

## CONSULTANCY TERMS OF AGREEMENT

This AGREEMENT is dated 13<sup>th</sup> March, 2023 and is executed between:

1. **APNALAYA**, a society under the Societies Registration Act, 1860 with its registered office in Maharashtra B/9 - 103, New Jaiphalwadi SRA Co-op Hsg Society, Behind Police Quarters, Tardeo, Mumbai - 400 036 (hereinafter referred to as “**Apnalaya**”); and
2. **MARKET XCEL DATA MATRIX PVT. LTD**, with its registered office at 17, Okhla Industrial Estate Phase-3, New Delhi-110 020, (hereinafter referred to as “**Consultant**”).

### WHEREAS

**Apnalaya** is a non-profit organization founded in 1973. Working in underprivileged urban communities in the city of Mumbai, Apnalaya aims to break inter-generational cycle of marginalization by dismantling the following three inter-related intergenerational cycles: (1) ill-health (2) poor education and (3) poverty. Apnalaya’s aim is to enable people and communities so that they can participate in their development.

**MARKET XCEL DATA MATRIX PVT. LTD** is a specialized research agency that provides program evaluation and custom research services to the commercial and social sector clients in India. Market Xcel, in the past, has taken wide spectrum projects in social and commercial sector. In social sector MX has carried out social and rural research projects in health & nutrition, population & family planning, education, women’s empowerment, agriculture/land usage, sexual and reproductive health, impact of social marketing, microfinance, mobile banking, and income/employment generation programs Also, the organization has undertaken large scale retail surveys both in urban and rural geographies

Pursuant to the terms of this Agreement, Apnalaya is desirous of engaging the Consultant for providing the Services (as defined below) and has offered to appoint the Consultant on a principal to principal basis and the Consultant has agreed to be engaged by Apnalaya on the terms and conditions as set out in this Agreement.

### IT IS HEREBY AGREED AS FOLLOWS

#### 1. Definitions

Capitalized terms used in this Agreement shall have the following meanings:

<b>Confidential Information</b>	has the meaning given to such term in Clause 11.1 <i>Confidentiality and Intellectual Property</i> ) of this Agreement
<b>Fees</b>	has the meaning given to such term in Paragraph 2 of Appendix 1 ( <i>Services</i> ) to this Agreement
<b>Intellectual Property</b>	means all patents, copyrights, designs, trademarks, service marks, internet domain names, logos, trade names, corporate names, data, database rights and mask works, documentation, inventions, trade secrets, internet domain names, inventions, processes, geographical indications, know-how, exploitation of any present or future technologies, and other industrial property rights, and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world including registrations and applications for registration of any of the foregoing in any jurisdiction.
<b>Invoice</b>	means an invoice from the Consultant addressed to Apnalaya identifying the Fees and Services performed
<b>Month End Report</b>	means a report substantially in the form of Appendix 2 ( <i>Month End Report</i> ) to this Agreement
<b>Party</b>	means, each of Apnalaya and the Consultant and collectively as “Parties”
<b>Policies</b>	means Apnalaya’s internal policies as set out in Appendix 3 ( <i>Policies</i> ) to this Agreement
<b>Services</b>	means the activities, responsibilities and duties set out in Paragraph 3 of Appendix 1 ( <i>Services</i> ) to this Agreement
<b>Standard</b>	means at all times, in performing the Services, the Consultant shall act promptly and diligently, in accordance with the standard of due care, level of proficiency and skill expected of a consultant with the background and level of experience that the Consultant has represented it has; and as are prudent, reputable and customary in the line of work that the Consultant is engaged in; and which at all times shall include acting in accordance with Apnalaya’s Policies
<b>Term</b>	has the meaning given to such term in Paragraph 1 of Appendix 1 ( <i>Services</i> ) to this Agreement

## **2. Services**

Apnalaya hereby engages the Consultant to perform the Services and the Consultant agrees to provide the Services in accordance with the Standard and the directions that Apnalaya may issue from time to time, during the Term.

## **3. Fees and Expenses**

- 3.1. In consideration of the Services provided and for fulfilment of the obligations of the Consultant under this Agreement, Apnalaya shall pay to the Consultant the Fees INR 5,67,214.2 (Including GST), subject to Apnalaya's receipt of the Invoice and the final report in form and substance satisfactory to Apnalaya.

