



Albanian-American
Development Foundation

SERVICE CONTRACT

Between

Albanian-American Development Foundation

And

[INSERT NAME OF CONSULTANT]

For

The development of project design for “Urban Trails Tirana” Project

Date: [month] [day], [year]

Contract No: ____ - ____

This Service Contract (the “**Contract**”) is made on [INSERT] day of [MONTH], [YEAR] by and between the following parties:

ALBANIAN-AMERICAN DEVELOPMENT FOUNDATION, a non-for-profit organization duly organized and established under the laws of the state of Delaware, with registered seat at 780 Third Ave, Floor 46, New York, NY 10017, U.S.A. through its Albanian branch registered by virtue of Tirana District Court decision no. 359 dated 18.03.2011, with tax number L11618452N and registered address at “Ibrahim Rugova” Street, Building no. 42, Entrance no. 7, Apartment no. 60, Tirana, Albania, duly represented by Mr. Martin Mata and Mr. Aleksandër Sarapuli (“**AADF**”)

and

[INSERT NAME AND DATA OF THE CONSULTANT], [IF APPLICABLE] acting by virtue of Special Power of Attorney no. ____ rep, no. ____ col, dated ____, in the name and on behalf of the temporary union of the companies [INSERT NAME OF LEADING APPICANT], with the abovementioned registration information, [INSERT NAME AND DATA OF OTHER MEMBERS], and [INSERT NAME AND DATA OF OTHER MEMBERS] (the “**Consultant**”).

Collectively, the AADF and the Consultant are referred to as “**Parties**” and individually as “**Party**”

WHEREAS:

- (A) AADF is supporting the Municipality of Tirana (the “**Beneficiary**”) and wishes to engage professional consulting services for the project “Urban Trails Tirana” (the “**Project**”);
- (B) Consultant is engaged in, amongst other activities, the supply of Services and Deliverables required by AADF;
- (C) AADF has selected the Consultant as a supplier of Services and Deliverables based on Consultant’s representation of its expertise in its field;

NOW THEREFORE, the Parties hereby agree as follows:

1. SCOPE OF WORKS

- 1.1 During the term of this Contract, the Consultant shall provide the Services and Deliverables, as per the requirements and specifications described in Schedule I – Service Requirements and Specifications, Schedule II - Consultant’s Technical Proposal and Schedule III - Project Timeline and specified in the tender documents (the “**Services and Deliverables**”).
- 1.2 **Time Schedule.** The Consultant shall complete the Services and Deliverables provided under Clause 1.1 above in accordance with the Project Timeline provided in Schedule III. It is of utmost importance to AADF that the Consultant strictly complies with the Project Timeline and duly notifies AADF as soon as possible of any event that might affect the timely delivery of the Project. The Project Timeline may be adjusted by written mutual agreement between the Parties. The Consultant hereby agrees that in case of postponement of the deadlines stipulated in the Project Timeline, the Consultant will not be entitled to any additional fees, compensation for any direct or indirect damages, expenses, costs or losses or any other payments by AADF.
- 1.3 The Consultant shall work on site and remotely according to the tasks provided in Schedule I and Schedule II attached hereto.
- 1.4 The Consultant hereby engages to review and resubmit its Services and Deliverables within the scope of works laid out in this Contract, without any additional cost to AADF, in accordance with comments of AADF, the Beneficiary and/or public institutions having jurisdiction over the Project, who shall approve the Deliverables, as per the Albanian law

requirements (the “**Approving Authorities**”).

2. DURATION

This Contract shall enter into force on the date of its execution by both Parties and shall be valid until completion of the Services and Deliverables (“**Term**”), or until termination in accordance with Clause 10.

3. RIGHTS AND OBLIGATIONS OF THE CONSULTANT

The Consultant covenants and agrees that:

