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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MoU") is entered into on this _____ day of _____ 2021 by and between:

The CUTS international, Consumer Unity & Trust Society, Jaipur, established in June 1984, a Society registered under the Indian Societies Act XXI of 1860 with PAN No.AAATC0869P, with registered office at D-217, Bhaskar Marg, Bani Park, Jaipur 302016, India, Ph: 91.141.2282821, Fx: 91.141.2282485 Email: cuts@cuts.org, Web site: www.cuts-interna , herein represented by **Mr. George Cheriyan**, Director, CUTS International, Jaipur and

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hereinafter referred to as “**CUTS**” which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns;

-AND-

India PPP Capacity Building Trust., is registered under the Indian Trust Act, 1882 with Registration No. 400 (2008-09) and PAN No. AAATI6168F having its registered office at 6th Floor, the Capital Court, Olof Palme Marg, New Delhi – 110067 and its principle office at the 2nd Floor, KCN Bhavan, 9/7 Yamunabai Road, Madhavnagar Extension, Off Race Course Road, Bangalore- 560001, India represented by **Dr Pankajkumar Sampat, Associate Director** and hereinafter referred to as “**I-CAP**” which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns;

The parties are individually referred to as “**Party**” and collectively as “**Parties**”;

WITNESSETH, That:

- A. CUTS International is an India origin public policy advocacy and consumer advocacy organisation established in June 1984. CUTS work intensively at the grassroots as well as at the national, regional and international level for more than 30 years for pursuing its vision of social justice and economic equity of poor and marginalised sections of the society. Good Governance is one of its key working areas along with Competition, Regulation, Economics and Trade areas for the last three decades or so. CUTS also works in the area of public procurement and it conducts research, training, awareness generation, system building and improvement and advocacy on related issues and runs a Public Procurement Observatory in Rajasthan.
- B. I-CAP was set up in 2007 by IDFC Ltd, with the primary objective to spearhead capacity building and knowledge sharing initiatives in planning, designing, tendering and implementation of infrastructure projects in the country and abroad. ICAP serves as a dedicated training delivery, pedagogy development and knowledge repository platform in the infrastructure sector and promotes national and international institutional networking in this context. Over 7000 Government functionaries have been trained by I-CAP since 2007, including a variety of stakeholders such as elected representatives, senior civil servants, municipal officials & engineers, private developers and others concerned with the infrastructure sector. I-CAP was earlier (2007-17) supported by IDFC Foundation (a 100% not-for-profit subsidiary of IDFC Ltd), and is presently managed by iDeCK as its trustee.
- C. iDeCK is a joint venture company established in the year 2000, and is jointly-owned by IDFC Foundation (a 100% wholly owned not-for-profit subsidiary of IDFC Ltd.), HDFC Ltd., and Government of Karnataka. The mandate of iDeCK is to catalyse well- planned, future-ready infrastructure projects. Over the last 20 years, iDeCK has accumulated a rich and diverse experience in the development of over 650 infrastructure projects in

different states across the country and abroad. Since the inception of ICAP Trust in 2007, it has been utilising the expert resources of iDeCK in the conduct of its capacity building and research activities.

- D. ICAP recognises that training and capacity building being extremely important to introduce Government Officers and Mid-Career Professionals to innovative methods and better equip them to deliver relevant projects within the given timelines and costs. With the COVID-19 pandemic affecting business-as-usual throughout the world, most of the establishments are being urged to embrace newer models and work cultures through online formats that are resilient to similar crises in future. An increasing need is thus felt to also shift training and capacity building to online modes to update the officials with concurrent global discourses, technological advancements, best practice case studies, and, facilitate peer-to-peer exchange and learning. Even after normalcy resumes these online trainings could be seen as a means to compliment classroom trainings.
- E. Considering this, ICAP along with CUTS intends to launch Online Training and Capacity Building Programmes (OTCB Programmes) on selected topics related to infrastructure development. The OTCB Programmes in Webinar format will provide the opportunity to deliver equally meaningful content, requiring only a few dedicated hours from the participant's day.
- F. The Parties through this MoU agree to collaborate to jointly develop OTCB Programme on the subject viz. 'MANAGEMENT DEVELOPMENT PROGRAMME ON E-PROCUREMENT'.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto agree as follows:

1. ABOUT THE OTCB PROGRAMME

- a) The OTCB Programme shall be on the subject viz. MANAGEMENT DEVELOPMENT PROGRAMME ON E-PROCUREMENT and the Parties are expected to launch it in the month of May 2021.
- b) Parties shall conduct at least one course on the said subject under the OTCB programme in each quarter i.e. four courses in one year for different set of participants. However, the Parties may mutually decide to increase the number of courses based on the responses received on the programme and may conduct more than 4 courses in a year.
- c) OTCB Programme shall be carried out in the manner set out below;

