

# Tour Operator Risk Management

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**Note:** *The referenced documents are basic examples that may not be suitable for the reader's particular needs. All provisions and terms should be reviewed by legal counsel to determine their applicability to the reader's individual circumstance, operations, travel services and destinations. These are not legal documents nor do they represent a legal opinion of any kind.*

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## Section I: Glossary of Terms

### **Additional Insured**

Individual, company, organization or other legal entity that is listed as an “insured” on a liability policy that is owned by the policyholder or “Named Insured”. In the event a claim or suit is filed against the “Additional Insured” for actions arising from the operations of the “Named Insured” (policyholder), then the “Additional Insured” would also be covered. An example would be a Tour Operator that is listed on the liability policy of the Bus Company. The Tour Operator (buyer of the services) would be the “Additional Insured” and the Bus Company (seller of the services) would be the policyholder (owner) or “Named Insured”. Both would have coverage under the bus company’s policy.

### **Assumption of Risk Statement**

A form that is signed by the participant in which the participant acknowledges the inherent risks associated with the travel services, activities or destinations included in the trip or tour.

### **Certificates of Insurance**

Documents that serve as evidence of insurance and are issued by the insurance company or its legal representative. The certificate lists the name of the policyholder (“Named Insured” or owner of the policy), lines of coverage, limits of liability, name of insurance company, policy period, policy number, name of the “Additional Insured” or certificate holder, if applicable, and other specifications.

### **Certificate of Insurance Procedures**

Written Standard Operating Procedures for the collection and maintenance of certificates of insurance that the Tour Operator requires of their travel and tour suppliers.

### **Crisis Management Plan**

Written document developed by the Tour Operator, which outlines the steps required for handling emergencies or unplanned events that occur while on tour. The plan would establish a crisis management team and include pre-event planning, steps for executing the plan, and post-event evaluation.

### **Harassment Policy**

Written policy that is shared with employees, tour escorts or other personnel hired by the tour operator that is intended to create and maintain conduct that fosters respect for all individuals regardless of their sex, sexual orientation, marital status, age, race, religion, ethnic background or disabilities.

### **Indemnity Provision**

Also known as a “Hold Harmless” provision, Indemnity Provisions are generally incorporated within a written agreement between the tour operator and the vendor/supplier. The provision usually (although not always) works both ways whereby the tour operator indemnifies the vendor for claims arising from its negligence and the vendor indemnifies the tour operator for claims arising from the vendor’s negligence.

### **Liability Release**

A form that is signed by the participant in which the participant agrees to release the Operator or Supplier from any liability for damages that would arise from the services, travel arrangements, or activities provided by the Operator or Supplier. Medical Forms / Medical Proxy Forms that collect the critical medical and emergency contact information from each traveler. Medical Proxy is an authorization by the tour participant or their legal guardian that gives permission to the Tour Operator to hospitalize and secure emergency treatment in the event that the injured’s party’s family / emergency contacts are not available.

### **Responsibility/Disclaimer Statement**

These are statements that are generally included in tour brochures, travel documents, and general marketing material to state to the reader that the operator is acting only as an agent for the suppliers (hotels, transportation providers, attractions, activities, etc.) and is not responsible for the actions or misdeeds of those suppliers.

### **Vendor Agreements**

Supplier/Vendor Agreements include the terms and conditions of the services provided by the supplier and the obligations of each party in the agreement.

## Section II: Certificates of Insurance/Collection Procedures

### Definition

Documents that serve as evidence of insurance and are issued by the insurance company or its legal representative. The certificate lists the name of the policy holder (“Named Insured” or owner of the policy), lines of coverage, limits of liability, name of insurance company, policy period, policy number, name of the “Additional Insured” or certificate holder, if applicable, and other specifications.

Following are some suggestions for establishing a systematic approach to collecting and maintaining “Additional Insured” protection and Certificates of Insurance from your suppliers. This is not a process that would be necessary for suppliers such as hotels, attractions, scheduled airlines or cruiselines, or similar vendors, but is suggested for providers of land transportation (motorcoach, airport transfers, vans, etc.), for chartered air or chartered vessels, and for activities usually provided by Outfitters and Guides (river rafting, for example). For those instances in which the Operator contracts with Destination Management Companies (DMCs or receptive operators), then the Certificates should be obtained from these companies. In those instances in which “Additional Insured” protection is not available, at the very least, you should have an “indemnity provision” included in your agreement with that vendor. (See Indemnity section).

