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Bcc:
Received Date: 2007-06-14 17:40:44 GMT
Subject:

Dear Howard,

Attached please find my response to the latest API notations on the contract. With regard to your inquiry concerning the need for funding over the next two weeks, I am expect to hear from Fudan tomorrow and should then have a better idea as to the funding status.

Richard

Attachments:

Response to API 6_13_07.doc

June 14, 2007

Dear Howard,

Thanks to you and API for a rapid response to my edits. I think we are getting close to finalizing this contract. As you will see in the comments below there are several important issues on which we need to come to an understanding. I believe that a conference call is premature until the critical issues set out below are addressed.

Page 1, second full paragraph (below the bullets):

- Please clarify what Appendix A-1 is. I have not seen it.
- Cinpathogen is not a "partner" of Fudan University nor has Cinpathogen "partnered" with Fudan. The business relationship between Cinpathogen and Fudan University is one of joint scientific endeavor. (Cinpathogen has previously provided a copy of the written contract between Cinpathogen and Fudan to API, and a reference could be made here to that contract, rather than introducing terms such as "subcontractor" or "partner."

Page 2, paragraph 3: Your changes are acceptable.

Page 2, paragraph 4(c): Your changes are acceptable.

Page 2, paragraph 4(d):

- As the Principal Investigator on this important study, I believe that, if the completion of the study requires that more money be spent on some categories and less on others, scientific independence for the study requires that I make those adjustments. The study sponsors are protected by the \$4,847,740 contract amount.

Page 2, paragraph 5(a)(i):

- This suggested addition regarding "documentation" to support quarterly financial reports is new. I believe that this suggested addition is not necessary in light of the other strict financial reporting requirements which API has proposed.

Page 3, paragraph 5(b): Your changes are acceptable.

Page 3, paragraph 6: Your changes are acceptable.

Page 3, paragraph 7:

- It is acceptable to strike out "other relevant insurance." However, the now modified term: "general and professional liability insurance" still does not tell Cinpathogen what insurance coverage API believes it needs. We need to know what type of "claim" or "occurrence" you feel needs to be

covered. Our broker has advised us that they cannot write insurance based on the description you have provided, and we need to advise regarding the specific risks for which coverage is sought as soon as possible.

Page 3-4, paragraph 8: Your changes are acceptable.

Page 5, paragraph 12:

- This provision is not acceptable because Cinpathogen was created primarily to complete this study, and may cease to exist shortly after the completion of work in China. I am willing to agree that Cinpathogen will maintain the administrative ability to make its records available to API for a duration of six months after the completion of work in China so long as API provides the funds necessary to do so.

Page 5, paragraph 14:

- While it is wholly appropriate that Cinpathogen hold harmless API and the Consortium for any acts of negligence on the part of Cinpathogen, it would be disingenuous for me to make that assertion for any other entity that is not within my control.

Page 6, paragraph 20:

- The addition to paragraph 20 would need to be changed to read as follows:

However, API may provide such information to its members and/or API auditors, but in such event, API shall: (1) provide at least 10 days written notice to Cinpathogen that it intends to provide such information and (2) obtain and provide to Cinpathogen, a written acknowledgment from any such person to whom the information is provided that the information is subject to a confidentiality agreement and that the recipient agrees to be bound by that confidentiality agreement. API may also provide such information if required to do so by court order or by a subpoena from a government entity but in such event, API shall: (1) provide written notice to Cinpathogen that it has been served with such an order or subpoena and that it intends to provide such information and (2) reasonably cooperate with Cinpathogen if it elects to seek legal relief from such order or subpoena.

(We may need to develop a form for the acknowledgment of confidentiality. Obviously, Cinpathogen's goal is to protect the confidentiality of its employment relationships and financial information.)

Finally, I have made no attempt to address the several marginalia indicating "need to discuss" because I do not have sufficient information to understand or evaluate your concerns. I look forward to

receiving clarification on those points quickly to expedite the signing of a contract.