

Section V – Pro forma Contract for Transportation of Persons

DRAFT

IOM office-specific Ref. No.:	
IOM Project Code:	
LEG Approval Code / Checklist Code	

**Transportation of Persons
Agreement
Between
The International Organization for Migration
And
[Name of the Other Party]**

1. Introduction

1.1 The Service Provider agrees to provide IOM with transportation services in accordance with the terms and conditions of this Agreement and its Annexes, if any.

1.2 The following documents form an integral part of this Agreement:

- (a) Annex I: IOM Data Protection Principles
- (b) Annex II: Vehicle Request Form
- (c) Annex III: Price Schedule
- (d) Annex IV: Bid/Quotation Form
- (e) Annex V: Delivery Schedule and Terms of Reference
- (f) Annex VI: Accepted Notice of Award (NOA)

2. Parties

The Parties to this Agreement are the **International Organization for Migration**, Mission in [XXX], [Address of the Mission], represented by [Name, Title of Chief of Mission etc.], hereinafter referred to as IOM, and [Name of the Other Party], [Address], represented by [Name, Title of the representative of the Other Party], hereinafter referred to as the Service Provider.

3. Services Supplied

3.1 The Service Provider agrees to provide to the IOM transportation of persons according to the following specifications:

- (a) The Service Provider will provide ground transportation with vehicles detailed in Article 3.2 upon receipt of a Vehicle Request Form (template attached as Annex II) which are officially authorized to transport passengers by the appropriate national transportation agency regulation in excellent mechanical condition. The date and number of vehicles required will be communicated by IOM focal person in *please write the office of location of the IOM focal point and phone number.*
- (b) Water and/or meals shall be provided if requested though the Vehicle Request Form in advance by IOM in sufficient quantity and quality for all persons. Any

additional fees for the provision of such Service need to be agreed in advance between the Parties and captured in the Vehicle Request Form.

- (c) The Service Provider shall ensure the following rules and regulations are fully respected:
- (i.) Before starting any operation the driver is fully responsible to verify the vehicle's faultless mechanical condition as well as ensuring the cleanliness of the vehicle.
 - (ii.) The driver in consultation with IOM focal person (or specifically assigned IOM escort) is responsible for the load of the vehicle. IOM focal person or escort has the authority to give instruction on the number of passengers and their seating as well as on the transportation of goods, tonnage limits and distribution of weight in the vehicle to assure the best balance.
 - (iii.) The drivers must possess a valid driving license the relevant vehicle type, a copy of the appropriate license for each driver must be submitted to IOM for its records.
 - (iv.) Drivers must handle the vehicle with care and pay attention to the road condition and other road users including pedestrians.
 - (v.) The driver must respect all local traffic regulations at all times. Speeding and overtaking is not allowed.
 - (vi.) Transporting passengers, luggage or cargo which are not authorized by IOM is strictly forbidden.
 - (vii.) In case of emergency, including, but not limited to people in need of urgent medical assistance or violent acts or the threat thereof, relevant IOM focal person or escort shall be informed immediately and a detailed written report must be submitted by the driver to IOM within 24 (twenty four) hours of the occurrence of any such situation.
 - (viii.) Drivers shall respect the culture, custom and habits of all passengers and IOM personnel. They should make every effort to avoid any behaviour that may be considered as not acceptable in a particular cultural context.
 - (ix.) It is the responsibility of the driver to ensure all the vehicles are parked in a secure area during any designated stop, which shall only be made in areas assessed to be safe and all the curfews must be respected. Driving after dark is not permitted, except if expressly permitted by IOM.
 - (x.) The Service Provider is responsible for obtaining and verifying all required documentation, including all relevant licenses and transport permissions and other relevant documents, as applicable in the context.
 - (xi.) In case of accident (i.e. any incident that happens unexpectedly resulting in damage to vehicle, passenger's property, or injury or death of passengers or personnel) the following procedures shall be followed:

- a. Ensure First Aid is provided and all injured are transferred to the nearest medical facility as quickly as possible
- b. A report should be made to the local authority (if required the driver must wait at the scene of the accident or report to the nearest police station)
- c. The IOM focal person and escort must be notified immediately.
- d. A written statement of the accident must be submitted to IOM within 24 (twenty four) hours of the accident

