



The Surrogacy Contract

A Roadmap for Intended Parents and Surrogates

34 Key Topics to Discuss Before Matching

Educational guide only — not legal advice. This guide is general and informational. It is not a substitute for independent legal counsel. Surrogacy contracts vary by state, clinic, medical facts, insurance, compensation structure, and the particular requirements of the parties. Every party to a surrogacy contract should have their own attorney.

Why Contract Alignment Matters Before Matching

A surrogacy contract is not just a legal document. It is a roadmap for the match. The contract forces everyone to talk through the issues that can later become emotional, expensive, or relationship-damaging if they are ignored during matching.

When intended parents and a surrogate are considering a match, it is easy to focus on personality, compensation, location, and general comfort with each other. Those things matter deeply. But a strong match also requires alignment on the major topics that will eventually appear in the surrogacy contract.

The purpose of reviewing these topics early is not to negotiate every legal detail before attorneys are involved. Rather, it is to help both sides understand whether they are broadly aligned before investing time, money, and emotion into the match. This is especially important in independent matching, where there may not be an agency guiding the early conversations. But even when working with an agency, these topics are a helpful starting point for discussions with the agency, clinic, mental health professional, and attorneys.

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Key Contract Topics to Discuss Before Matching

Each topic includes what the section typically addresses and why it matters during matching.

1. Purpose and Intent of the Agreement

This section generally explains the basic purpose of the surrogacy arrangement: the surrogate agrees to carry a pregnancy for the intended parents, and the intended parents intend to become the legal parents of any child born from the arrangement.

Why it matters for matching: Everyone must be fully aligned that the surrogate's role is to carry the pregnancy, not to co-parent or maintain legal rights to the child.

2. Representations and Background Information

Agreements often include statements from each party confirming important background facts, such as legal capacity, marital status, medical history, criminal history, financial ability, honest disclosures, and voluntary participation.

Why it matters for matching: Both sides rely on the accuracy of what they have been told. Misrepresentations can seriously damage the match and create legal, medical, or emotional consequences later.

3. Psychological Evaluation and Counseling

Contracts commonly address psychological screening, mental health evaluation, and sometimes counseling during the journey, including individual evaluations or joint counseling.

Why it matters for matching: A good match requires emotional readiness, healthy boundaries, and the ability to communicate through sensitive issues.

4. Medical Screening and Physical Examinations

This section usually addresses medical records, fertility clinic screening, infectious disease testing, medical clearance, and cooperation with recommended testing.

Why it matters for matching: A match is not truly viable until the clinic and required professionals clear the surrogate. "We like each other" is only one step in the process. Medical screening and clearances are almost always completed prior to engaging a lawyer to draft the contract, so this section basically summarizes what has been completed and must be completed before the medical process begins.

5. Selection of Physicians and Medical Providers

Contracts often identify who selects the fertility clinic, IVF physician, obstetrician, hospital, and other providers.

Why it matters for matching: Medical provider choice can affect travel, insurance, delivery location, comfort level, and control over the pregnancy experience.

6. Embryo Transfer Plans

This section may address the number of transfer attempts, the number of embryos to transfer per attempt, timelines, and what happens if transfers are unsuccessful. Most contracts indicate up to three embryo transfers but this can differ as well.

Why it matters for matching: Intended parents and surrogates should be aligned on transfer expectations, single embryo transfer, twin possibilities, and repeated attempts. Most contracts provide for up to three embryo transfer attempts but this can vary as well.

7. Conduct During the Agreement and Pregnancy

Contracts usually include expectations for the surrogate's conduct before and during pregnancy, including following medical instructions, attending appointments, taking medications, avoiding certain substances, and avoiding high-risk activities.

Why it matters for matching: These provisions can feel personal to a surrogate. They should be discussed respectfully so everyone understands reasonable expectations and boundaries.

8. Communication During the Journey

Communication expectations may include appointment updates, sharing test results, notice of symptoms or complications, and how intended parents participate in appointments.

Why it matters for matching: Communication mismatch is one of the most common sources of tension. Frequency, tone, privacy, and boundaries should be discussed early.

9. Medical Decision-Making During Pregnancy

Contracts often address who makes decisions about the surrogate's medical care, who has access to medical information, and how decisions affecting the pregnancy or fetus are handled.

