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Master Clinical Trial Agreements

By Norman M. Goldfarb

What Is A Master Clinical Trial Agreement?

A master clinical trial agreement (MCTA) is a contract between a sponsor and a site that applies to multiple studies. It may or may not apply to all studies that site conducts for that sponsor. By negotiating a single agreement, the parties can avoid duplicating the effort of negotiating a separate clinical trial agreement (CTA) for every study. MCTAs avoid awkward answers to the site complaint: "You agreed to this term last time."

An MCTA includes common terms that apply to covered studies, such as:

- Intellectual property
- Publication rights
- Confidentiality
- Indemnification
- Subject injury
- Termination
- General terms

MCTAs typically have a term of three to five years, long enough to obtain efficiencies, but short enough to allow for periodic renegotiation if the parties' circumstances change. MCTAs may expire at the end of the contract term, or renew automatically unless a party gives notice, say, six months prior to expiration.

An MCTA looks a lot like a standard CTA, except it delegates some of the contract terms to a separate document – a statement of work (SOW) – that covers the unique features of each individual study.

The Statement of Work

The SOW includes terms specific to a study, such as the name of the investigator, the enrollment target, termination provisions, the budget attachment, and the protocol attachment. It may also include any terms that override the MCTA, provided the MCTA allows that flexibility. Termination provisions require special attention: Under which circumstances is the SOW terminated and under which is the entire MCTA terminated? For example, the site's lack of enrollment on a study may justify termination of the SOW, while the sponsor's nonpayment of amounts-due may justify termination of the MCTA and all the SOWs under it.

MCTA Benefits

Sponsors and sites invest the effort in negotiating MCTAs to gain speed and efficiency later. Because an agreement governing multiple studies is more important than an agreement that governs only one study, the negotiation is typically very detailed. Without the pressure of study startup, there is less need for the parties to "choose their battles." The result is a better-drafted agreement that more accurately reflects the parties' intentions.

MCTAs are especially valuable when the sponsor has multiple divisions, each with its own CTA template, or the site has multiple entities (e.g., hospitals), each with its own negotiation priorities.

Once an MCTA exists, any new study requires negotiation of only an SOW, which may be very similar to previous SOWs.

With an MCTA in place, contract administration is much simpler because there are no minor differences between CTAs to cause confusion and errors. Any amendments can be negotiated once, with a single amendment document.

MCTA Challenges

MCTAs are not without their challenges. To start with, negotiations can be lengthy because both parties appreciate the importance of getting every detail right. Multiple parties on either side may have to conduct intraparty pre-negotiations to develop common positions, which are then relatively inflexible when the interparty negotiation begins.

MCTAs are also relatively inflexible after they are signed. As the years pass, circumstances may change. For example, a flaw in the MCTA may become apparent or the relative strength of the parties may shift. If one party wants to renegotiate, the other probably will not. It may be worthwhile to include nonbinding "intent" language in the CTA that discusses when such circumstances justify early renegotiation, but too much flexibility defeats the purpose of the MCTA.

However, if either party concludes that the MCTA is intolerable, it has the option to stop conducting studies with the other party. New senior management or a new owner of the organization may reach that conclusion very easily.

An MCTA may be acceptable to the site and sponsor that sign it, but include terms that are unacceptable to a third-party such as a contract research organization (CRO).

Should You Use an MCTA, a Template or a Model Agreement?

Once a sponsor and site have signed a CTA, they automatically have a mutually-acceptable CTA template available for reuse. Such templates have the advantage of flexibility; they can evolve organically from negotiation to negotiation – across multiple sites. This flexibility is also their point of vulnerability: As CTA 1 becomes CTA 2, which becomes CTA 3 and then CTA 4, while CTA 2 branches off to CTA 5 and then CTA 6, minor changes accumulate that can create difficulties, e.g., with variation in the screen failure terms. When sites see a new version, they may perceive it as an objectionable, apparently sneaky, revision. From the sponsor's perspective, the template can drift over time, with concessions (and typos) being added hapzardly.