3.2 The Service Provider shall make the following vehicles available to IOM:

No.	Type and passenger capacity	Year	Plate number	Engine ID / Chassis ID
1	Volvo 9400, 50 pax	2012	ABCD1234	XYZ123456
2				
3				
4				
5				
6				
7				

3.3 The Service Provider shall provide transportation services from *[insert date]* to *[insert date]*.

4. Charges and Payments

4.1 The all-inclusive Service fee for the Services under this Agreement, which is the total charge to the IOM, shall be in accordance with the following table

No.	Type	Price per hour / day / week / month / passenger / completed route
1	Volvo 9400, plate no. ABCD1234	USD 250.00 (Two Hundred Fifty US Dollars only)
2		
3		
4		
5		
6		
7		

- 4.2 If, at any time, contracted capacity has not been made available to IOM (in case of technical breakdown, etc.) the corresponding amounts will be deducted from the total owed proportionally.
- 4.3 The rental fee includes the cost of the salaries and allowances of drivers for each vehicle, Comprehensive Motor Vehicle Insurance, vehicles' maintenance, repair, any taxes, tolls and levies and fuel and any other costs related to the transportation services.
- 4.4 The Service Provider shall invoice IOM upon completion of **each movement / at the end of every week/month [delete as required]**. The invoice shall include: *[services provided, routes completed, daily/weekly/monthly rate / rate per pax, number of hours billed, (add/delete as necessary)]*.
- 4.4 Payments shall become due *[insert number of days]* days after IOM's receipt and approval of the invoice. Payment shall be made in *[Currency]* by *[bank transfer]* to the following bank account: *[insert the Service Provider's bank account details]*.
- 4.5 The Service Provider shall be responsible for the payment of all taxes, duties, levies and charges assessed on the Service Provider in connection with this Agreement.
- 4.6 In the event of a delay to the specified delivery schedule IOM shall charge a penalty of one tenth of one per cent [0.1%] of the Service fee for every day of breach of the delivery schedule.

5. Warranties

The Service Provider warrants that:

- 5.1 It is the legal owner of the vehicles, and that the vehicles are each properly registered, as evidenced by a Certified True Copy of each vehicle's registration papers. Each vehicle must carry the original registration papers at all times during the period of this Agreement;
- 5.2 Each vehicle is covered by a Comprehensive Motor Vehicle Insurance issued by a reputable insurance company for the entire duration of the Agreement, as evidenced by a Certified True Copy of comprehensive motor vehicle insurance policy to be provided by the Service Provider to IOM prior to signing this Agreement;
- 5.3 Each vehicle is officially authorized to transport persons and all appropriate national transportation regulations and standards are met;
- 5.4 Each vehicle is in good working condition (road worthy) such as to ensure the safety of goods and has all the necessary tools and equipment that may be needed in times of emergency, as evidenced by a list of such equipment certified by IOM's focal person or escort;
- 5.5 The vehicles provided by the Service Provider are to include the driver, (or in case of long-haul journey, two drivers), an adequate supply of fuel, lubricants, spare parts, and, in particular, a sufficient number of spare tyres. If re-fuelling is not possible because of fuel shortage IOM will consider vehicles as non-operational and deductions will be made accordingly.
- 5.6 All vehicles shall bear IOM markings. Upon completion of each movement the markings should be removed immediately.
- 5.7 All aspects of the drivers including payment are the responsibility of the Service Provider. No employment relationship exists between IOM and the drivers;