- Assign this task to a designated employee. For larger organizations, this would typically fall within the responsibility of the Risk Manager; for smaller organizations, this is usually the responsibility of the Office Manager or Financial Officer;
- Include the insurance requirements and Certificate of Insurance requests in your standard vendor agreements. The contract should not be signed until this documentation is presented to you;
- Make certain that the Certificates include general liability for bodily injury and property damage and cover the territory in which your group is travelling;
- Establish a spreadsheet of the suppliers you use on a regular basis that will include the suppliers’ policy limits and expiration dates. Review this document monthly and contact those suppliers for updated Certificates of Insurance.

## Section III: Indemnity Provisions

**Note:** *These examples may not be suitable for the reader's particular needs. All provisions and documents should be reviewed by legal counsel to determine their applicability to the Tour Operator's individual circumstances, operations and supplier agreements. This is not a legal document, nor should it be considered a legal opinion.*

### **Definition:**

Also known as "Hold Harmless" provisions, Indemnity Provisions are generally incorporated within a written agreement between the tour operator and the vendor/supplier. The provision usually (although not always) works both ways whereby the tour operator indemnifies the supplier for claims arising from its negligence and the supplier indemnifies the tour operator for claims arising from the supplier's negligence.

### **Example #1:**

"This agreement provides for a Hold harmless and Indemnification by 'Supplier/ Vendor/Destination Management Company'. This agreement and its provisions specifically address the use of owned, hired, non-owned automobiles, buses, and all other forms of transportation used in the delivery of services to clients of the "Tour Operator". "Supplier" agrees to indemnify and hold harmless "Tour Operator", its officers, employees, and agents harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing transportation services or subcontracting transportation services of any kind in which any client of "Tour Operator" is engaged."

### **Example #2:**

"Supplier/Vendor" shall defend, indemnify and hold harmless "Tour Operator", its officers, agents and employees, from and against any and all actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys' fees, for injury to, or death of, person(s), for damages to property, and/or for the loss of use thereof, and for errors and omissions caused by the "Supplier/Vendor", its officers, agents, subcontractors and employees, arising from, or related to, their performance under this agreement.

"Tour Operator" shall indemnify (client or vendor/supplier) against any damages, compensation, losses, expenses (including legal costs and any other costs associated with legal proceedings), fines, claims, penalties or other sums of whatever nature which (client or vendor/supplier) may incur as a result of any negligent act, act of omission, and/or breach of this contract by the Tour Operator, its employees, servants or agents under its control.

### **Example #3:**

"Each Party (Indemnifying Party) shall defend, indemnify and hold the other Party and its employees, officers, contractors, agents or affiliates harmless from any and all claims, suits, actions, demands, costs, settlements, losses, damages, expenses and all other liabilities, including attorney's fees (hereinafter "Claims"), but only to the extent that such claims arise out of or result from the acts, errors or omissions of the Indemnify Party in the conduct of its travel agency operations.

## Section IV: Vendor / Supplier Agreements

### Definition:

Vendor/Supplier Agreements include the terms and conditions of the services provided by the supplier and the obligations of each party in the agreement. To assure that adequate risk management applies to transportation services purchased by the Operator, the following specific provisions should be included in these agreements.

**Note:** *These examples may not be suitable for the reader's particular needs. All provisions and documents should be reviewed by legal counsel to determine their applicability to the Tour Operator's individual circumstances, operations and supplier arrangements. This is not a legal document, nor should it be considered a legal opinion.*

### Example #1: Transportation Agreements

<i>Insurance Coverage</i>	Supplier will maintain at its own expense comprehensive liability insurance covering bodily injury (including death) and property damage with minimum limits as required by law (note - for U.S interstate travel, that would be \$5 million). Supplier will name Buyer as an Additional Insured on relevant policies and require the insurer to give to Buyer one month's prior written notice of any changes in, or cancellation of, the insurance. Supplier will provide Buyer insurance certificates reflecting the above.
<i>Indemnification (a/k/a hold harmless)</i>	Supplier will defend, hold harmless and indemnify - including attorney's fees - the Buyer and the Buyer's Personnel against claims that arise, or are alleged to have arisen, as a result of any negligent or intentional acts or omissions of Supplier or breach by Supplier of any terms of this Agreement.
<i>Limitation of Liability</i>	Except for liability under the Section entitled indemnification, in no event will either party be liable to the other for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages.