- 3.1** During the Term, the Consultant shall devote the appropriate time and attention to the performance of the Services and Deliverables and shall act with due diligence and efficiency and in accordance with the Service Requirements and Specifications attached as Schedule I hereto.
- 3.2** The Consultant shall provide the Services and Deliverables in consideration of the goals and objectives of the Project, the legal requirements as per Albanian legislation and in accordance with this Contract and AADF’s and the Beneficiary’s guidance. The Consultant shall perform the Services in a professional and timely manner and assure its completion in good conditions, with reasonable care and skill, in accordance with all applicable laws and regulations.
- 3.3** The Services and Deliverables provided by the Consultant under this Contract shall be inclusive of any and all elements/component that should normally be provided in the construction documents as per the standards applicable in this subject matter, including drawings, specifications and bill of quantities that the contractor shall use to implement the construction works for the Project.
- 3.4** Within 15 (fifteen) days from the date of execution of this Contract, the Consultant shall submit to AADF a detailed Work Plan for the preparation of each of the Deliverables, specified in Schedule I and II, with respect to Deliverables for each work phase. AADF shall have the right to approve, modify or request the Consultant to modify the proposed Work Plan. Once the Work Plan is approved by AADF, the Consultant shall perform its Services and Deliverables in accordance with the Work Plan. The Work Plan may be adjusted by mutual agreement between the Parties, in the course of implementation of this Contract, including allowances for periods of time required for AADF’s review.
- 3.5** The Consultant shall prepare a list of consultation activities with key stakeholders, and provide a draft consultation calendar to AADF within 15 (fifteen) days from the date of execution of this Contract. The Consultant shall review the consultation calendar in light of any comments and suggestions received from AADF and any other entity, if required from AADF. The Consultant shall prepare and submit to AADF a monthly activity report. The Consultant shall notify AADF in writing at least 5 working days prior to any activity of any changes to the consultation calendar or other unforeseen activities, through AADF Contact person.
- 3.6** The Consultant undertakes to coordinate with its own sources and by its own means its work with the key stakeholders and Approving Authorities involved in accordance the Service Requirements and Specifications and the Consultant’s methodology, including any required access to the Project site. The Consultant shall keep regular communications with AADF and keep the latter’s authorized representatives copied in all communications the Consultant will have with the key stakeholders and Approving Authorities involved in the Project.
- 3.7** The Consultant shall prepare and submit to AADF monthly progress reports, in a format mutually agreed between the Parties, by sending the draft Deliverables for continuous consultation with AADF during the course of each project phase, including supporting documentation, such as but not limited to desk research data, analysis and findings, recommendations, minutes of meetings. AADF shall review such documents and provide its

feedback to the Consultant. The Consultant shall prepare and submit any other reports and documents as might be reasonably requested by AADF from time to time.

- 3.8** The Consultant shall perform its Services and Deliverables in accordance with the methodology and Work Plan prepared by the Consultant and through the Key Personnel engaged in the Project as per Schedule IV of this Contract. The Consultant shall not substitute any Key Personnel, except under circumstances beyond the control of the Consultant and the concerned Key Personnel. In such case, substitution will be permitted only with prior written approval from AADF, provided that such substitution shall be subject to equally or better qualified and experienced personnel being provided to the satisfaction of AADF.
- 3.9** The Consultant's Key Personnel (preferably the team leader and international partner, if applicable) must be present in Albania to present key developments to AADF, the Beneficiary and/or the Approving Authorities, upon AADF requests and, as may be necessary, for site visits, meetings or presentations with the key stakeholders and Approving Authorities and public hearings until the detailed Deliverables are approved by the Approving Authorities.
- 3.10** The Consultant shall ensure that the professionals involved in this Project have all necessary licenses and qualifications required by the Albanian law and the best practices of the international construction design standards.
- 3.11** The Consultant shall ensure that no circumstances arise during the Term in which the Consultant's activities under the Contract conflict or might conflict with the personal interest of the Consultant or with any services which the Consultant may render to third parties.
- 3.12** It is the Consultant's responsibility to ensure compliance of the Services and Deliverables with the relevant Albanian legislation and requirements applicable to its obligations and duties under this Contract, as well as other planning documents. For this purpose, the Consultant shall participate in the presentation of the Deliverables to the Beneficiary, Approving Authorities and other stakeholders, providing any clarifications required for obtaining the relevant permits and approvals of all Approving Authorities as per Albanian legal requirements and make any revisions requested by the Approving Authorities, until approval is obtained. The Consultant shall respect and abide by all applicable laws and Good Industry Practice.
- 3.13** Upon request by AADF, the Consultant shall be available during the entire tendering process to answer any questions:
- (i) from AADF or the authorities;
 - (ii) from bidders (potential constructors including their sub-constructors) to inform them of the design intent during the preparations of their technical and financial proposals.
- Answers must be formally submitted in writing within 2 (two) working days from submission by AADF. They need to be dated to ensure fairness to all bidders and include references to the tendered documentation set and may be in the form of text, drawings, images, or meeting minutes. A full drawing sheet or portion of the bill of quantity may require to be produced, completed or resubmitted. The Consultant may be also required to advise AADF on the suitability of possible constructors during the vetting process. A pre-bid conference may be conducted on or off-site that could require the presence of the Consultant.
- 3.14** During construction, in the case of errors or omissions in the construction documents, the Consultant shall make clear the original intention to fulfill the wholeness or integrity of the design. This can take the form of text, drawings, images, or meetings. AADF may require during the construction further clarifications addressing issues that should have been foreseen during design phase. In such cases, the Consultant shall confirm receipt of any request and resolve the issue as per the terms in Schedule I. This does not constitute construction observation or supervision but is intended to avoid any misinterpretations or incompleteness of the construction design documents.