Why it matters for matching: Everyone should understand the difference between the surrogate's bodily autonomy and the intended parents' role as future parents of the child.

10. Prenatal Testing, Genetic Testing, and Fetal Abnormalities

This section commonly addresses prenatal testing, genetic testing, amniocentesis, CVS, NIPT, anatomy scans, and other recommended or requested testing, as well as how the parties will handle results showing fetal abnormalities.

Why it matters for matching: These are among the most emotionally difficult conversations in surrogacy. Alignment before matching is critical because misalignment here can end a journey painfully.

11. Selective Reduction and Termination

Many contracts address selective reduction (in a multiple pregnancy) and termination of pregnancy in defined circumstances, including who decides, on what grounds, and how disagreements are handled.

Why it matters for matching: These are values-based decisions. Both sides need to understand the other's position before signing \u2014 not during a crisis.

12. Travel Restrictions

Contracts often address travel limits during pregnancy, including how far the surrogate may travel, when restrictions begin, and what notice the intended parents must receive.

Why it matters for matching: Travel restrictions can affect the surrogate's family life, work, holidays, emergencies, legal parentage, insurance, and delivery planning.

13. Delivery Location and Birth Plan

This section usually addresses where the surrogate is expected to deliver, what hospital will be used, who may be present, and how intended parents will be notified when labor begins.

Why it matters for matching: The birth plan is emotional for everyone. Intended parents may want to be present, while the surrogate may have privacy needs.

14. Intended Parents' Access to the Child at Birth

Contracts typically address the intended parents' right to take custody after birth, hospital access, medical decision-making for the baby, and discharge planning.

Why it matters for matching: Some surrogates want a warm goodbye or photos; others prefer clear separation. Intended parents may have their own comfort level. Alignment matters.

15. Parentage and Legal Proceedings

This section typically addresses pre-birth or post-birth orders, parentage judgments, birth certificate procedures, and the steps needed to establish the intended parents' legal rights to the child.

Why it matters for matching: Legal parentage procedures vary significantly by state. Everyone should understand the legal pathway being used.

16. Compensation and Expenses

Compensation provisions usually address base compensation, payment schedule, monthly allowances, milestone payments (such as start of medications, transfer, and confirmation of pregnancy), and reimbursement of agreed expenses.

Why it matters for matching: Both parties need clarity about what is being paid, when, and why \u2014 not just the headline number.

17. Escrow and Payment Administration

Contracts often require intended parents to fund an escrow account before major steps begin. Escrow may be used for compensation, reimbursements, medical bills, insurance costs, legal fees, and other agreed expenses.

Why it matters for matching: Surrogates need confidence that funds are available. Intended parents need clarity about what they are funding and when.

18. Insurance

Insurance provisions may address the surrogate's health insurance, surrogacy exclusions, deductibles, co-pays, premiums, life insurance, disability coverage, complications coverage, newborn insurance, and uncovered expenses. If a surrogate has insurance, it should be carefully evaluated by an experienced broker.

Why it matters for matching: Insurance can dramatically affect cost and risk. Intended parents should not assume the surrogate's insurance covers everything.

19. Taxes

Contracts often state that the parties have been advised to consult tax professionals regarding the tax treatment of compensation and reimbursements.

Why it matters for matching: Tax treatment can affect the surrogate's actual take-home compensation. This should not be left to assumptions.

20. Lost Wages and Childcare

Contracts may address reimbursement of lost wages for the surrogate or her partner due to bed rest, appointments, or recovery, as well as childcare costs in defined circumstances.

Why it matters for matching: These are real costs of a journey. Both sides need to understand what is covered and what is not.

21. Medical Emergencies and Life Support

Some contracts address what happens if the surrogate experiences a serious medical emergency, including life support decisions, medical decision-making, and protection of the pregnancy.

Why it matters for matching: Surrogacy involves real medical risk. These discussions are uncomfortable, but avoiding them does not make the risk disappear.

22. Death, Divorce, Separation, or Incapacity of Intended Parents

Contracts may address what happens if one or both intended parents die, separate, divorce, or become incapacitated during the journey.