Payment Terms –

- 50% on signing the MoU.
- 50% on finalization of data collection tool in Week 2.

- 3.2. The Consultant shall be entitled to reimbursement for all pre-approved expenses reasonably incurred in the performance of Services, upon submission and approval of written statements and receipts in accordance with Apnalaya's regular procedure as outlined in the Policies.
- 3.3. [For the avoidance of doubt, the Consultant shall be responsible for all other costs and expenses, including insurance, travel, accommodation and food expenses and the payment of any taxes, levies, duties or charges, of whatever nature, in respect of all sums payable by Apnalaya to Consultant under this Agreement.]
- 3.4. [Any tax liability including service tax, if any, arising in respect of payments made or benefits provided pursuant to this Agreement or income earned by the Consultant while this Agreement is in effect shall be borne solely by the Consultant. Apnalaya shall under no circumstances be responsible for or bear payment of any taxes or statutory dues in relation to the Consultant.]
- 3.5. All payments made under this Agreement by Apnalaya to the Consultant, including Fees, shall be made inclusive of all deductions and taxes, including withholding taxes, if any. In the event that any applicable law requires mandatory withholding of tax by Apnalaya, Apnalaya is entitled to deduct or withhold such amounts in respect of any such taxes.

#### **4. Relationship of the Parties**

- 4.1. The Parties are independent entities and this Agreement is being entered into on a principal to principal basis. It is understood and acknowledged by the Consultant that the Consultant is not, by virtue of this Agreement, rendered a representative or agent or employee of Apnalaya and the Consultant hereby agrees not to make any such representation to any person or authority. The Consultant has no right or authority to (i) assume or create, in writing or otherwise, any obligation or responsibility of any kind, express or implied, in the name of or on behalf of Apnalaya, (ii) legally bind or obligate Apnalaya in any other manner or (iii) supervise or direct any of employees, unless provided with an express written authority in advance by Apnalaya to do so.
- 4.2. The Consultant agrees to comply with all laws (including the laws of India) applicable to the performance of his obligations under this Agreement, including the performance of the Services. In case however, Apnalaya suffers any loss or damage or claim etc. of any nature whatsoever on account of any action or inaction of the Consultant including as a result of, arising from, or in connection with, or relating to any misrepresentation, negligence, breach and/or failure of performance (in whole or in part) by the Consultant of any representation, undertaking obligation or covenant contained in this Agreement, the Consultant shall indemnify, defend and hold harmless Apnalaya in respect of all such losses, damages, claims, penalties, fines, costs paid or similar losses.
- 4.3. [The Parties agree that the appointment of the Consultant is non-exclusive.]
- 4.4. The Consultant acknowledges and confirms that the rights and obligations of the Consultant under this Agreement are personal in nature and the Consultant hereby agrees not to assign or transfer its obligations or interests or any part thereof to any person, nor delegate any part of its obligations or duties to any person. The Parties agree that Apnalaya has the right to assign or transfer in whole or in part its rights and obligations under this Agreement or any interest therein to any of its affiliate organizations without having to obtain the consent of the Consultant.

#### **5. Representations and Warranties and Covenants**

- 5.1. The Consultant represents and warrants that:
  - 5.1.1. the execution, delivery and performance of this Agreement by the Consultant does not and will not conflict with, breach, violate or cause a default under any

- contract, agreement, instrument, order, judgment or decree to which the Consultant is a party or by which the Consultant is bound;
- 5.1.2. it is not a party to or bound by any employment agreement, consultancy agreement, non-competition agreement or confidentiality agreement with any person or entity other than Apnalaya;
- 5.1.3. after the execution and delivery of this Agreement by Apnalaya and the Consultant, this Agreement shall be the valid and binding obligation of the Consultant, enforceable in accordance with its terms; and
- 5.1.4. Apnalaya shall not be in infringement of any applicable regulation, rule, legislation, guidelines, judicial or legislative pronouncements, other binding restrictions or any third party rights in usage of the Services provided by the Consultant.