- i. The OTCB programme on MANAGEMENT DEVELOPMENT PROGRAMME ON E-PROCUREMENT shall comprise of about 12 technical sessions along with an inaugural session and a panel discussion.
- ii. Each technical session would be for about 90 minutes with first 10 minutes for introduction and reading speakers profile, 50 minutes of presentation by the expert on the subject through a pre-recorded video, followed by 30 minutes live question and answer session with participants by such expert or panel discussion.
- iii. The course shall be designed as a certification course covering key topics on technology, policy, finance, legal, consumer strategy, complete procurement process for the projects, implementation, management and explorations through government experience, industry experience, international case studies etc.

2. AREAS OF COLLABORATION

- a) The Parties hereby agree as follows;
 - i. jointly develop, outreach and deliver the OTCB Programme in the manner set out in Annexure I of this MoU
 - ii. collaborate with each other for developing outreach and communication material including Brochures, Flyers, WebPage etc. for the OTCB Programme.
 - iii. collaborate for identifying suitable resource persons within India and share such resources for conducting the OTCB Programmes, developing final videos, developing the delivery platform, other course material like quizzes, assignments etc.
 - iv. collaborate for providing joint certificates for all successful participants.
- b) In addition to the activities set out in sub-clause (a) above, ICAP Trust may take up any other mutually agreed activities to support development, outreach and delivery the OTCB programme.
- c) CUTS shall support for the activities as listed in Annexure I and put all efforts to make program successful.

3. AUTHORISED REPRESENTATIVES

Unless otherwise agreed by the Parties in writing, any action required or permitted to be taken, and any document required or permitted to be executed, under this MoU may be taken or executed by

- i. Mr. George Cheriyan, Director, CUTS International, Jaipur for CUTS and
- ii. Dr Pankajkumar Sampat, Associate Director for ICAP Trust.

4. COST OF DEVELOPMENT OF OTCB PROGRAMME

The parties recognise and agree that certain components such as cost of development of video recording by experts, course material, brochure, publication videos and material, programme advisor and speaker remuneration etc. are fixed expenses. While these expenses are required to be incurred only for the first course under the OTCB Programme, few other expenses such as delivery web platform, registration and payment gateway, outreach, honorarium, upgradation of course material etc. are recurring costs for each Programme.

The total estimated cost towards the development of OTCB Programme inclusive of both above fixed expenses and recurring expenses for the first course is estimated to be INR 2,00,000/-, which the parties agree to be incurred by ICAP only. ICAP shall recover the said INR 2,00,000/- from the Revenue before sharing any payment towards Fixed Fee and the Fee on Profit share basis.

The Parties shall mutually calculate the said recurring costs to be incurred in connection with each of the subsequent courses to be taken up by the Parties under the OTCB Programme prior to launch of such course(s) and the same would be paid to the Parties as set out in clause 5(a)(i) below.

For the purpose of this MOU the term "Revenue" shall mean and include the participation registration fee, sponsorship, publication fee etc. generated from the OTCB Programme.

5. PAYMENT TERMS

- a) The Parties agree that revenue generation from the OTCB Programme is the joint responsibility of the Parties. All the revenue income shall be deposited and received in ICAP bank account only. The payment for the Parties under this MoU shall be met out of the revenue generated from the courses conducted under the OTCB Programme. The payment to the parties shall consist of 3 components viz. (i) Reimbursement of cost towards development (ii) Fixed Fee (iii) Fee on profit share basis. The payment shall be made in the manner and as per the priority set out below;

i. Reimbursement Cost of development

The Parties agree that ICAP shall initially incur all expenses towards development of the first OTCB Programme, which includes both one-time fixed expenses and recurring cost as provided in Clause 4 above. For the subsequent programmes, the Parties shall mutually calculate the recurring costs prior to launch of each such course(s) and the same shall be paid to the Parties on the basis of actual expenditure incurred in this regard by each of the Parties prior to making any payment towards Fixed Fee and the Fee on Profit share basis.

ii. Fixed Fee

A onetime Fixed Fee of Rs.3,00,000/- (Rupees Three Lakhs Only) shall be paid to ICAP and Rs. 2,00,000/- (Rupees Two Lakhs Only) shall be paid to CUTS towards the cost incurred by the Parties for overall co-ordination and management of the OTCB Programmes. Fixed Fee shall be paid out of the balance revenue post reimbursement of cost of development to ICAP in accordance with (i) above.