- 3.15** The Consultant shall ensure that all deadlines described in the Project Timeline in Schedule III of this Contract are duly complied with. The Consultant shall notify AADF as soon as possible of any foreseen delays in the submission of the Deliverables. Should AADF note from the progress reported by the Consultant there may be delays, upon request from AADF, the Consultant shall deliver a working plan to mitigate any delays and ensure the realization of the Services and Deliverables on time.
- 3.16** It is expressly agreed that should the Consultant fail to deliver the Services and Deliverables within the Project Timeline provided in Schedule III, the Consultant shall be charged a penalty amounting 0.2% of the total project fees per day of delay up to 10% of the total project fees. AADF may deduct the accrued penalty from each and any payment. Payment of the penalty does not absolve the Consultant from its contractual obligations. Delays caused by the approval and/or consultation processes with the Beneficiary and Approving Authorities will extend the Deliverables time-schedule with the number of days calculated from submission of the final documents by the Consultant to the approval date. AADF shall not be liable for any additional costs or damages which may be incurred by the Consultant due to delays caused by the Approving Authorities.
- 3.17** The Consultant shall provide full support to AADF, by providing any clarifications required and make any revisions requested by AADF within the scope of works, until approval of all Deliverables by AADF is obtained.

4. RIGHTS AND OBLIGATIONS OF AADF

- 4.1** AADF shall pay on time the Services and Deliverables charged by the Consultant in accordance with terms and conditions determined herein.
- 4.2** AADF shall provide its comments and suggestions in relation to the Deliverables within a reasonable time, and shall not cause any unjustified delays to the Consultant's performance as per the Project Timeline.
- 4.3** AADF shall coordinate meetings between the Consultant and the Beneficiary so that all documents, drawings, plans that the Beneficiary has in its disposal, which are considered necessary for the completion of the Services and Deliverables, are made available to the Consultant. AADF does not assure and has no liability for the quality, reliability and accuracy of such documents. The Consultant shall be solely responsible for verifying with its own sources and by its own means, the accuracy of such existing documents made available by AADF or third parties for determining whether such documents meet its needs and reflect the actual site conditions. When existing documents do not reflect the actual site conditions, the Consultant shall propose to AADF a mitigation plan in this regard.
- 4.4** AADF shall be entitled to partially or entirely refuse the Deliverables prepared by the Consultant in case such Deliverables are not in compliance with the requirements under this Contract, instructions of AADF, the Beneficiary and/or Approving Authorities or the applicable Albanian legislation. In this case, the Consultant shall submit the revised Deliverables within a reasonable time period agreed among the Parties and indicated by AADF in the relevant refusal letter. If the Parties do not find an agreement on the time period for the submission of the revised Deliverables, AADF shall have the right, in its sole discretion, to indicate a reasonable time period according to the type of revisions required to be made. Should the Consultant fail to deliver the revised Deliverables within such time period, it shall pay to AADF a penalty at the amount set forth in Clause 3.16, calculated from the expiry of the time period indicated in the relevant refusal letter and AADF may at its discretion terminate this Contract without any compensation. The penalty under this Clause 4.4 shall be calculated in addition to any penalty accrued under Clause 3.16. The Consultant shall be liable for any damage to AADF resulting from the Consultant's refusal or failure to deliver the revised Deliverables within the specified time, whether or not the Consultant's right to proceed with the Services is terminated. This liability includes any increased costs incurred by AADF in completing the Deliverables.

- 4.5 The AADF is the owner of any product that results from the performance of the Contract. The product under this Contract, and any other related document produced, cannot be shared, published, used and distributed by the Consultant in any manner whatsoever without the prior consent of AADF, except to the extent necessary for purposes of describing the Consultant's corporate qualifications or experience. These rights shall survive termination of this Contract.

5. MARKETING AND ADVERTISEMENT

- 5.1 AADF will provide guidance to the Consultant on the nature and specific marketing and advertisement requirements under this Contract. The Consultant, as directed by AADF, agrees to cooperate with AADF and facilitate and support these requirements as needed.
- 5.2 The Consultant will not publish, have published or otherwise publicly share or disseminate any data, materials, writings, reports, outlines, drafts, any other materials or deliverables produced under this Contract, in any medium, except as may be approved by AADF. The Consultant shall consult and agree in advance with AADF on public declarations, publications in the media, social networks or any other form regarding the Project and the Services and Deliverables provided by the Consultant under this Contract.
- 5.3 Any publicity or advertisement concerning this Contract using AADF's name or trademarks, will require prior written approval by AADF. Requests for use of the name and/or trademarks of AADF shall be addressed to AADF.
- 5.4 All publications, videos or other information/media and similar products funded under this Contract and intended for general readership or other general use shall be marketed in accordance with the guidelines and instructions set by AADF.
- 5.5 In all marketing activities, publications and other publicity, the Consultant will be acknowledged as the author and lead architect of the Deliverables.