Why it matters for matching: The surrogate needs assurance that the child will be cared for and that obligations will be honored even if the intended parents' circumstances change.

23. Miscarriage, Stillbirth, or Failed Transfer

Contracts usually address what happens if an embryo transfer fails, the pregnancy ends in miscarriage, or there is a stillbirth, including compensation timing, reimbursement obligations, medical care, counseling, and future transfer attempts.

Why it matters for matching: These outcomes are painful but real. Knowing in advance how they are handled gives everyone the foundation to grieve and move forward.

24. Multiples

Contracts may address what happens in the case of twins or higher-order multiples, including additional compensation, selective reduction discussions, and medical considerations.

Why it matters for matching: Multiples carry higher medical risk and different financial implications. Everyone should be clear on expectations before transfer.

25. Post-Birth Contact

Contracts may address whether and how the surrogate and intended parents will stay in touch after birth, including photos, updates, visits, or no contact.

Why it matters for matching: A surrogate who hopes for updates may feel hurt if intended parents want no contact. Intended parents may feel uncomfortable if expectations are unclear.

26. Confidentiality and Privacy

Confidentiality provisions usually address what can be shared publicly, on social media, with family, friends, and third parties, including identifying information, medical information, photographs, and announcements.

Why it matters for matching: People have very different comfort levels with privacy. This must be discussed early.

27. Social Media

Social media provisions may address whether the surrogate may post about the journey, whether intended parents may be identified, whether ultrasound images can be shared, and whether photos of the baby can be posted.

Why it matters for matching: What feels like a beautiful post to one person may feel like a privacy violation to another.

28. Breach of Agreement

Contracts often explain what happens if someone fails to follow the agreement, such as failure to attend appointments, follow medical instructions, make payments, provide truthful information, or maintain confidentiality.

Why it matters for matching: Both parties need to understand what is considered a breach and what the consequences are before anyone feels surprised.

29. Termination of the Agreement

Contracts typically address how and when the agreement can be ended, including mutual termination, termination for cause, and what happens to obligations already incurred.

Why it matters for matching: Everyone should understand when they can walk away and when obligations continue.

30. Independent Legal Counsel

Each party should have independent legal counsel. The surrogate should have her own attorney, separate from the intended parents' attorney.

Why it matters for matching: A surrogacy contract should not be signed casually or copied from the internet. Independent legal counsel is essential.

31. Dispute Resolution

Contracts may include procedures for resolving disagreements, such as communication requirements, mediation, arbitration, court action, attorney fees, and venue.

Why it matters for matching: Even strong matches can experience tension. A dispute-resolution process helps prevent every disagreement from becoming a crisis.

32. Governing Law and Jurisdiction

This section identifies which state's law applies and where disputes or parentage proceedings may be handled.

Why it matters for matching: Surrogacy law is state-specific. The location of the surrogate, the birth, the intended parents, and attorneys can all affect the legal process.

33. Agency Role, If Any

When an agency is involved, the contract may identify the agency's role, responsibilities, and limitations, and clarify that the agency is not providing legal or medical advice.

Why it matters for matching: Both sides need to understand what the agency does \u2014 and what it does not do \u2014 so expectations are clear.

34. Amendments and Changes

Contracts usually explain that changes must be made in writing and signed by the parties. Verbal side agreements are risky.

Why it matters for matching: Surrogacy journeys evolve. But if something important changes, it should be properly documented.

Closing Thoughts

The best surrogacy matches are not built only on warmth, excitement, or shared hopes. They are built on clarity.

A contract does not replace trust. It protects trust by making sure the surrogate and intended parents have talked through the issues that matter most before problems arise.

For independent matches, this kind of discussion is essential. For agency matches, it is still an important starting point for conversations with the agency, attorneys, clinic, and mental health professionals.

The goal is not to make the process feel cold or overly legal. The goal is to create a thoughtful, respectful foundation so the journey can move forward with fewer surprises, fewer misunderstandings, and a stronger relationship between everyone involved.

Have questions about a specific contract topic?

Advocates for Surrogacy is a founder-led, attorney-founded agency. We help intended parents and surrogates think through these topics carefully so the journey starts with clarity — not confusion.

Visit advocatesforsurrogacy.com/contact to schedule a consultation.

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