### Example #2: Transportation Agreements

<i>Insurance</i>	Carrier (transportation vendor) shall insure all motorcoaches against damage by fire, collision or accident and make good any damage to, or loss of, the motorcoach and also any damage to property or person, including the property and persons of the passengers, whether by reason of negligence of the driver or otherwise. Insurance procured pursuant to this section shall meet or exceed the following minimum limits of protection (Operator would specify ....):  Automobile Liability:
<i>Hold Harmless (a/k/a: indemnification)</i>	To the fullest extent permitted by law, Carrier (transportation provider) shall defend, indemnify and hold harmless (name of Tour Operator) and its affiliates, officers, employees, clients, representatives, and agents from and against all losses, claims, suits, damages, and expenses, including but not limited to attorneys' fees, arising out of, or resulting from, performance of any service, provided that (i) any loss, claim, suit, damage or expense is attributable to injury or death of persons or to injury or destruction of property including the loss of use resulting there from and (ii) is caused in whole or part by any negligent act or omission of the Carrier.

### Example #3: Destination Management Company Agreements

If the Tour Operator contracts with a DMC - Destination Management Company - for transportation services, then the same Insurance and indemnification provisions should be included in the DMC agreement.

## Section V: Responsibility / Disclaimers Statements

**Note:** *These examples may not be suitable for the reader's particular needs. All provisions and terms should be reviewed by legal counsel to determine their applicability to the Tour Operator's individual circumstances, operations, travel services and destinations. This is not a legal document, nor should it be considered a legal opinion.*

### **Definition:**

Responsibility / Disclaimers statements are generally included in tour brochures, travel documents, and general marketing material to state to the reader that the operator is acting only as an agent for the suppliers (hotels, transportation providers, attractions, activities, etc.) in contracting for the services included in the tour and is not responsible for the actions or misdeeds of the supplier.

### **Example #1:**

"Tour Operator" and its affiliated entities and its employees, shareholders, officers, directors, successors, agents, and assigns, neither own nor operate any person or entity which is to, or does, provide goods or services for these trips or tours. Because "Tour Operator" does not maintain any control over the personnel, equipment, or operations of these suppliers, "Tour Operator" assumes no responsibility for and cannot be held liable for any personal injury, death, property damage, or other loss, accident, delay, inconvenience, or irregularity which may be occasioned by reason of (1) any wrongful, negligent, willful, or unauthorized acts or omissions on the part of any of the tour suppliers, or other employees or agents, (2) any defect in or failure of any vehicle, equipment, instrument owned, operated or otherwise by any of these suppliers, or (3) any wrongful, willful, or negligent act or omissions on any part of any other party not under the supervision or control of the Operator.

### **Example #2:**

"Tour Operator" acts only as an agent for the various independent suppliers that provide hotel accommodations, transportation, sightseeing, activities, or other services connected with this tour. Such services are subject to the terms and conditions of those suppliers. Tour Operator and their respective employees, agents, representatives, and assigns accept no liability whatsoever for any injury, damage, loss, accident, delay, or any other incident which may be caused by the negligence, defect, default of any company or person in performing these services. Responsibility is not accepted for losses, injury, damages or expenses of any kind due to sickness, weather, strikes, hostilities, wars, terrorist acts, acts of nature, local laws or other such causes. All services and accommodations are subject to the laws and regulations of the country in which they are provided. Tour Operator is not responsible for any baggage or personal effects of any individual participating in the tours / trips arranged by Tour Operator. Individual travellers are responsible for purchasing a travel insurance policy, if desired, that will cover some of the expenses associated with the loss of luggage or personal effects.

## Section VI: Assumption of Risk and Liability Waivers

(These are generally used in connection with adventure travel or travel to foreign/remote destinations.)

**Note:** *These examples may not be suitable for the reader's particular needs. All provisions and terms should be reviewed by legal counsel to determine their applicability to the Tour Operator's individual circumstances, operations, travel services and destinations. This is not a legal document, nor should it be considered a legal opinion.*

### Definitions:

**Assumption of Risk Statement** A form that is generally signed by the participant in which the individual acknowledges the inherent risks associated with the travel services, activities or destinations included in a particular trip or tour.

### Liability Release

A form that is signed by the participant in which the individual agrees to release the Operator or Supplier from any liability for damages that would arise from the services, travel arrangements, or activities provided by the Operator or Supplier.