6. INTELLECTUAL PROPERTY

- 6.1 The Consultant represents and warrants that the Services and Deliverables provided by the Consultant to AADF under this Contract will not infringe or violate any intellectual property rights or other rights of any third party. The Consultant will promptly notify the AADF if it becomes aware of any potential breaches.
- 6.2 The Consultant hereby acknowledges that the Deliverables and Services hereunder and all results and proceeds thereof are works done under AADF's direction and control and have been specially ordered or commissioned by the AADF. To the extent the Deliverables and any elements or part thereof are subject to copyright, they shall constitute "works made for hire" for AADF and shall be the exclusive property of the AADF, and should such Deliverables be held by a Court of competent jurisdiction to not be a "work made for hire," the Consultant shall and does hereby assign the copyright therein to AADF. Therefore, the Consultant hereby agrees to assign and transfer exclusively to AADF all rights, titles, and interest (a) in and to the Deliverables that are or will be created, produced or developed by the Consultant through the provision of services pursuant to this Contract, including any and all intellectual property rights pertaining thereto, (b) in any and all works created, made, conceived or developed by the Consultant in the performance of the Services under the Contract and resulting from tasks assigned to the Consultant by AADF or resulting from the use of materials, documents data and confidential information owned, leased or contracted by AADF, as well as (c) in all drafts, notes, concepts, ideas, suggestions, modifications, improvements and derivative works related thereto or contained therein and each element and part thereof. Notwithstanding the above, the Consultant: (i) retains the right to be identified as the author of the Deliverables; (ii) the Consultant shall have the right to use original technical solutions created by the Consultant for this Project during the performance of the Services in his future works, except elements that are unique to the Project.

- 6.3** All Deliverables produced by the Consultant pursuant to this Contract shall become the sole property of AADF, including all intellectual property rights embodied therein. The Consultant agrees that during the term of this Contract, it shall make any required modifications and adaptations to the deliverables, as stipulated under Clause 3 of this Contract. In case the Consultant refuses to make any such modifications or adaptations, or after termination of this Contract, the Consultant agrees that AADF and/or the relevant public institutions, in the capacity of beneficiaries of the Project, have the right to use, modify, alienate or adapt the Deliverables produced by the provision of Services pursuant to this Contract, whether partially or entirely, including any provisional version of such Deliverables, without any limitation and that the Consultant does not have any claim related to the Deliverables, other than the compensation according to Clause 7. Should the Consultant not agree with alterations of the Deliverables by AADF or the Approving Authorities, the Consultant shall be entitled to demand that such alterations be not designated by his name.
- 6.4** *[IF APPLICABLE]* The Consultant represents and warrants that the Consultant has been duly authorized by the temporary union and its team's Key Personnel to undertake the commitments and obligations provided herein on behalf of the temporary union of companies and that the provisions of this Clause do not infringe or violate intellectual property rights of any Key Personnel or other members.

7. FEES AND PAYMENT

- 7.1** The Parties have agreed to payment of Services for a total fee of *[INSERT AMOUNT IN NUMBERS AND LETTERS]* (*SPECIFY IF VAT EXCLUDED/INCLUDED*) (the "**Fees**") with rates proposed in Schedule II, Consultant's Technical Proposal.
- 7.2** The Fees will be paid in *[INSERT]* instalments, in accordance with the following payment schedule ("**Payment Schedule**"):
- i. *[SPECIFY THE INSTALMENTS]*;
- 7.3** All fees become payable once the Services and Deliverables have been confirmed as received and approved by AADF and the Beneficiary's authorized representatives, after obtaining the necessary approvals by the respective Approving Authorities. Invoices are payable within 15 (fifteen) working days from acceptance of the fiscal invoice by AADF.
- 7.4** Payment of the Fees shall be performed by AADF in favor of the Consultant through bank transfer (with shared charges) at the Consultant's bank account as per below:
- Beneficiary name:
Bank name:
Account no.:
SWIFT:
IBAN:
Currency:
- 7.5** *[IF APPLICABLE]* The Consultant shall be solely responsible for performing any and all payments to the other members of the temporary union as per the cooperation/consortium agreement entered into between them, keep them fully informed of the progress of the work under this Contract and consult regularly with them. All members must receive copies of the reports, progress and financial documents submitted to AADF.
- 7.6** Except as otherwise expressly provided in this Contract, each Party will bear its own expenses in connection with the preparation, execution and performance of this Contract.

8. AESTHETICAL SUPERVISION

- 8.1** The Consultant will be engaged in aesthetical supervision during implementation phase. AADF shall inform the Consultant in writing at least 15 (fifteen) days in advance on the date

when the construction works shall commence.

