Tip Sheet 25: Provisions in Contracts and Funding Agreements

Related Accreditation Elements: Standard: I-8, Elements I.8.A., I.8.B., I.8.C., I.8.D., I.8.E.

AAHRPP Standard I-8 deals with five provisions for contracts and funding agreements that are designed to contribute to the protection of research participants in sponsored research. Accredited organizations must negotiate with sponsors to ensure that contracts and funding agreements include the required provisions, when appropriate, for each specific Element that is appropriate for the research under negotiation.

Recommended Content:

Suggested elements for implementing the required language:

1. Include the sample language in the organization's contract template. Provisions may be modified when appropriate to individual contracts and the research protocol.
2. Educate staff who negotiate contracts and funding agreements about meeting the required AAHRPP Elements and their importance to the protection of human participants in research.
3. Develop a checklist for the language to be used in each contract or funding agreement to meet the Elements. The checklist should indicate whether each item of required language is present in the contract or funding agreement, not applicable to the specific research protocol with justification, or that the sponsor refused to include the language with evidence attached (e.g. e-mails).
4. If a sponsor refuses to include the requested language, develop a process to inform senior officials and/or general counsel at the organization who are in the position to make decisions about pursuing the research protocol. For example, if the sponsor will not provide data and safety monitoring reports, the IRB will have no basis to assess risk at continuing review and thus the research cannot be approved.
5. Maintain good communication between the IRB and the unit that negotiates contracts and funding agreements and ensure consistency between the consent document and the contract or funding agreement.
6. Be ready to explain the required provisions to sponsors. Once sponsors understand the requirements they usually are willing to include them in the contracts and funding agreements.
7. Check with the sponsor to ascertain if they have contract language that has been approved by AAHRPP. Many sponsors have worked with AAHRPP to develop acceptable language. If they have not, you may refer them to AAHRPP for the development of such language.

Element I.8.A. The Organization has a written agreement with the Sponsor that addresses medical care for research participants with a research-related injury, when appropriate.

915 15th Street, NW
Suite 400
Washington, DC 20005

(202)783-1112 phone
(202)783-1113 fax
www.aahrpp.org

For this Element it is required that the organization's policies and procedures have contracts or other funding agreements that indicate who will provide care and who is responsible to pay for it. They should also have a process to confirm the terms specified in the contract or funding agreement and in the consent document are consistent. This Element is not applicable when there is no potential for research-related injury. This Element generally applies only to organizations that conduct clinical research, unless the organization decides that there are risks for injury in other types of research. Although AAHRPP does not require that sponsors or the organization should be responsible for paying for care for research-related injury, they do require that organizations address payment (that is, regardless of whether or not it is available) for research-related injury in the contract or funding agreement before research starts so participants can consider this information during the consent process. The laws of some countries, excluding the United States, require that care for research-related injury is paid for by the sponsor. In that case, contracts and funding agreements should specify the specific obligation of the sponsor.

Sample Language:

[The sponsor] will provide payment to the institution for reasonable, unreimbursed medical expenses, including hospitalization, which the institution may incur as a direct result of the treatment of a subject's injuries that directly result from the study drug or its administration during the clinical trial, as determined by [the sponsor] and the principal investigator.

Research-Related Injury. [The sponsor] shall be responsible for payment of the actual and reasonable medical expenses incurred in diagnosing and treating any injury, illness, or adverse reaction of a study subject that results from the administration of the study drug [or device] in accordance with the protocol or the proper performance of any Protocol procedure.

Element I.8.B. In studies where Sponsors conduct research site monitoring visits or conduct monitoring activities remotely, the Organization has a written agreement with the Sponsor that the Sponsor promptly reports to the Organization findings that could affect the safety of participants or influence the conduct of the study.

For this Element it is required that the organization's policies and procedures have contracts (or other funding agreements) require, that if the sponsor conducts monitoring of its site, the sponsor must promptly report to the organization any findings from the monitoring that could affect the safety of participants or influence the conduct of the study. Policies and procedures should define what is meant by "promptly" (which, generally, should not exceed 30 days). This Element is not applicable when the sponsor does not monitor the site.

Sample Language:

[The sponsor]/or CRO conducts monitoring of sites on a periodic basis throughout the study. If a monitor finds non-compliance at the site that affects safety or materially affects the proper conduct of the study, [the sponsor]or CRO shall in a timely manner notify the investigator and, if non-compliance is serious or continuing, the site.

