

MEDICAL TOURISM ASSOCIATION CONTRACT GUIDELINES FOR MEDICAL TOURISM FACILITATORS

April 2012

The following guidelines for contracts between medical travel facilitators (“MTF”), their clients and providers are provided to make you aware of some of the important provisions that should be included in such contracts. The lists of contract provisions set forth below are not intended to be exhaustive. Please consult with an attorney to determine which of these provisions is appropriate for your specific contract and for specific language addressing these and other provisions that may be needed for your contract.

Client Informed Consent and Release. This agreement informs a client of the risks and benefits associated with receiving medical care abroad, including risks and/or consequences of treatment and traveling before and after treatment. In addition to standard contract provisions, a Client Informed Consent and Release (“Consent”) should include the following clauses:

1. **General Provisions.** The Consent should contain clear statements of what the MTF does and does not provide so there is no misunderstanding of the scope of the coordination services provided by the MTF. It should also recommend that the client seek independent advice from a qualified health care provider.
2. **Warranty Disclaimer.** This clause provides that the MTF does not guarantee the services performed by others, specifically those who provide travel, accommodations and direct health care services.
3. **Limited Liability.** This provision provides that the MTF is not responsible for any losses the client may incur that are caused by anyone outside the control of the MTF.
4. **Limited Damages.** This clause provides that the MTF is not responsible for any money claimed by a client for loss or injury, for any reason, beyond the amount actually paid to the MTF for coordination services.
5. **Limitation on Actions.** This provision requires a client to assert any claim against the MTF within a specified period of time so that the MTF can manage its risks.
6. **Governing Law.** Where parties operate in different states or countries, there may be disagreement about the interpretation of a contract. This clause is intended to address under what law the Consent will be interpreted if a dispute arises.
7. **Dispute Resolution.** Where parties operate in different states or countries, there may be disagreement about where, and under what process, disputes will be resolved. This provision is intended to address where and how disputes between the parties will be resolved, such as by the courts or by arbitration.
8. **Venue and Jurisdiction.** Where parties operate in different states or countries, there may be disagreement about which courts will hear any claims. This clause addresses where and in which courts such judicial action would take place.

9. Severability. This provision prevents the entire agreement from being unenforceable if one provision is determined to be invalid or unenforceable.
10. Attorney's Fees. This clause specifies who is responsible for paying attorney's fees in the event a dispute arises.

Client Agreement. This agreement governs the commercial terms between the MTF and the client. Because a client will have signed a Consent, it is not necessary to include in the Client Agreement many of the protections contained in the Consent document, resulting in a simpler form of Client Agreement. That said, in addition to standard contract provisions, a Client Agreement should include the following clauses:

1. Payment. This provision addresses the amount and timing of all payments due to the MTF.
2. Informed Consent. The client should specifically acknowledge entering into the Consent.
3. Assignment. Most contracts are freely assignable, unless stated otherwise. This clause provides that the Client Agreement may not be assigned to another party. For example, the MTF may not want the Client to assign its rights and obligations under the agreement to another party unless the MTF consents to such assignment.
4. Governing Law. Where parties operate in different states or countries, there may be disagreement about the interpretation of a contract. This clause addresses under what law the Client Agreement will be interpreted if a dispute arises.

Hospital Agreement. This agreement governs the commercial terms between the MTF and the hospital. In addition to standard contract provisions, a Hospital Agreement should include the following clauses:

1. Representations and Warranties. These provisions should contain statements that establish and guarantee certain contract elements such as accreditation of hospital, licensure of hospital, and that the parties are operating in compliance with all applicable laws and regulations.
2. Indemnification. An indemnification provision requires the hospital to defend the MTF against any claims, and associated expenses, caused by the hospital. Indemnification provisions can also be mutual, where each party will indemnify the other for any claims and expenses caused by the other party.
3. Dispute Resolution. Where parties operate in different states or countries, there may be disagreement about where, and under what process, disputes will be resolved. This provision addresses where and how disputes between the parties will be resolved, such as by the courts or by arbitration.
4. Venue and Jurisdiction. Where parties operate in different states or countries, there may be disagreement about which courts will hear any claims. This clause addresses where and in which courts such judicial action would take place.

5. Assignment. Most contracts are freely assignable, unless stated otherwise. This clause describes any restrictions on the assignability of the contract. For example, the MTF may not want the Hospital to assign its rights and obligations under the agreement to another party unless the MTF consents to such assignment.
6. Governing Law. Where parties operate in different states or countries, there may be disagreement about the interpretation of a contract. This clause addresses under what law the agreement will be interpreted if a dispute arises.
7. Insurance. A key component of risk management for any party is maintaining adequate insurance coverage. This clause should specify the required types and amounts of insurance.
8. Severability. This provision prevents the entire agreement from being unenforceable if one provision is determined to be invalid or unenforceable.

NOTICE

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