For avoidance of doubt, where the surplus amount after offsetting the Cost of Development of Rs. 2,00,000/- (as set out in sub-clause (i) hereinabove), is insufficient to meet the Fixed Fee in its totality, the revenue shall be shared by the parties towards the fixed fee in the ratio of 70: 30 between ICAP and CUTS respectfully. The Fixed Fee payable to each party under this clause and the unpaid Fixed Fee shall be met from the surplus amount from the revenue generated from the succeeding course under the OTCB Programme.

iii. Fee on Profit Sharing Basis

The balance amount, if any, after making payments mentioned in Clause (i) and (ii) above from the total revenue generated of the Programme shall be considered as profit. The profit shall be shared in the ratio of 70:30 by ICAP and CUTS respectively.

Illustration 1:

In the event the Revenue from the OTCB Programme is INR 10,00,000/- the terms of payment between the parties shall be as set out in the table below:

SI No.	Details	Amount in Rs	
		CUTS	ICAP
A	Estimated Target Program Revenue Generation from the OTCB Programme	10,00,000	
1	Cost of Development of OTCB Programme (Fixed Expenses and Recurring Expenses as set out in sub-clause (i) above)	NA	2,00,000
2	Fixed Fee for overall co-ordination and management of the OTCB Programmes	2,00,000	3,00,000
3	Profit Sharing in the Ratio of 70:30 between ICAP and CUTS (post deducting payments made to CUTS and iDeCK towards 1 and 2 above from the A)	90,000	2,10,000
	Total	2,90,000	7,10,000

Illustration 2:

In the event the Revenue from the OTCB Programme is INR 7,00,000/- the terms of payment between the parties shall be as set out in the table below:

SI No.	Details	Amount in Rs	
		CUTS	ICAP
A	Estimated Target Program Revenue Generation from the OTCB Programme	7,00,000	
1	Cost of Development of OTCB Programme (Fixed Expenses and Recurring Expenses as set out in sub-clause (i) above)	NA	200000
2	Fixed Fee for overall co-ordination and management of the OTCB Programmes	2,00,000	3,00,000
3	Profit Sharing between ICAP and CUTS (post deducting payments made to CUTS and iDeCK towards 1 and 2 above from the A)	NA	NA
	Total	2,00,000	5,00,000

- b) All the fees/payments as set out above would be exclusive of applicable GST and other statutory deductions as per applicable laws prior to payment. CUTS is a registered society and shall submit the invoice without GST.
- c) Besides above, no further expenses from out of pocket will be paid to the Parties, unless specifically agreed to in writing by the Parties prior to incurring such expenses.

6. OTHER CONDITIONS OF MOU

- a) The Parties shall exercise the skill and care in the performance of all its obligations under this MoU and observe the highest standard of ethics in performing its services:
- b) The Parties shall hold periodic meeting/calls/discussions as mutually agreed from time to time;
- c) The Parties in exercise of its obligation under this MoU shall not engage in corrupt or fraudulent practices in relation to the performance of its obligations.
- d) The Parties shall not violate any proprietary and intellectual property rights of the other or any third party, including without limitation, confidential relationships, patent, trade secrets, copyright and any other proprietary rights.

- e) The Parties shall be solely responsible for their respective compliance to all laws, rules, regulations, orders, notifications and directions applicable in the relevant state/jurisdiction of its operation with respect to its personnel and shall establish and maintain all proper records including, but not limited to, accounting records required by any law, code, practice or corporate policy applicable to it from time to time, including records and returns as applicable under relevant legislations.
- f) The Parties shall take, and shall have appropriate mechanisms and means to ensure adequate precaution to protect the privacy and confidentiality of all data received in connection with the services rendered under this MoU. The Parties shall also take appropriate precaution not to breach the privacy of the client, customers of the client, or any third party during the course of performance of its obligations herein.

7. EXCLUSIVITY

- a) The Parties, agree that there will be assignment-based exclusivity for this collaboration on developing and delivering the Online Training and Capacity Building programme on MANAGEMENT DEVELOPMENT PROGRAMME ON E-PROCUREMENT. This MoU and the collaboration on the said OTCB will be irrespective of any other collaborations or Agreements signed between CUTS, Jaipur and ICAP Trust.
- b) Additionally, it is also agreed upon that neither Party would be undertaking any assignment individually pertaining to development and delivery of the OTCB on MANAGEMENT DEVELOPMENT PROGRAMME ON E-PROCUREMENT with any third party without the prior consent or approval of all Parties concerned and binding under this MoU.

8. RIGHT TO CHOOSE PROGRAMME PARTNERS, SUB-CONTRACTOR OR ASSOCIATE

ICAP Trust shall have exclusive right to select and decide on Knowledge Partner, Association with Government/s, Media Partner, Industrial Partner and Sponsorships for the programme without requiring any permission from CUTS. However, ICAP shall appraise about the other partnering organisations to CUTS, time to time.