The following is acceptable language for I.8.B., I.8.C. and I.8.E. because it is written to cover all:

During and for a period of [specify a period of time appropriate to the specific study, for example, at least two years after the completion of the study; or specify a triggering event, for example completion of data analysis], [the sponsor] shall promptly (or in a timely manner appropriate to the level of risk involved) report to the investigator any information that could directly affect the health or safety of past or current study subjects or

influence the conduct of the study, including but not limited to the study results and information in site monitoring reports and data safety monitoring committee reports as required by the protocol. In each case, the investigator and [the organization] shall be free to communicate these findings to each study subject and the IRB.

Element I.8.C. When the Sponsor has the responsibility to conduct data and safety monitoring, the Organization has a written agreement with the Sponsor that addresses provisions for monitoring the data to ensure the safety of participants and for providing data and safety monitoring reports to the Organization.

For this Element it is required that the organization's policies and procedures have contracts (or other funding agreements) require the sponsor to send data and safety monitoring plans and reports to the organization. This should be take place according to the data and safety monitoring plan that the IRB approves, including the time frames for reporting. At a minimum, data and safety monitoring reports should be sent annually, so they can be considered by the IRB at the time of continuing review.

Sample Language:

[The sponsor] shall promptly notify investigator of any findings of (1) new and unexpected serious adverse safety events arising from [the sponsor's] monitoring of the study that could affect the safety of subjects, and (2) trends or patterns of non-serious or expected adverse events that occur at a specificity or severity that is inconsistent with prior observations, all in accordance with the obligations set forth in 21 C.F.R. 312.32(c), 21 C.F.R. 312.55(b), 21 C.F.R. 56.108(b) and FDA's Guidance on Adverse Event Reporting to Institutional Review Boards in Clinical Trials (January 2009).

[The sponsor] agrees to provide data and safety monitoring plans to the principal investigator prior to IRB review of the study. [The sponsor] will provide the [organization's] principal investigator with any findings from its data and safety monitoring that could affect the safety of subjects or their willingness to participate or influence the conduct of the study. Reports of an urgent nature must be provided within ten business days; routine reports must be submitted within 30 business days. (This language is not required in the contract if these provisions are described in the protocol).

The following is acceptable language for I.8.B. and I.8.C. because it is written broadly enough to cover both:

[The sponsor] shall provide notice to the institution of any findings that may (i) affect the safety and welfare of subjects, (ii) affect the willingness of subjects to continue their participation in the clinical trial, (iii) influence the conduct of the clinical trial or (iv) alter the IRB's approval to continue the clinical trial. The institution will work with its IRB and the principal investigator to disseminate this information to the subjects.

Element I.8.D. Before initiating research, the Organization has a written agreement with the Sponsor about plans for disseminating findings from the research and the roles that Researchers and Sponsors will play in the publication or disclosure of results.

For this Element it is required that the organization's policies and procedures have contracts or other funding agreements require the sponsor to follow the organization's policies and procedures regarding the publication of findings from sponsored research. This Element is not applicable if the organization has no such policy.
Sample Language:
[The sponsor] acknowledges and accepts the interest of the [organization] in the non-commercial publication of the results, independent of a positive or negative outcome of the study. With respect to any proposed