5.2. The Consultant, at all times during the Term, shall:

- 5.2.1. act in accordance with the Standard when performing the Services;
- 5.2.2. comply with any other information and advisory materials followed by Apnalaya that Apnalaya may provide to the Consultant from time to time;
- 5.2.3. [no later than the [1<sup>st</sup> day] of each calendar month, submit to Apnalaya an Invoice and Month End Report in respect of the preceding calendar month;]
- 5.2.4. if applicable, remain duly qualified in the area of expertise of the Consultant;
- 5.2.5. provide its own tools, instruments and equipment and place of performing Services, unless otherwise agreed between the Parties;
- 5.2.6. report to Apnalaya's office or such other location as Apnalaya may request at [10:00 am to 6:30 pm, 5 days a week (Monday to Friday);]
- 5.2.7. comply with all applicable rules, regulations and laws;
- 5.2.8. not enter into any commitments or dealings on behalf of Apnalaya for which it has no express authority nor alter or be a party to any alteration of any principle or Policy of Apnalaya or exceed the authority or discretion vested in it without the previous written approval of Apnalaya;
- 5.2.9. not make any disparaging or negative statements regarding its engagement with Apnalaya under the terms of this Agreement; and
- 5.2.10. not enter into any agreement or obligation, which conflicts with Services or with any other terms of this Agreement.

5.3. The Consultant agrees and acknowledges that:

- 5.3.1. it has read and understood the terms of this Agreement and has freely consented to its terms;
- 5.3.2. the Consultant is not authorized to make any policy decisions related to the strategy, operations or future direction of Apnalaya;
- 5.3.3. during the Term of this Agreement, the Consultant has been and shall be privy to certain Confidential Information of Apnalaya;

- 5.3.4. the terms of this Agreement are essential to Apnalaya's willingness to engage the Consultant, and that consequently, these provisions herein are for the promotion of and not the restriction of the business and trade interests of the Consultant; and
- 5.3.5. the character, duration and geographical scope of this Agreement is reasonable and fair in the light of the circumstances as they exist.
- 5.4. The warranties and covenants provided herein by the Consultant are in addition to and do not exclude any the implied and covenants warranties under the applicable law with respect to the activities contemplated under this Agreement.
- 5.5. Apnalaya shall provide such access to its information, property and personnel as may be reasonably required in order to enable Consultant to perform the Services.

## **6. Notices**

- 6.1. Any communication to be made under or in connection with this Agreement shall be made in English and in writing and may be delivered personally or made by email, fax or by registered A/D mail, sent to the correspondence details set out in Paragraph 4 of Appendix 1 (*Services*) to this Agreement.
- 6.2. Any change in the contact details shall forthwith be communicated in writing to the other Party.
- 6.3. Any such notice shall be deemed to have been duly sent and served if personally delivered, when delivered; if by registered A/D mail, on dispatch thereof; and if by fax or email transmission when dispatched and electronically generated confirmation receipt is received by the sender.

## **7. Termination**

- 7.1. This Agreement may only be terminated:
  - A. at any time, by mutual consent given in writing and signed by both Parties hereto; or
  - B. by either Party at will or without cause with not less than two week's written notice (or, at Apnalaya's discretion, the payment of Fees, subject to receipt of an Invoice, in lieu of notice); or

- C. notwithstanding sub-clause (A) and (B) above, by Apnalaya, immediately and without any notice whatsoever, in case Apnalaya determines in its sole discretion that: [can terminate or suspend]
- a. the Consultant does not act or perform the Services in accordance with the Standard; or
  - b. the Consultant breaches a term of this Agreement; or
  - c. the Consultant commits a crime involving moral turpitude (whether or not such crime was committed in connection with Apnalaya's business) or commit any other act or omission involving theft, embezzlement, dishonesty, disloyalty or fraud with respect to Apnalaya or any of its customers or is convicted of any cognizable criminal offence; or
  - d. the Consultant was grossly negligent, or has committed wilful misconduct with respect to Apnalaya in connection with the performance of the Services; or
  - e. the Consultant been found guilty of any other act of misconduct; or
  - f. an event or circumstance occurs pursuant to which it is or will become unlawful under any applicable law in any relevant jurisdiction for any person to perform any of its obligations under this Agreement.
- 7.2. In the event of termination for a reason other than Clause 7.1, Apnalaya will be obligated to pay only the then current Fee (based on the number of days actually worked) to the Consultant through the date of termination and any other statutory dues, as required.
- 7.3. During the notice period, Apnalaya may require the Consultant to perform only specific tasks or may require the Consultant not to provide any Services during all or part of the notice period. In addition, Apnalaya may instruct the Consultant not to communicate with suppliers, clients, investors, employees, agents, trustees or representatives of Apnalaya and/or its affiliates.
- 7.4. Upon termination, all property of, or relating to, Apnalaya as shall have been in the possession of the Consultant, including records of Apnalaya and all documents containing Confidential Information or Intellectual Property and any letter of authority or power of attorney issued to the Consultant, shall be surrendered by the Consultant to a duly authorized person by Apnalaya.

