIAL CONDITIONS:

EXAMPLE ONLY

Condition	Condition type	Due date	Date satisfied

EXAMPLE ONLY