FEATURE ARTICLE

Veterinary clinical trial agreements in the EU: a guide to key provisions

Animal health companies that wish to conduct veterinary clinical trials in the EU should be aware of the VICH Guideline on Good Clinical Practices (GCP). Although the Guideline is not binding, it is intended to facilitate the mutual acceptance of clinical data by the EU, US and Japanese regulatory authorities. Susan J Clements, an associate at the law firm Hogan & Hartson LLP in Brussels, Belgium, provides some indicators on negotiating veterinary clinical trial agreements.

The clinical trial agreement is an opportunity to make the institution responsible for the investigator conducting the trial and for ensuring that the study will be carried out according to the protocol following the GCP principles and other regulatory requirements, says Ms Clements.

"Clinical trial governance is extremely important"

The agreement should be between the sponsor and the institution, rather than individual investigators. The institution should ensure that the investigator has the necessary qualifications, time and resources to perform the clinical trial and is aware of his or her obligations as an investigator.

Clinical trial governance is extremely important, stresses Ms Clements. The parties involved in the clinical trial agreement should agree explicitly to comply with all relevant laws of the EU and the member state in which the trial site is located. They should also comply with the study protocol and all relevant guidance relating to clinical trials including VICH GCP.

In addition, the parties must conduct the clinical trial according to the clinical trial notification or authorization granted by the relevant national authority. The Community Code on Veterinary Medicinal Products provides that no veterinary medicine can be administered to animals unless a marketing authorization has been issued for that product. Exceptions to this are tests of veterinary medicines including clinical trials that have been accepted by the competent national authorities following notification or authorization in accordance with the national rules.

It is essential that the trial does not start before regulatory approvals have been obtained. Therefore, the sponsor should not supply the investigational veterinary product (IVP) to the investigator until all the necessary approvals are in place.

Specific provisions for what happens to the IVP during and at the end of the trial should be made, notes Ms Clements. In particular, the institution should ensure that the investigator does not permit the IVP to be used for any purpose other than the conduct of the clinical trial. All unused IVPs should either be returned to the sponsor or disposed of appropriately at the end of the clinical trial, or before if it is stopped early.

The parties should consider timelines for the clinical trial and clinical trial responsibilities. These include relevant dates for regulatory approval, the start of the clinical trial and the end of the clinical trial. The dates should be realistic, ensuring that the timelines can be met and providing alternative options if there are any delays. The institution should ensure that the investigator does not conduct any other trial that might hinder his or her ability to conduct the clinical trial.

Susan J Clements

sponsor control

The sponsor should retain the ability to exercise control over regulatory compliance. Sponsors should be able to examine the conduct of the trial and the trial site to ensure that it is being carried out according to the clinical trial agreement. The institution should also inform the sponsor about communications with regulatory authorities, such as inspections or enquiries. The sponsor should also be allowed to review and amend any

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proposed replies and to have a representative present during any inspection.

The sponsor is responsible for providing a final study report, although it can be prepared by the sponsor, the investigator, or the sponsor and investigator together. The clinical trial agreement should stipulate who will prepare the report and that it must be prepared at the end of the clinical trial, or before if it is stopped early.

protecting interests

All information about the trial, including the results, should be kept confidential to protect the sponsor's commercial interests. The institution should restrict access to confidential information to those directly concerned with conducting the clinical trial agreement. Information should only be disclosed to a third party if required by a regulatory authority or by law. Where disclosure is required, the sponsor should maintain at least some control over the disclosure. The institution should inform the sponsor about this within a reasonable amount of time before making the disclosure.

The confidentiality provision should remain in place indefinitely after the end of the clinical trial agreement. Any attempt to reduce this time period could affect data and marketing exclusivity, and should be considered carefully.

If the sponsor agrees that the institution and investigator may publish results of the clinical trial, this should at least be subject to certain conditions. The institution and investigator should not publish the data of the clinical trial before the end of the trial or until the clinical trial data are considered adequate. The sponsor should be given a specific number of days to comment on the data before they are submitted for publication. Provisions should be made to incorporate the sponsor's comments. Finally, the sponsor should have an opportunity to protect the information. For example,

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the sponsor should be able to request a delay in publication so that the intellectual property can be protected.

Moreover, the publication provision should survive the end of the clinical trial agreement.

intellectual property

As a general rule, the creator of intellectual property (IP), or his or her employer, owns the intellectual property unless ownership is transferred to a third party. Therefore, an institution or an investigator will retain ownership of any IP they develop unless they assign ownership to the sponsor. The sponsor should therefore make specific provisions about IP or know-how.

The agreement should provide that IP or know-how generated at the trial site is the property of the sponsor. This should include IP or know-how related to the clinical trial, the protocol, the IVP or any subsequently authorized product that belongs to the sponsor. The clinical trial agreement should also specifically make provisions for achieving this. In particular, the institution should ensure that the investigator promptly discloses any such IP or know-how to the sponsor. It should undertake not to use or disclose IP or know-how for any purpose other than the clinical trial agreement. Moreover, the institution should assign, and ensure that the investigator and any other relevant person assigns, the rights to all IP and know-how to the sponsor.

The institution may not agree to such a far-reaching assignment of IP and know-how. For example, it may want to retain IP and know-how on clinical procedure and related improvements. The sponsor should exercise caution in this regard, particularly if the method of administration of the IVP is new.

Again, the IP provision should survive the end of the clinical trial agreement.

financial arrangements

The sponsor should provide adequate indemnity for the investigator and compensation for animal owners in the event of injury or death of the animal or loss of productivity related to the trial.

It is useful to consider the nature of an "adequate" indemnity. For example, whether the indemnity should extend to injury caused by a negligent act or the omission or failure of the institution to conduct the clinical trial properly.

Moreover, the sponsor should consider retaining some control over proceedings. This could include informing the sponsor promptly of any circumstances likely to give rise to any proceedings and to keep it informed of developments.

It will be essential to consider the extent to which the sponsor is also required to take out insurance cover, or whether an indemnity will instead suffice.

The clinical trial agreement should contain a financial schedule covering all financial issues, including costs related to all staff and services. The sponsor should not provide any gift or consideration not contemplated by the financial arrangements set out in the clinical trial agreement. Invoicing by the institution and the time in which payments must be made should be clearly set out.

Moreover, the parties should make provisions for the consequences of delayed payment, for example, interest charges and for the consequences of non-payment. ●