Either Party may, with the written consent of the other, exercise the right to sub-contract a part of the services to be discharged under this MoU or may associate with other agencies from time to time for performing its obligations or to bring in more professional content into the services. Such party shall however bear responsibility for the services and behaviour of the sub contracted agency. Such party shall indemnify the other party against the effects of non-performance in the service or lack of desired quality of the sub-contracted agency.

9. COPYRIGHT

The Parties agree that ICAP shall have copyright on all the content developed, generated or prepared for the OTCB programme under this MoU.

10. ARBITRATION

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this MoU or its interpretation. If the Parties are unable to reach a settlement within twenty-eight (28) days of the first written correspondence on the matter of disagreement, then either Party may give notice to the other party of its intention to commence arbitration. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration proceedings will be carried out following Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. and the language of arbitration proceedings shall be English.

11. GOVERNING LAW AND JURISDICTION

All and any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be construed in accordance with Laws of India. The Parties submit to the jurisdiction of the courts of Bangalore only.

12. MODIFICATIONS

This MoU may only be amended by mutual agreement of the parties hereto. All such changes shall be in writing, and signed by the duly authorized representative of the Parties.

13. TERM AND TERMINATION

- 13.1 The Parties understand and agree that this MoU will be valid initially for a period of 3 (three) years from the date written hereinabove. The Parties may thereafter extend this MoU on mutually agreed terms and conditions, in writing. It is agreed that irrespective of a decision to terminate this MoU, the Parties are obliged to complete the course(s)

already initiated under this MoU and with respect to such course the Parties shall continue to be governed by this MoU until all the obligations with respect to such course are satisfactorily completed by the Parties according to the agreed specifications of the client.

13.2 This MoU may be terminated by either Party:

- (a) A 60 (sixty) day's written notice by a Party to other Party conveying its intention to terminate the MoU without the necessity to assign any reason therefor. Upon the expiry of the aforesaid notice period, but subject to Clause 13.1 hereof, the MoU shall stand terminated.
- (b) At any time by mutual consent of the Parties.

13.3 In the event of a Party being declared as insolvent, bankrupt, wound up or dissolved, or subjected to reorganization under the bankruptcy laws or assigned for the benefit of creditors of such Party or debarred to carry on business, whether under Indian laws or the laws governing such party, the MoU shall automatically stand terminated with immediate effect.

13.4 The termination of this MoU shall not affect any contractual arrangements pertaining to any specific assignment or project entered into by the Parties. Such arrangements shall remain independent of this MoU and shall continue to be governed by their respective agreements or contracts.

13.5 The termination of this MoU shall not relieve a Party of any obligations hereunder which expressly or by implication survives termination hereof.

14. COMMUNICATION

Unless otherwise stated, all communication between the Parties shall be addressed to the following:

For CUTS

Mr. George Cheriyan

Director

D-217, Bhaskar Marg, Bani Park, Jaipur 302016, India

Email id- gc@cuts.org.in

For ICAP-

Dr. Pankajkumar Sampat

Associate Director

2nd Floor, KCN Bhavan, 9/7 Yamunabai Road, Madhavnagar Extension,

Off Race Course Road, Bangalore- 560001, India

Email id- pankajkumar.sampat@ideck.in

15. LANGUAGE

The official and binding language of this MoU, as well as the official and binding language between the Parties will be English.

16. COUNTERPARTS

This MoU is executed in two counterparts each of which will be deemed original but will together constitute one document only.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SIGNED THIS MoU:

FOR CUTS



Mr. George Cheriyan
Director

FOR ICAP



Dr. Pankajkumar Sampat
Associate Director

In the presence of:

(1) _____

(2) _____

Annexure 1

ICAP shall conduct and manage the overall implementation of the Programme towards the successful implementation of the OTCB programme. CUTS shall support ICAP in the activities as set out in the table below.:

Part	List of Activities	Timeframe
Part A	Facilitate the sessions on Public Procurement Policy & Legal Framework in India, with a focus on Rajasthan (Total 45 minutes).	Prior to the date of OTCB programme and during the entire OTCB Programme
	Facilitate the sessions on Rajasthan Public Procurement Observatory: Sharing of relevant experiences (Total 90 minutes).	
Part B	Sharing list of potential participants	within 20 (twenty) days prior to the date of OTCB programme
	Sharing list of potential resource persons on the given subject of E-Procurement	within 20 (twenty) days prior to the date of OTCB programme
	Wider Dissemination of the training brochure with CSOs, professional	Within 30 (thirty) days prior to the date of OTCB programme
	Inputs to finalise the objectives, brochure, training schedule, background note etc.	Within 15 (fifteen) days prior to the date of OTCB programme
	Support in drafting and preparing the conference outcome report to publish	Within 15 (fifteen) days after the date of OTCB programme