## 8. Jurisdiction

- 8.1. This Agreement shall be governed and construed in accordance with, and performance of all services hereunder are subject to, the laws of India. Any disputes arising out of or in connection with this Agreement shall be subject to

exclusive jurisdiction of courts in Mumbai and no other court(s) shall have jurisdiction.

- 8.2. Clause 8.1 is for the benefit of Apnalaya only. As a result, Apnalaya may bring proceedings in any other courts or tribunals with jurisdiction. To the extent allowed by law, Apnalaya may bring concurrent proceedings in any number of jurisdictions.

**9. Failure or delay to Enforce**

The failure or delay of either Party hereto to enforce at any time or for any period of time any provision(s) of this Agreement shall not be construed to be waiver of such provision(s) or of the right of such Party thereafter to enforce each and every such provision. A waiver by either Party in respect of a breach of a provision of this Agreement by the other Party will not be deemed to be a waiver in respect of any other breach and the failure of either Party to enforce at any time a provision of this Agreement will in no way be interpreted as a waiver of such provision.

**10. Rights and obligations upon expiration or termination**

Neither Party shall be liable by reason of the termination or expiration of this Agreement to the other Party for any compensation, reimbursement or damages for terminating this Agreement in accordance with the terms hereof on any account whatsoever. The termination of the Agreement shall however not affect the obligations of the Parties incurred prior to the termination.

**11. Entire Agreement - Execution and Modification**

- 11.1. [This Agreement contains and constitutes the entire and only Agreement] between the Parties hereto with respect to the subject matter hereof, and any representation, terms or conditions relating thereto not incorporated herein, shall not be binding upon either Party. This Agreement wholly cancels, terminates and supersedes any and all previous agreements, negotiations, commitments and writings between the Parties in connection with the subject matter of this Agreement.
- 11.2. No change, modification, extension, renewal, ratification, rescission, termination, notice of termination, discharge, abandonment or waiver of this Agreement or any of the provisions hereof, nor any representation, promise or condition relating to this Agreement shall be binding upon Apnalaya unless



made in writing and signed on behalf of Apnalaya by the aforementioned representative.

- 11.3. The Parties agree that the Services may be modified from time to time as per mutual agreement between Apnalaya and Consultant, and that the Services, as amended from time to time, shall form an integral part of this Agreement.

## **12. Confidentiality and Intellectual Property**

- 12.1. The Consultant shall maintain in confidence and safeguard all information that the Consultant may come to know as a result of this Agreement or otherwise about or relating to Apnalaya, including all information provided by Apnalaya for purposes of this Agreement (whether provided before or after the execution of this Agreement) ("**Confidential Information**").
- 12.2. The Consultant,
- 12.2.1. may not use any Confidential Information for any purpose other than for the performance of its obligations under this Agreement;
- 12.2.2. may not disclose any Confidential Information to any person except with the prior written consent of Apnalaya; and
- 12.2.3. shall make every effort to prevent the unauthorized use or disclosure of the Confidential Information.
- 12.3. The Consultant shall not, except with the prior written authorization of Apnalaya, disclose, give or publish to any other person, firm or corporation nor shall the Consultant use such information for its personal gain or benefit.
- 12.4. Any reports produced and data collected by Consultant and all rights in the Intellectual Property utilized in the course of or created by Apnalaya or the Consultant in the performance of the Services, will be the property of Apnalaya and will not be published and disseminated by the Consultant without prior written permission of Apnalaya.
- 12.5. The Consultant agrees to assign to Apnalaya, all Intellectual Property which he may create, make or originate, either solely or jointly with any other consultant/employee of Apnalaya, during the term of this Agreement, in connection with the business of Apnalaya and such Intellectual Property will be the exclusive property of Apnalaya.
- 12.6. The obligations of the Consultant in this clause 12 shall continue after expiration or termination of this Agreement, including any renewal thereof.