MAGI, the Model Agreement Group Initiative, has created a model CTA.[1] Also, the Association of the British Pharmaceutical Industry and the National Health Trust have negotiated a model CTA for use in the United Kingdom.[2] The question is sometimes asked: Are these model CTAs substitutes for MCTAs? The ABPI/NHT master CTA is already widely accepted in the UK; a sponsor and site can easily convert it into an MCTA to accommodate their particular preferences. Because the MAGI model CTA includes multiple choices and fill-in-the blank terms, it is not suitable out-of-the-box for an MCTA. It does, however, provide clean language, various options, and associated commentary that are very useful when a sponsor and site are negotiating an MCTA.

When Should You Negotiate an MCTA?

It makes sense to negotiate an MCTA after the sponsor/site relationship has stabilized and both parties expect to continue working together on enough studies to justify the MCTA investment. Disagreements and unpalatable compromises are inevitable; they are easier to swallow if the parties have a solid, ongoing relationship. As a practical matter, each party knows who its largest partners are, so it is fairly simple to start with the partner that generates the most CTAs and then work down the list. The size of the negotiation investment will vary, depending on the complexity of the negotiations and the tractability of the issues. If five sponsor divisions and five sister sites all have different positions on the contract terms, and neither side has a single decision-maker, it may be better to defer that negotiation.

Master Budgets

Even when an MCTA is present, budgets are usually study-specific. However, the same principles can be applied to standardize and streamline budget negotiations:

- The parties can negotiate prices for common items annually.
- The parties can negotiate a pricing formula based on the site's retail price list or a third-party database of prices.
- The price list for new studies can be adjusted annually based on a cost index.

Master Confidential Disclosure Agreements

Confidential disclosure agreements (CDAs) are on the critical path for study startup. They are relatively short documents with relatively few points to negotiate, so master confidentiality agreements (MCDAs) are an easy way to streamline the process. Most small sites would probably sign an MCDA without any negotiation. The sponsor can then send a copy of it with each new protocol to remind the site of its obligations.

Common MCTA Mistakes

Common MCTA mistakes include:

- Negotiating an MCTA prematurely, before the relationship has stabilized or when one of the parties may see changes in management or ownership
- Waiting too long to negotiate an MCTA, wasting prior time and effort
- Holding the other party to the terms of the last CTA, which probably was not negotiated with the care due an MCTA
- Accepting the terms of the last CTA without careful consideration
- Attempting to create an MCTA with overreaching scope – all therapeutic areas or all types of trials
- Entering into the negotiation without appreciating the time, effort and commitment that will be required
- Conducting the negotiation without appointing a lead negotiator and a decision-maker with the authority to resolve internal disputes
- Not enforcing use of the signed MCTA across the organization

Implications for CROs

Sponsors often hire a CRO to negotiate CTAs for a study. The CRO often has its own CTA template. If the sponsor has an MCTA with a site, should the CRO's CTA template or the

sponsor's MCTA be used? There are three practical options for the sponsor, none of them perfect:

1. **Use the CRO's CTA template for all sites.** The site is likely to balk at this option because it defeats the purpose of negotiating the MCTA. The sponsor will have difficulty responding to issues that escalate beyond the CRO's authority.
2. **Have the CRO use the MCTA for that site.** The CRO's staff will be unfamiliar with this document and the issues that are likely to arise. It will be less likely to negotiate efficiently and effectively than if it uses its own CTA template. However, the scope of the negotiation is limited to the SOW.
3. **Handle sites with MCTA sites in-house.** Negotiate directly with sites that have an MCTA in force. Outsource negotiations with the other sites to the CRO. The sponsor's contract administrators will object to managing two sets of contracts, but the inconvenience is no greater than in option 2.

Conclusion

MCTAs can substantially reduce delays during study startup. Assuming a sponsor and a site have the skills, relationship and shared perspectives to negotiate an MCTA, it is well-worth the effort. The accelerated timeline moves the focus to IRB review and approval, another recalcitrant process. Without concomitant acceleration on the regulatory side, MCTA benefits can be realized only partially. On the other hand, acceleration of the IRB timeline is more likely to occur when it is the bottleneck.

References

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Author

Norman M. Goldfarb is Managing Director of First Clinical Research LLC, a provider of clinical research best practices information, consulting and training services. Contact him at 1.650.465.0119 or ngoldfarb@firstclinical.com.