- 5.8 The drivers assigned to vehicles used for the purpose of transportation under this Agreement are to be properly licensed, trained and suitably attired at all times in the prescribed uniform and shall conduct themselves in a manner that will not cause any prejudice or bad publicity to IOM. No unauthorized driver shall be allowed to drive any vehicle at any time.
- 5.9 The maximum number of working hours of the drivers shall not exceed applicable national standards and regulations (in order to avoid accidents due to fatigue). The drivers shall follow the instructions given by IOM staff, provided those instructions do not go against applicable law. Drivers found to be unsuitable by IOM shall be replaced immediately and without contest. Consumption of alcohol and/or other drugs or driving under the influence thereof is strictly forbidden and constitutes grounds for immediate dismissal of the driver;
- 5.10 The Service Provider is fully responsible for all the maintenance and repair of each vehicle including when the vehicle is damaged or is not in good working condition. Maintenance should be conducted by the Service Provider every 5,000 (five thousand) km or three months whichever comes first. During such maintenance or repair, the Service Provider shall provide IOM with a service vehicle of the same quality, type and condition as the vehicle which is undergoing maintenance. In case the Service Provider fails to provide such vehicle within 24 (twenty four) hours of required replacement, IOM reserves the option to either terminate or suspend the Agreement until such time that the subject vehicle or its replacement is made available to IOM by giving an immediate notice to the Service Provider. IOM shall not be responsible for any rental fee during the suspended period;
- 5.11 No arms, prohibited or dangerous items or contraband shall be carried/transported on-board the IOM contracted vehicles;
- 5.12 The subject vehicles are officially authorized to transport humanitarian aid.
- 5.13 The Service Provider further warrants that:
- a) It is a company financially sound and duly licensed, with adequate human resources, equipment, competence, expertise and skills necessary to provide fully and satisfactorily, within the stipulated completion period, all Services in accordance with this Agreement;
 - b) It shall comply with all applicable laws, ordinances, rules and regulations when performing its obligations under this Agreement;
 - c) In all circumstances it shall act in the best interests of IOM;
 - d) No official of IOM or any third party has received or will be offered by the Service Provider any direct or indirect benefit arising from the Agreement or award thereof;
 - e) It has not misrepresented or concealed any material facts in the procuring of this Agreement;
 - f) The Service Provider, its staff or shareholders have not previously been declared by IOM ineligible to be awarded agreements by IOM;
 - g) It has or shall take out relevant insurance coverage for the period the Services are provided under this Agreement;
 - h) It shall abide by the highest ethical standards in the performance of this Agreement, which includes not engaging in any discriminatory or exploitative practice or practice inconsistent with the rights set forth in the Convention on the Rights of the Child;
 - i) The Price(s) specified in Article 4.1 of this Agreement shall constitute the sole remuneration in connection with this Agreement. The Service Provider shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or the discharge of its

obligations there under. The Service Provider shall ensure that any subcontractors, as well as the personnel and agents of either of them, similarly, shall not receive any such additional remuneration.

5.14 The Service Provider further warrants that it shall:

- a) Take all appropriate measures to prohibit and prevent actual, attempted and threatened sexual exploitation and abuse (SEA) by its employees or any other persons engaged and controlled by it to perform activities under this Agreement ("other personnel"). For the purpose of this Agreement, SEA shall include:
 1. Exchanging any money, goods, services, preferential treatment, job opportunities or other advantages for sexual favours or activities, including humiliating or degrading treatment of a sexual nature; abusing a position of vulnerability, differential power or trust for sexual purposes, and physical intrusion of a sexual nature whether by force or under unequal or coercive conditions.
 2. Engaging in sexual activity with a person under the age of 18 ("child"), except if the child is legally married to the concerned employee or other personnel and is over the age of majority or consent both in the child's country of citizenship and in the country of citizenship of the concerned employee or other personnel.
- b) Strongly discourage its employees or other personnel having sexual relationships with IOM beneficiaries.
- c) Report timely to IOM any allegations or suspicions of SEA, and investigate and take appropriate corrective measures, including imposing disciplinary measures on the person who has committed SEA.
- d) Ensure that the SEA provisions are included in all subcontracts.

5.15 The above warranties shall survive the expiration or termination of this Agreement.

6. Audit

The Service Provider agrees to maintain financial records, supporting documents, statistical records and all other records relevant to the Services in accordance with generally accepted accounting principles to sufficiently substantiate all direct and indirect costs of whatever nature involving transactions related to the provision of Services under this Agreement. The Service Provider shall make all such records available to IOM or IOM's designated representative at all reasonable times until the expiration of seven years from the date of final payment, for inspection, audit, or reproduction. On request, employees of the Service Provider shall be available for interview.

