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Cooperative Research Centres (CRC) Program

Contract Variation Guidelines May 2019

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1 Introduction

1.1 Scope of these Guidelines

These guidelines set out the department's requirements regarding contract variation requests to the Grant Agreement¹ and provide direction to CRCs about the variation process.

Note: These guidelines are written for CRC Recipients and should be read in conjunction with your Grant Agreement. In the case of any inconsistency between the Grant Agreement and these guidelines, the Grant Agreement prevails.

1.2 Compliance with the Grant Agreement

It is the responsibility of you as the Recipient² to ensure the Activities are carried out at all times in accordance with the Grant Agreement. You must notify the department immediately upon becoming aware of any circumstances likely to adversely affect your ability to comply with the terms of the Grant Agreement. Specifically, you may request changes to alter the information contained in the schedules of the Grant Agreement, in accordance with any relevant clauses.

Note: Further guidance on compliance with the Grant Agreement can be found in the Recipient obligations section of the Grant Agreement.

2 Varying the Grant Agreement

2.1 Cases where the Recipient initiates the Variation

You, as the Recipient, may request approval for changes at any time. You should contact your Program Liaison Officer to discuss the nature of the variation request and submit a 'Contract Variation Request' form (Attachment A) and accompanying documentation. This request must be approved by the CRC Board and have in principle agreement from all Participants/Partners³.

Based on the information provided, the department, at its sole discretion, will determine whether the proposed changes require the execution of a Deed of Variation between the department and the Recipient. Changes impacting the activities of the CRC (including research, outcomes, outputs or milestones), Budget or Participants/Partners⁴ will require the execution of a Deed of Variation.

If you wish to make changes affecting the current financial year, the approved 'Contract Variation Request' form and all supporting documents must be submitted to the department by 30 April so changes can be in place before the end of the financial year for reporting processes.

In some instances, the department may refer the request to the CRC Advisory Committee for advice on whether:

- The changes retain an 'equivalence' to the proposal approved by the Minister;
- You could still be expected to achieve the outputs and impacts /outcomes outlined in the application; and
- The revised proposal would have been competitive if considered as part of the same selection round.

¹ The funding agreement with the Commonwealth is called the Grant Agreement. Previously it was called the Commonwealth Agreement or the Funding Agreement. In these Guidelines the term Grant Agreement is used to cover all these Agreements.

² The Recipient is the party (or parties) from the CRC who signs the Grant Agreement. For most CRCs it is the CRC Entity.

³ From Round 21 'Participants' are now known as 'Partners'.

⁴ Excluding Other Participants (for Round 17 and earlier).

2.2 Cases where the Department initiates the Variation

The department can give notice and initiate a variation if it deems necessary. For example, the department may initiate a variation to address any issues or recommendations arising from reviews of the CRC or reports submitted by you.

The department may also request a variation for other reasons, such as changes to the CRC Program or a legislative change affecting the Grant Agreement.

3 Other Agreements

You must not make any changes to the Partners Agreement, Company Constitution or Manager's Agreement which may affect your ability to comply with the Grant Agreement, without prior written approval of the department.⁵

For the purposes of these guidelines, the 'Partners Agreement' refers to the document that deals with the relationship, arrangements and obligations between Partners and you.

3.1 Variation of the Participants/Partners Agreement

The department is not a party to the Participants/Partners Agreement, however in accordance with the provisions of the Grant Agreement, changes to the Participants/Partners Agreement resulting in alteration to the information contained in the schedules and relevant clauses of the Grant Agreement will require the prior written approval of the department.

It is the responsibility of the relevant parties to execute a variation to the Participants/Partners Agreement separate to any variation to the Grant Agreement. You must vary the Participants/Partners Agreement to reflect the changes to the Grant Agreement.

The department must be provided with a copy of any alteration or variation to the Participants/Partners Agreement within 10 Business Days of execution of the amendment⁶.

4 Variation Process

This section provides an overview of the expected process for most variations where the execution of a Deed of Variation is required, and is a guide only.

4.1 Submitting a request for Variation

Step 1

- Contact your Program Liaison Officer as soon as there is an expectation the information in the schedules of the Grant Agreement may need to change.
- Prepare a 'Contract Variation Request' form and the proposed schedules, with all changes clearly marked in track changes. The department can provide electronic versions of these schedules to you, if requested, including a Budget Schedule spreadsheet.
- Seek advice from your Program Liaison Officer to ensure all necessary documentation needed to submit a valid request is prepared.

Step 2

- Obtain in-principle agreement from all Participants/Partners for the proposed variation.
- Obtain Board approval of the request.

⁵ Refer to the relevant Participant/Partner obligation/requirement clause of the Grant Agreement.

⁶ Refer to the relevant Participant/Partner obligation/requirement clause of the Grant Agreement.

Step 3

- Submit a completed 'Contract Variation Request' form to the department, covering all the information requested on the template, together with the proposed schedules. All changes to the schedules must be clearly marked, preferably by using the 'track changes' function or highlighting relevant cells in the Excel spreadsheet.

4.2 Processing the request for Variation

The department will consider the request to determine whether it is acceptable and/or whether it needs to be referred to the CRC Advisory Committee or the responsible Minister for consideration.

If a request is incomplete, the department will contact you to advise which documents or information must be provided before the request can be considered.

If there are any parts of the request we cannot agree to, the department may negotiate with you to reach an in-principle agreement to acceptable changes. If required, the department may request you obtain Board approval for the negotiated changes.

Following in-principle agreement, the department will prepare and send the Deed of Variation to you electronically. You must sign the Deed of Variation, then scan and return it to the department for execution.

The department will email an electronic copy of the executed Deed of Variation to you.

The Deed of Variation does not take effect until it has been executed by the department.

4.3 Following execution of the Deed of Variation

The department will update details of the Deed of Variation in CRC Online for CRCs in Round 18 and prior.

For post Round 18 CRCs, the Quarterly Report Financial Spreadsheet will be updated with details of the Deed of Variation and emailed to you for ongoing reporting purposes.

5 Important Notes

- More than one change can be incorporated into a single request.
- Requests may be referred to the CRC Advisory Committee or the responsible Minister for consideration if required.
- The department may request additional information from you in relation to any change request, and/or seek the advice of relevant experts at any time.
- If relevant, the department may ask you to update the Impact Tool in relation to a change request.
- The department will consider requests to change figures to prior financial years to ensure contributions and expenses reflect actuals, and to allow projected figures to balance.
- Any requested changes to participant/partner contributions must also be reflected in the expenses and allocation of resources tables of the Budget schedule.
- You should consider the effect of any change/s to other contracts or agreements you may have entered into on your ability to comply with the Grant Agreement.
- Once the Deed of Variation is executed, you may be required to vary the Participants/Partners Agreement to reflect the changes to the Grant Agreement. A copy of the varied Participants/Partners Agreement must be submitted to the department within 10 days of execution.

Attachment A: Contract Variation Request

Attachment A is available as a separate document.