- 8.2** Aesthetical supervision shall start immediately upon commencement of the construction works and will include all aesthetical supervision of all construction works implementing the Project prepared by the Consultant, notwithstanding the investor of such construction works.
- 8.3** During aesthetical supervision, the Consultant may make changes and additions to designs as deemed necessary during implementation (construction), with prior approval of AADF. The AADF shall require the engagement of the Consultant (through drawn details or presence in the field) with regard to any clarifications, further detailing or changes in design, addressing issues that could not have been foreseen during the designing phase. In such cases, the Consultant shall immediately confirm receipt of any request made under this Clause and shall solve the issue within 2 (two) working days if the matter is qualified as urgent by AADF or within 5 (five) working days in other cases.
- 8.4** The Consultant shall be responsible for following all necessary procedures and obtaining any and all approvals from the Approving Authorities of the changes and additions made as per Clause 8.3, in accordance the requirements of the applicable law.
- 8.5** During the aesthetical supervision of the construction works, the Consultant, in coordination with the supervisor of the construction works, shall perform monthly site visits. Within 4 days from each site visit, the Consultant shall submit to AADF and the Supervisor of the construction works a written report on the progress and quality of the construction works, including concerns and suggestions related to aesthetical construction component. The supervision services and written report shall include the following elements:
- i. Assessment/consultation of designs proposed by the constructor, when factual situation differs from the approved project design, in accordance with article 8.3 above. The Consultant is instructed by the Supervisor to prepare and finalize the final designs before the Supervisor issues the execution order for changes in the designs, which do not affect the term and total costs of the project execution. The Supervisor has the responsibility on the final decision in relation to these changes.
 - ii. Consultation with regard to the quality of main materials/certificates and/or samples in the Site of materials that have an impact on the architectural aspect.
- 8.6** The Consultant shall ensure staff presence on site with at least monthly site visits to perform aesthetical supervision during the project implementation. The presence of the above must be agreed in advance upon requests made by AADF.
- 8.7** Within 30 (thirty) days from the completion of the construction works, the Consultant shall deliver to AADF a final aesthetical supervision report on performance of the construction works in full compliance with the Project Design.
- 8.8** The Parties herein agree that the date of commencement of construction works is not under the responsibility of AADF, and AADF shall not be held liable for any delay related to construction works.

9. FORCE MAJEURE

- 9.1** In the event of and as soon as possible after the occurrence of any cause constituting Force Majeure, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting Force Majeure shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.
- 9.2** If the Consultant is rendered unable, wholly or in part, by reason of a Force Majeure to

perform its obligations and meet its responsibilities under the Contract, AADF shall have the right to suspend the Contract with prior written notice to the Consultant. In any case, AADF shall be entitled to consider the Consultant permanently unable to perform its obligations under the Contract in case the Consultant is unable to perform its obligations, wholly or in part, by reason of Force Majeure for any period in excess of 30 (thirty) days. In such case, AADF may terminate the Contract upon 5 (five) days written notice to the Consultant.

- 9.3** Force Majeure as used herein means any unforeseeable and irresistible circumstances beyond the affected Party's control, including acts of the public enemy, fires, earthquakes, floods, pandemics, epidemics, quarantine restrictions, strikes (not involving employees, subcontractors or agents of the party whose performance is delayed or prevented), war, acts of terrorism, riots, freight embargoes, or any other acts of similar nature or force, provided that the delay or failure to perform must be beyond the control and without the fault or negligence of the party claiming excusable delay and such affected party shall take steps to mitigate the effect and length of such Force Majeure event.

10. TERMINATION

- 10.1** AADF may terminate this Contract prior to its Term for convenience upon 15 (fifteen) days prior written notice to the Consultant. In case of termination by AADF for convenience, the Consultant shall be paid for the Services and Deliverables provided in accordance with the provisions of the Contract up to the effective date of termination and any direct costs and expenses proven to be incurred by the Consultant prior to termination and approved in advance by AADF, but such costs shall not exceed the fee payable by AADF to the Consultant, as agreed under Clause 7 up to the relevant phase before which the Contract is terminated.
- 10.2** AADF may immediately terminate this Contract upon notice delivered in writing to the Consultant, for the following reasons:
- for a material breach by the Consultant of its obligations under the Contract, which is not cured within 15 (fifteen) days after written notice;
 - the Consultant is bankrupt or bankruptcy proceedings are initiated against him;
 - the Consultant or any of its Key Personnel is subject of a judgment, which has force of res judicata for fraud, corruption, involvement in a criminal organization or any other illegal activity;
 - if, for any reason, it is determined by AADF that the Services or Deliverables do not comply with the requirements of this Contract and the Consultant is not able to fulfil its obligations hereunder.
- 10.3** Upon termination or expiry of this Contract, the Consultant shall return and/or submit to AADF any and all documents received or prepared by the Consultant during the implementation of this Contract in electronic and hard copy. The Consultant shall not keep or store any electronic or hard copy of such data.
- 10.4** In case of termination under Clause 10.2, AADF is entitled to complete the Services and Deliverables by a third party, without the Consultant's consent and may use any data, materials, documents, findings or information produced by the Consultant under this Contract. The Consultant shall be liable to cover any costs incurred by AADF as a result of the termination of this Contract.
- 10.5** The provisions of this Contract that by their nature are intended to survive termination, including but not limited to Clauses 4.5, 5, 6, 10.3, 10.4, 11.1, 14, 14, shall survive any completion, rescission, expiration or termination of this Contract.