7. Independent Contractor

The Service Provider shall perform all Services under this Agreement as an independent contractor and not as an employee, partner, or agent of IOM.

8. Dispute resolution

- 8.1 Any dispute, controversy or claim arising out of or in relation to this Agreement, or the breach, termination or invalidity thereof, shall be settled amicably by negotiation between the Parties.
- 8.2 In the event that the dispute, controversy or claim has not been resolved by negotiation within 3 (three) months of receipt of the notice from one party of the existence of such

dispute, controversy or claim, either Party may request that the dispute, controversy or claim is resolved by conciliation by one conciliator in accordance with the UNCITRAL Conciliation Rules of 1980. Article 16 of the UNCITRAL Conciliation Rules does not apply.

- 8.3. In the event that such conciliation is unsuccessful, either Party may submit the dispute, controversy or claim to arbitration no later than 3 (three) months following the date of termination of conciliation proceedings as per Article 15 of the UNCITRAL Conciliation Rules. The arbitration will be carried out in accordance with the 2010 UNCITRAL arbitration rules as adopted in 2013. The number of arbitrators shall be one and the language of arbitral proceedings shall be English, unless otherwise agreed by the Parties in writing. The arbitral tribunal shall have no authority to award punitive damages. The arbitral award will be final and binding.
- 8.4. The present Agreement as well as the arbitration agreement above shall be governed by internationally accepted general principles of law and by the terms of the present Agreement, to the exclusion of any single national system of law that would defer the Agreement to the laws of any given jurisdiction. Internationally accepted general principles of law shall be deemed to include the UNIDROIT Principles of International Commercial Contracts. Dispute resolution shall be pursued confidentially by both Parties. This Article survives the expiration or termination of the present Agreement.

9. Delays/Non-Performance

- 9.1 If, for any reason, the Service Provider does not carry out or is not able to carry out its obligations under this Agreement and/or according to the project document, it must give notice and full particulars in writing to IOM as soon as possible. In the case of delay or non-performance, IOM reserves the right to take such action as in its sole discretion is considered to be appropriate or necessary in the circumstances, including imposing penalties for delay or terminating this Agreement.
- 9.2 Neither Party will be liable for any delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure is caused by force majeure, such as civil disorder, military action, natural disaster and other circumstances which are beyond the control of the party in question. In such event, the Party will give immediate notice in writing to the other Party of the existence of such cause or event and of the likelihood of delay.

10. Confidentiality

All information which comes into the Service Provider's possession or knowledge in connection with this Agreement is to be treated as strictly confidential. The Service Provider shall not communicate such information to any third party without the prior written approval of IOM. The Service Provider shall comply with IOM Data Protection Principles (Annex I) in the event that it collects, receives, uses, transfers or stores any personal data in the performance of this Agreement. These obligations shall survive the expiration or termination of this Agreement.

11. Notices

Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered, or sent by prepaid post or facsimile to the other Party at the following address:

International Organization for Migration (IOM)

Attn: [Name of IOM contact person]

[IOM's address]

Email: [IOM's email address]

[Full name of the Service Provider]

Attn: [Name of the Service Provider's contact person]

[Service Provider's address]

Email: [Service Provider's email address]

12. Use of IOM Name

The official logo and name of IOM may only be used by the Service Provider in connection with the Services and with the prior written approval of IOM.

13. Insurance and Indemnities

- 13.1 The Service Provider will be liable for all loss or damage, injury or death to the persons and their belongings other than that caused through no fault of the Service Provider of which IOM will be the sole judge. Upon the arrival of persons to the final location indicated by IOM, any damage or loss shall be assessed and recorded by IOM. All missing or damaged belongings of the persons transported will be debited against any sums due. No fees will be paid by in relation to lost/damaged belongings of the persons. If the value of lost / damaged belongings or liability for injury or death is greater than the sums due, the balance will be deducted by IOM from the sum due in relation to any other agreement with the Service Provider or will be recoverable as damages.
- 13.2 The Comprehensive Motor Vehicle Insurance of each vehicle which is included in the rental fee shall cover all accidents and any damage caused to the vehicle, its driver and passengers and to a third party as well as to property damage. IOM shall not, in any case, be held responsible for any damage to the vehicle or to any third party (whether life or property) resulting from any accident in which one of the vehicle's may be involved. The Service Provider will furnish a certified copy of the certificate of insurance in force to IOM upon signature of this Agreement.
- 13.3 The Service Provider shall at all times defend, indemnify, and hold harmless IOM, its officers, employees, and agents from and against all losses, costs, damages and expenses (including legal fees and costs), claims, suits, proceedings, demands and liabilities of any kind or nature to the extent arising out of or resulting from acts or omissions of the Service Provider or its