### Example #1:

#### Assumption of Risk

I, \_\_\_\_\_, acknowledge that I have voluntarily applied for the trip / tour designated as \_\_\_\_\_. I understand that I may travel to remote countries and areas that are inherently risky and that may include \_\_\_\_\_ and other similar activities associated with foreign travel. I am prepared to assume the risks associated with this trip / tour including: forces of nature; terrorism; civil unrest; war; accidents; and transportation including land vehicles, boats, and aircraft that are not operated or maintained to standards found in North America. I also assume risks associated with altitude, illness, disease, physical exertion, and alcohol consumption, knowing that access to evacuation and/or suitable medical supplies and support may not be available. By signing this document, I agree to take full responsibility for my own actions, safety and welfare, except for unanticipated events including injury, illness, emotional trauma, or death. I also understand that I will be a member of a group and will conduct myself in a way that will not endanger the group or myself. I understand that if I fraudulently represent my self as fit for this trip, I may be removed prior to or during the trip at my own expense. I agree to these statements by placing my signature here: \_\_\_\_\_ on \_\_\_\_\_ (day / month / year).

### Example #2:

#### Liability Release Form

I, \_\_\_\_\_, hereby release and discharge \_\_\_\_\_, and its agents and employees from and against any and all liability arising from my participation in the trip / tour of \_\_\_\_\_. I agree that this release will be legally binding upon myself, my heirs, successors, assigns and legal representatives; it being my intention to fully assume all risk of travel and to release \_\_\_\_\_ from any and all liabilities to the maximum permitted by law.

## Section VII: Crisis Management - Plan Outline

**Note:** *These recommendations may not be suitable for the reader's particular needs. Depending on the size and type of operations, the reader may or may not need to include all of the following suggested provisions in a Crisis Management Plan. This is an outline only. It is not intended to be a complete listing, nor intended to be an actual "Plan".*

### Definition

Written document developed by the Tour Operator that outlines the steps required for handling emergencies or unplanned events that occur while on tour. The plan would establish a crisis management team and include the pre-event planning; steps for execution of the plan; and post-event evaluation.

### A. Pre-Event Management

- Create a written plan that prepares for the most likely scenario and worst case scenario;
- Establish a pre-designated Crisis Team that will execute the plan and handle all communication needs;
- Evaluate the Plan by meeting regularly to determine if changes are required or if additional resources are needed;

### B. Key Features - the Plan should include:

- An updated listing of advisors and professionals such as Insurance contacts; Industry contacts; Legal advisors; Public relations/media contacts;
- Standard Operating Procedures for handling State Department Advisories;
- Standard Operating Procedures for collecting emergency contract and Medical Information.
- A call center for handling the expected influx of inquiries from family, clients, customers, vendors and the media.
- A designated spokesperson who will be the "voice" of the company in dealing with the authorities, media, family, customers and vendors.
- An emergency fund for additional expenses;
- Prepared media statements and press releases;

### C. Post-Event Management

- Keep communication lines open;
- Maintain a "bedside manner";
- Refund carefully - avoid admission of guilt and mark the refund accordingly;
- Work with suppliers - they, too, have a stake in the outcome of the event;
- Contract the travel insurance providers and assist in the coordination of emergency services;

## Section VIII: Recommended Guidelines for the Selection of Land, Air and Waterway

Transportation Vendors and Destination Management Companies Following are some key elements that should be included in an Operator's standard procedures for the selection of foreign transportation vendors. Although not all of these characteristics would necessarily apply in all cases, the majority of them should in order to assure that the Operator has selected the best possible vendor available.

- Supplier was recommended by other known and trusted supplier, industry colleague and/or is recognized by an established travel or tour industry association;
- Supplier has been operating for a minimum of 5 years;
- Supplier has a proven track record for safety, either incident-free or with no serious or material claims;
- Supplier has a written Crisis Management Plan;
- Supplier is chosen for its expertise with a reputation for being among the most experienced of local receptive operators;
- Supplier is compliant with local insurance and licensing regulations;
- Supplier is accessible 24/7 for handling contingencies and emergencies;
- Tour Operator and Supplier have a written, signed contract;
- Supplier agrees to sign a 'hold harmless' provision with Operator;
- Tour Operator and Supplier perform periodic quality review programs;
- Tour Operator has written, minimum service standards with the supplier;
- Tour Managers (employees of TO) accompany most excursions;
- Supplier has standard procedures in place for addressing Customer Service complaints;
- Supplier can produce favorable credit references and financial statements.

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April 23, 2012