**13. Remedies**

The rights and remedies provided for by this Agreement are cumulative with and not exclusive of any rights or remedies provided by law. Without prejudice to any other rights or remedies of Apnalaya, the Consultant acknowledges for the benefit of Apnalaya that damages might not be an adequate remedy for any breach of the provisions of this Agreement and that, accordingly, Apnalaya shall be entitled to the remedies of injunction and other equitable relief for any threatened or actual breach of the provisions of this Agreement. This Clause 13 shall survive any termination or expiration of this Agreement.

**14. Further assurance**

Each Party agrees that it will from time to time do and perform such other and further acts and execute and deliver such further documents to establish, maintain and protect the rights and remedies of Apnalaya and to carry out the intent and purpose of this Agreement, including taking such actions and executing such additional documentation as Apnalaya may require.

**15. Severability**

In case any provision in this Agreement shall be held illegal, invalid or unenforceable, such provision shall be fully severable and the validity, legality and enforceability of the remaining provisions thereof will not in any way be affected or impaired thereby.

**16. Headings**

All headings set forth in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**17. Counterparts**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement.

IN WITNESS THEREOF, this Agreement has been signed on the date stated at the beginning of this Agreement.

*[signature page follows]*

## SIGNATURE PAGE – CONSULTANCY AGREEMENT

<b>Apnalaya</b>	<b>Consultant</b>
Name – Praveen Singh	Name – Raja Vishal Oberoi
Designation – CEO	Designation –CEO
Date – 13 <sup>th</sup> March, 2023	Date – 13 <sup>th</sup> March, 2023
Place – Mumbai	Place – Delhi
          Signature	          Signature

## **APPENDIX 1 – SERVICES**

1. **Term:** 13<sup>th</sup> March 2023 to 21<sup>st</sup> April 2023, unless terminated earlier in accordance with Clause 7. The consultant will have to submit all the deliverables by the end of 6 weeks as per the proposal. As exigency, Apnalaya builds in a buffer period of two extra weeks. The consultant is to note that the project cannot be extended beyond the buffer period under any circumstances.
2. **Fees:** INR 4,80,690 (Excluding GST)
3. **Services:** The Consultant shall conduct:

### **a. A baseline to:**

1. To analyze the current level of services, functioning, performance for providing forward looking recommendations for the future support to the roadmap implementation, based on broader evidence.
2. To conduct a substantive analysis of the organization's thematic as well as strategic approach through feedback from beneficiaries and stakeholders at different level
3. To assess the situation of educational services and access in M East, identifying the extent to which the observed changes can be attributed to the intervention efforts.
4. To evaluate enable partners and stakeholders for a better understanding of the organization level achievements, challenges, and areas for improvement.
5. To assess the learning and accountability towards its stakeholders

### **b. Deliverables:**

1. Inception Report (Covering objectives of the study, detailed methodology, operational plan for primary data collection, type of survey instruments, plan for data analysis and outline of the final reports)
2. Work plan/chronogram (a draft should be included in the proposal, but should be refined and finalized in collaboration with client)

3. Report on Pre-testing of tools, and final version of tools (English and Hindi)
4. Final Survey tools (English and Hindi)
5. Electronic script of survey tools (in case CAPI proposed)
6. Training manual and training agenda
7. Audio recording of FGDs and KIIS with proper labelling 8) Transcripts of FGDs and KII with proper labelling
8. Draft tabulation & data analysis plan
9. Raw data and processed data in excel and SPSS with proper labelling and coding of variables.
10. Final report & slide deck incorporating suggestions from Apnalaya.

#### **Timeline for the Baseline assessment**

Sr. No.	Activity	Wk1	Wk2	Wk3	Wk4	Wk5	Wk6
1	Kickoff meeting						
2	Desk research						
3	Inception report						
4	Field work plan						
5	Finalization of data collection tool (including pilot testing)						
6	Recruitment and training						
7	Quantitative and Qualitative survey						
8	Transcription, data validation, cleaning						
9	Data analysis						
10	Draft study report						
11	Finalize study report						

4. **Contact Details:**

Apnalaya	Consultant
Contact Person: Cheryl Anandas	Contact Person: Manav Sharma
<a href="mailto:cheryl@apnalaya.org">cheryl@apnalaya.org</a>	Email: <a href="mailto:manav.sharma@market-xcel.com">manav.sharma@market-xcel.com</a>
Contact No: 8652721692	Contact No: 8800458932
Fax No: [ ]	Fax No: [ ]
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