11. CONSULTANT'S LIABILITY AND INDEMNITY

- 11.1** The Consultant shall be liable for and indemnify and hold harmless AADF, its trustees, officers, employees, representatives and agents in respect of:

- i. any act or omission, whether negligent, tortious or otherwise, of the Consultant, its Key Personnel or allowed subcontractors relating to or arising from the provision of the Services or the matters contemplated in this Contract;
- ii. any breach by the Consultant of any of the warranties and obligations under this Contract;
- iii. any claims from the Beneficiary and/or public authorities and/or any third parties as a direct or indirect consequence of the breach by the Consultant of any warranties and obligations stipulated in this Contract;
- iv. any death, personal injury or property damage caused by the negligence of the Consultant, its Key Personnel or allowed subcontractors;
- v. any actual or alleged infringement, misuse or misappropriation by the Consultant of any intellectual property or proprietary right of any third party, including, without limitation, patents, copyright, registered design, trade secrets or any similar proprietary rights; or
- vi. any failure of the Consultant, its Key Personnel or allowed subcontractors to comply with any applicable law, rule or regulation.

11.2 The Consultant agrees to defend, indemnify, and hold harmless AADF, its trustees, officers, directors, employees, representatives and agents from and against any and all claims, damages, costs, including attorney fees, expenses, penalties, losses and liabilities arising from or in connection with Clause 11.1. *[IF APPLICABLE]* The temporary union of companies is jointly and severally liable towards AADF for the performance of the Services and Deliverables under this Contract. AADF shall first claim the full amount of liability from the Consultant, as the lead member of the temporary union.

11.3 The Consultant must have professional liability insurance for coverage of all damages as results of errors, omissions or negligent acts of the Consultant or any of its team members in an amount no less than 1 million euro per claim.

12. REPRESENTATIONS AND WARRANTIES

12.1 Each Party warrants and represents that it has the legal right, power and authority to enter into the Contract and carry out its obligations hereunder.

12.2 The Consultant represents and warrants that:

- i. *[IF APPLICABLE]* it has been duly authorized to sign this Contract on behalf of the temporary union of companies, its team's Key Personnel and to represent them in all dealings with AADF in project implementation and management, including receipt of any and all fees;
- ii. it has the capacity and skills to perform the Services and Deliverables and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with professional standards and practices and shall always act in accordance with the applicable law and shall at all times support and safeguard AADF's legitimate interests in dealing with any third parties, including the media, and shall not perform any acts on behalf of AADF that are beyond its competences;
- iii. it does not have a conflict of interests and any shall refrain from engaging directly or indirectly in any business and professional activities which would conflict with activities undertaken under this Contract;
- iv. the Consultant and its Key Personnel shall observe the highest standards of ethics and professionalism and shall be available and committed to the Project for the entire duration of this Contract;
- v. the performance by the Consultant and its Key Personnel of the Services and Deliverables and fulfillment of their obligations under this Contract will not result in any breach or be considered as an event of default of any other Contracts that the Consultant or its Key Personnel have in place with any third party.

12.3 During the Term of this Contract, the Consultant shall devote the appropriate time and attention to the performance of the Services and Deliverables and make or assist in making any reports and recommendations as may be reasonably required by AADF within the general

scope of the Services, and shall at all times co-operate with AADF, its employees, agents and relevant stakeholders in the interests of the Project. After the Term, including during any Project evaluation by AADF, the Consultant shall continue to co-operate with AADF to such reasonable extent as may be necessary to clarify or explain any reports or recommendations made by the Consultant.

13. ASSIGNMENT AND SUBCONTRACTING

- 13.1** Neither this Contract nor any of the rights, interests, or obligations under this Contract shall be assigned by either Party without the prior written consent of the other Party. As the Contract has been concluded *intuitu personae*, it may not be assigned or transferred by the Consultant or any of its Key Personnel without the prior written and express consent of AADF.
- 13.2** The Consultant may not subcontract partially or entirely the Services without the prior approval in writing of AADF. In order to obtain such approval, the Consultant shall submit to AADF information on the intended Services and Deliverables to be subcontracted, its subcontractors' company details and their professional licenses. The Consultant may proceed with the subcontracting following AADF's approval and submit a copy of the contract to AADF.
- 13.3** When the Consultant is permitted by AADF to associate with individual consultants through subcontracting, the Consultant shall ensure that each such subcontractor fully complies with the Consultant's obligations under this Contract.
- 13.4** The Parties agree that the Consultant shall act on behalf of the Key Personnel in exercising all the Consultant's rights and obligations towards AADF under this Contract, including without limitation the receiving of instructions and payments from AADF. The Consultant shall be fully liable towards AADF for any and all Services or works delivered by its Key Personnel or any subcontractor(s) and any acts and omissions of the latter, as if such services or works, acts or omissions were entirely performed by the Consultant.
- 13.5** [IF APPLICABLE] The Consultant shall provide to AADF the service agreements entered with the subcontracted experts part of the Key Personnel, not later than 15 (fifteen) days from the execution of this Contract.