publication or presentation of the results of the study, the organization and/or investigator agree to submit to [the sponsor] a copy of the proposed publication or presentation at least two months prior to the submission thereof for publication or the date of such presentation in order to allow [the sponsor] to review it. Any manuscript for publication submitted to [the sponsor] shall be reviewed without unreasonable delay and approval shall not be withheld unreasonably. If [the sponsor] does not notify [the organization] within thirty days of the [the sponsor's] receipt of the intended publication, [the organization] shall be free to publish. In the case a difference of opinion between [the sponsor] and [the organization], the contents of the publication will be discussed in order to find a solution which satisfies both parties. [The organization] acknowledges that in the case of multi-center studies the results of the study are to be published only through coordination by [the sponsor] in order to combine the results of all participating centers. [The organization] shall be free to publish the results of their center provided the overall results have not been published with twenty-four months from the completion of the study, subject to the compliance to the remaining terms set forth in the section. [The sponsor] may recommend any changes to the publication it reasonably believes are necessary for scientific purposes. [The organization] agrees that the implementation of such recommended changes shall not be unreasonably refused. If [the sponsor] informs[the organization] that such publication could be expected to have an adverse effect on the confidentiality of any of [the sponsor's] confidential information, [the organization] shall prevent the publication, unless the confidential information can be deleted from the publication without detriment effect on the scientific correctness of the publication. If the publication could in [the sponsor's] view have an adverse effect on the ability to obtain patent protection for any invention, [the sponsor] may request a delay of the publication for a reasonable period of time in order to permit the preparation and filing of any desired patent application by or on behalf of [the sponsor], such period, however, not to exceed three months from the date on which [the sponsor] received the intended publication for review. [The sponsor] may request a further delay of publication only in the case when a patent application has been filed and the prior application is incomplete and subject matter has to be added to the application during the priority year. In this case [the sponsor] may request delay of any publication until the competition of the priority application. [The sponsor] shall not unduly delay such completion. The organization and/or investigator shall comply with all applicable requirements regarding disclosure of industry support (financial or otherwise) in connection with such publications and presentations. [The organization] shall impose the same obligations on publication as set forth in this section on all study team members. The obligation set forth in this section shall survive for a period of ten years upon early termination or expiration of this Agreement.
Publication. [The organization] shall be free to use the results of the research and clinical study for its own teaching, research, education, clinical and publication purposes without the payment of royalties or other fees. [The organization] shall submit to [the sponsor] for its review, a copy of any proposed publication resulting from the research at least thirty (30) days prior to the date of submission for publication, and shall consider in good faith all comments provided by [the sponsor] during that review period. If [the sponsor] determines that the proposed publication contains patentable subject matter which requires protection, [the sponsor] may require the delay of publication for a period of time not to exceed sixty (60) days for the purpose of filing patent applications. {If multicenter study, may insert language agreeing to delay publication until the earlier of the multicenter publication, or one year after end of study, but with firm commitment from Sponsor to encourage publication}.

Element I.8.E. When participant safety could be directly affected by study results after the study has ended, the Organization has a written agreement with the Sponsor that the Researcher or Organization will be notified of the results in order to consider informing participants.

For this Element it is required that the organization's policies and procedures have contracts (or other funding agreements) require the communication of findings from a closed research study to the researcher or organization when those findings directly affect participant safety. The sponsor's experience and expertise should be relied upon to specify what the timeframe, if any, should be for each specific study. AAHRPP

recognizes there is no "one size fits all" timeframe, but that this may vary based on the nature of the investigational agent and study design. AAHRPP does not require a specific timeframe. Nor does AAHRPP require a specific triggering event, except that the triggering event cannot be before the completion of data analysis. Because the timeframe will extend beyond the closure of the study at the site, this requirement should be included or referenced in the surviving clauses of the contract. If the clinical trial agreement is between the organization and a contract research organization instead of a sponsor, then it is acceptable to waive Element I.8.E., if the contract research organization's contract does not include obtaining or analyzing study results. This Element may not be applicable to some studies.

Sample Language:

Following completion of this study under this contract, if [the sponsor] becomes aware of relevant findings from the study data that would directly affect the safety of the former study subjects, [the sponsor] shall promptly (or in a timely manner appropriate to the level of risk) notify the institution of such relevant finding so that the institution may communicate such findings to the former study subjects. [The sponsor] shall determine the relevance of the findings and the institution shall inform former study subject as appropriate. [The sponsor's] reporting obligation shall continue for two years following completion of the study conducted under this contract or until the occurrence of a triggering event (such as a data lock).

The following is acceptable language for I.8.B, I.8.C. and I.8.E. because it is written to cover all:

During and for a period of at [specify a period of time appropriate to the specific study, for example, least two years; or specify a triggering event, for example, completion of data analysis] after the completion of the study, [the sponsor] shall promptly (or in a timely manner appropriate to the level of risk) report to the investigator any information that could directly affect the health or safety of past or current study subjects or influence the conduct of the study, including but not limited to the study results and information in site monitoring reports and data safety monitoring committee reports as required by the protocol. In each case, the investigator and [the organization] shall be free to communicate these findings to each study subject and the IRB.

These Elements apply to independent IRBs when they contract with sponsors or clinical research organizations. If the contract for conducting research is with individual investigators or research sites, the independent IRB should obtain an attestation of other written statement that the require language is included in contracts and funding agreements.