employees, officers, agents or subcontractors, in the performance of this Agreement. IOM shall promptly notify the Service Provider of any written claim, loss, or demand for which the Service Provider is responsible under this clause. This indemnity shall survive the expiration or termination of this Agreement.

14. Status of IOM

Nothing in this Agreement affects the privileges and immunities enjoyed by IOM as an intergovernmental organization.

15. Assignment and Subcontracting

15.1 The Service Provider shall not assign or subcontract the activities under this Agreement in part or all, unless agreed upon in writing in advance by IOM. Any subcontract entered into by the Service Provider without approval in writing by IOM may be cause for termination of the Agreement.

15.2 In certain exceptional circumstances by prior written approval of IOM, specific jobs and portions of the Services may be assigned to a subcontractor. Notwithstanding the said written approval, the Service Provider shall not be relieved of any liability or obligation under this Agreement nor shall it create any contractual relation between the subcontractor and IOM. The Service Provider remains bound and liable here under and it shall be directly responsible to IOM for any faulty performance under the subcontract. The subcontractor shall have no cause of action against IOM for any breach of the subcontract.

16. Waiver

Failure by either Party to insist in any one or more instances on a strict performance of any of the provisions of this Agreement shall not constitute a waiver or relinquishment of the right to enforce the provisions of this Agreement in future instances, but this right shall continue and remain in full force and effect.

17. Severability

If any part of this Agreement is found to be invalid or unenforceable, that part will be severed from this Agreement and the remainder of the Agreement shall remain in full force.

18. Entirety

This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, relating to the subject matter of this Agreement.

19. Termination

19.1 IOM may terminate this Agreement at any time, in whole or in part.

- 19.2 In the event of termination of this Agreement, IOM will only pay for the Services completed in accordance with this Agreement unless otherwise agreed. Other amounts paid in advance will be returned to IOM within 7 days from the date of termination.
- 19.3 Upon any such termination, the Service Provider shall waive any claims for damages including loss of anticipated profits on account thereof.

20. Special Provisions (Optional)

Due to the requirements of the Donor financing the Project, the Implementing Partner shall agree and accept the following provisions:

[Insert all donor requirements which must be flown down to IOM's implementing partners and subcontractors. In case of any doubt, please contact LEGContracts@iom.int]

21. Final clauses

- 21.1 This Agreement will enter into force upon signature by both Parties. It will remain in force until completion of all obligations of the Parties under this Agreement unless terminated earlier in accordance with Article 19.
- 21.2 Amendments may be made by mutual agreement in writing between the Parties.

Signed in two copies in English , on (date) at (place).

For and on behalf of
The International Organization
for Migration

Signature

Name
Position
Date
Place

For and on behalf of
[Full name of the Service Provider]

Signature

Name
Position
Date
Place

ANNEX II
VEHICLE REQUEST FORM

Reference is made to the Agreement signed by IOM and [name of the Service Provider] on [date of signing of the Agreement].

In accordance with Article 3.1 a), IOM has the right to request vehicles which shall be provided with a driver.

IOM hereby requests the following vehicle(s) at the date(s), time(s) and address(es) outlined below:

NO.	VEHICLE	DATE AND TIME OF DEPARTURE	DEPARTURE AT	ARRIVAL AT
1	Volvo 9400, ABCD1234	1 February 2015, 9am	Airport Exemptown, Airportstreet 1, Exemptown	IOM Office at Samplestreet 1, Exemptown
2				
3				
4				
5				
6				
7				

All conditions as outlined by the above mentioned Agreement apply.

For IOM:

Name and signature

Date and place:

DRAFT