14. CONFIDENTIALITY

- 14.1** Each Party agrees to treat confidentially any information, data, document, results of analyses concerning any matters relating to the business of the Parties, as well as all trade secrets, strategies, ideas, models, concepts and methodologies incorporated therein, received by the other Party or obtained from any other sources in connection with this Contract (the "**Confidential Information**").
- 14.2** The Parties shall not use such Confidential Information other than for the purposes of this Contract and not disclose it to any third parties, unless:
- a) it is or later becomes public knowledge by means other than by breach of this confidentiality obligation, or
 - b) it is required by law or it is approved for release by written authorization of AADF; or
 - c) is developed independently by the receiving Party without reference to the Confidential Information acquired from the other Party.
- 14.3** The Parties shall ensure that such Confidential Information will only be disclosed to employees, consultants, representatives and agents to whom it is necessary to disclose the Confidential Information for the purpose of considering, advising or furthering the fulfilment of the obligations under this Contract, provided they are informed by the Consultant of the confidential nature of the Confidential Information and the terms of this confidentiality obligation before disclosure of the Confidential Information to them.
- 14.4** The Parties shall ensure that any persons to whom such Confidential Information is to be

disclosed shall comply with the terms of this confidentiality obligation and that each of such persons will keep the Confidential Information confidential and secret.

14.5 The Consultant shall duly keep the confidentiality of the Services and Deliverables provided under this Contract and shall not transfer any findings, data or documents produced for the account of AADF under this Contract, to any third party.

14.6 The confidentiality obligation shall continue notwithstanding termination of this Contract.

15. PROHIBITED PRACTICES

15.1 The Consultant agrees:

- i. that the Consultant shall, at all times during the term of this Contract, comply with this clause including reporting to AADF any suspicion the Consultant has, or is informed of, regarding the use of a Prohibited Practice in relation to a AADF Project.
- ii. **"Prohibited Practices"** are one or more of the following, as of the date of this Contract:
 - **coercive practice** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - **collusive practice** means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - **corrupt practice** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - **fraudulent practice** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; and
 - **theft** means the misappropriation of property belonging to another party.

15.2 AADF, without prejudice to any other remedy for breach of contract may, by written notice, terminate this Contract if in its judgement, the Consultant has engaged in Prohibited Practices in competing for or in executing the Contract.

16. RESTRICTED ACTIVITIES

The Consultant shall comply with, and shall require any sub-consultants to comply with, any U.S. Executive Orders and/or U.S. law, which prohibits transactions, including but not limited to, with, the provision or resources and support to, or the financing of:

- i. individuals and organizations associated with terrorism;
- ii. the manufacture or sale of abortion equipment or the provision of abortions services;
- iii. the manufacture or sale of munitions articles or services; or
- iv. activities which would be inconsistent with the criteria stated in Section 547 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1994 and comparable provisions of subsequent statutes.

17. GOVERNING LAW AND DISPUTE SETTLEMENT

17.1 This Contract, its meaning and interpretation and the relationship between the Parties shall be governed by the laws of the Republic of Albania.

17.2 Any disputes arising between Parties due to the interpretation or implementation of the conditions of this Contract shall be settled amicably between the Parties within a period of 30 (thirty) days from the date on which the dispute is referred to. In case of failure to reach a settlement agreement, the dispute shall be settled through arbitration, referring to the rules of the International Chamber of Commerce (ICC Rules). The Parties accept the arbitration jurisdiction without reservation. The place of arbitration will be in New York, New York, U.S.A. and the language of arbitration will be English. The eventual dispute shall be tried by three arbitrators, where each Party will appoint one arbitrator and the third arbitrator will be appointed according to the ICC Rules. The arbitrator's decision shall be final and legally

binding and subject to enforcement.

18. MISCELLANEOUS

18.1 Governing language. The Contract is compiled in 2 (two) original copies in English signed by both Parties with one original copy to remain with each of the Parties. English shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

18.2 Entire Agreement. This Contract constitutes the entire, full and complete agreement and understanding among the Parties hereto in respect of the subject matters hereof and supersedes all prior agreements, arrangements and understandings, whether oral or written, among the Parties hereto with respect thereto. There are no representations, inducements, promises, statements or intentions or agreements, oral or written, among the Parties hereto not embodied herein, which are of any force or effect with reference to the Contract and the subject matters hereof.

18.3 Amendments. The Contract shall not be amended, superseded or cancelled except by a written instrument signed by both Parties and any instrument purporting to amend, supersede or cancel the Contract or any part hereof shall not be binding and shall be of no effect unless and until it has been executed and delivered by both Parties.

18.4 Severability. Each provision or term of this Contract constitutes a separate and independent provision. If any of the provisions of this Contract are judged by any court or authority of competent jurisdiction to be void or enforceable, the remaining provisions shall continue in full force and effect and, if legally permitted, such offending provision or provisions shall be replaced with an enforceable provision or enforceable provisions that as nearly as possible effects the parties' intent.

18.5 Notices. All notices and communications to be given under the Contract shall be in writing and shall be delivered to the addresses below, or such other address as may be designated by a party from time to time. Such notices shall be delivered by hand (including by recognized overnight courier service) or by certified or Express mail, all charges and postage prepaid, to the attention of:

For AADF

Contact person: [INSERT]
Address: "Ibrahim Rugova" street
Building no. 42, Entrance no. 7, Apartment no. 60
Tirana-Albania
E-mail: [INSERT]

For the Consultant

Contact person: [INSERT]
Address: [INSERT]
E-mail: [INSERT]

Routine communications relating to the performance of the Contract may be conducted by electronic mail but the Parties agree that any communication by electronic mail shall not amount to notice in writing for the purposes of the Contract.

18.6 Relationship between the Partnership. Nothing in this Contract shall be understood or implied as establishing a relationship of principal and agent or establishing an agency or partnership between the AADF and the Consultant. Consultant, under this Contract, has complete charge of its personnel and any second-tier contractors, if any, performing under this Contract and shall be fully responsible for the services performed by them or on their behalf herein.

18.7 Waiver. Failure of a Party hereto to exercise any of its rights in relation to the Contract shall in no manner be construed as a waiver of such right. No act or omission of any Party hereto, other than an express written waiver signed by such Party, shall constitute a waiver by such Party of any breach of the Contract or of the provision of the Contract so breached. No waiver by a Party hereto of the breach of any provision hereof, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of such breach or as a waiver of the provision hereof so breached.

18.8 Cumulative Remedies. The rights, powers and remedies of AADF under this Contract are cumulative and in addition to and not in substitution for any rights, power or remedy that may be available to AADF in accordance with the applicable Albanian legislation.

18.9 Conflict of Interest. The Consultant agrees that it will not act for AADF if a conflict of interest exists or is likely to exist. The Consultant will notify AADF in a comprehensive manner on any potential future conflicts of interests, or conflicts already in place and AADF will decide on the waiver of the conflict of interest on case-by-case basis.

18.10 Requirements. The Consultant shall, at any time and from time to time, upon AADF's request, execute and deliver such further documents and do such further acts and things as AADF may reasonably request in order to evidence, carry out and give full legal effect to the terms, conditions, intent and meaning of this Contract.

18.11 Special Character, Privileges and Immunities of AADF. The Consultant acknowledges the special character of AADF as a non-for-profit organization established in accordance with the laws of the State of Delaware, U.S.A., with status, privileges and immunities provided by the Economic Bilateral Agreement between the Republic of Albania and United States of America, ratified by Decree no. 224, dated 11.06.1992 of the President of the Republic of Albania. Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the AADF under the Economic Bilateral Agreement.

18.12 Schedules and Annexes. This Contract contains the following Schedules and Annexes as described below, which form an integral part of this Contract and have the same legal effect as this Contract:

- **Schedule I: Service Requirements and Specifications;**
- **Schedule II: Consultant's Technical Proposal;**
- **Schedule III: Project Timeline;**
- **Schedule IV: Key Personnel.**

In the event of any conflict or inconsistency between the main body of this Contract and the terms of such Schedules and Annexes, the former shall prevail.

IN WITNESS WHEREOF, The Parties hereto have read and agree to be bound by this Contract, duly executed as of the date first indicated above.

For Albanian-American Development Foundation

Date: _____.____._____

By: Aleksandër Sarapuli & Martin Mata
Title: Co-CEOs

For the Consultant

Date: _____.____._____

By: [INSERT]

Title: *[INSERT]*

SCHEDULE I
SERVICE REQUIREMENTS AND SPECIFICATIONS

SCHEDULE II
CONSULTANT'S TECHNICAL PROPOSAL

SCHEDULE III
PROJECT TIMELINE

The Consultant shall complete the Services and Deliverables provided in accordance with the Project Timeline agreed.

Deliverables	Timeline / Reporting date

SCHEDULE IV KEY PERSONNEL

The Key Personnel of the Consultant is composed of the following experts:

1. *[INSERT]*