



## **Agreement on the Provision and Operation of an Online Learning Platform based on Moodle Work- place**

entered into as of the date of the award of the contract in the preceding procurement procedure  
(**“Effective Date”**) between

**EIT RawMaterials GmbH**

Knesebeckstr. 62

D-10623 Berlin, Germany

(**“EIT RawMaterials”**)

and

**[•]**

(**“Contractor”**, EIT RawMaterials and contractor each also a **“Party”** and collectively **“Parties”**)

## Preamble

The European Institute of Innovation and Technology (EIT) is an EU body created by the European Union in 2008 to strengthen Europe's ability to innovate. The EIT is an integral part of [Horizon Europe](#), the EU's key funding programme for research and innovation.

The EIT supports the development of dynamic, long-term European contractorships among leading companies, research labs and higher education. These contractorships are called [Knowledge and Innovation Communities](#) (KICs) and each is dedicated to finding solutions to a specific global challenges, from climate change and sustainable energy to healthy living and food.

Under the Digital Education Action Plan (2021-2027), which outlines the European Commission's vision for high-quality, inclusive and accessible digital education in Europe, specifically under Action 13 "Encourage women's participation in STEM" (science, technology, engineering, and mathematics), and under the Union of Skills framework, the European Commission expects Girls Go STEM to equip 100,000 girls aged 14-19 with digital skills through a learning model that engages girls in an EIT-branded digital learning platform by 2028.

The [Girls Go STEM Project](#) will achieve this ambition and involve secondary school students in the selected countries who will participate in a 5 to 7-hour training on digital skills and the circular economy.

[EIT RawMaterials](#), being the largest consortium in the raw materials sector worldwide and represented by its umbrella organization, EIT RawMaterials GmbH, is coordinating all EIT activities within the Girls Go STEM Project.

The services under this contract have been subject to a public procurement procedure run by EIT RawMaterials GmbH, in which contractor's tender was chosen as the most economically advantageous tender according to the contract award criteria set out in the procurement documents.

## 1. Subject Matter of this Agreement

- 1.1 Subject to the terms set forth herein, the contractor provides and operates the online learning platform [circularlearningspace.eu](http://circularlearningspace.eu) ("**Circular Learning Space**") based on the Moodle Workplace (Circular Learning Space and Moodle Workplace together "**Online Learning Platform**") with the functionalities specified in the Statement of Work to EIT RawMaterials during the term of this Agreement, as defined in section 10.1. The Parties agree to specify the Statement of Work annually for each following year and summarize the work conducted the previous year.
- 1.2 The contractor implements the Online Learning Platform with functionalities specified in the Statement of Work within two months after the effective date (as defined in section 10.1).
- 1.3 EIT RawMaterials may request additional services in accordance with section 4. The contractor shall in particular adapt, develop and implement ad-hoc-features of the Online Learning Platform further as set forth in the Statement of Work and the Amended Statements of Work in close cooperation with the assigned ICT development and technical implementation consultant. EIT RawMaterials provides the contractor with the necessary information for the adaptation, development and implementation of ad-hoc-features. The parties agree that the adaptation, development and implementation under this section 1.3 shall be deemed services pursuant to sections 631 et seq. BGB (German Civil Code).

## 2. Constituent Parts

- 2.1 Constituent Parts of the Agreement are – in case of conflict or discrepancy in the following order – exclusively:
  - 2.1.1 the Data Processing Agreement
  - 2.1.2 this Agreement
  - 2.1.3 the Statement of Work
  - 2.1.4 the contractor's tender
  - 2.1.5 General Terms of Contract for the Execution of Services Part B of the Contracting Rules for Services (VOL/B)
  - 2.1.6 Articles 28 and 29 FPA (EIT – EIT RawMaterials)
- 2.2 Terms and conditions of the Service Provider, documents not listed in paragraph 1 or any other correspondence, provision, expression or acknowledgement shall not constitute a part of this agreement, unless specifically agreed otherwise in text form.

### **3. Operational services**

- 3.1 The contractor shall operate the Online Learning Platform during the term of this contract. Operational services are:
  - 3.1.1 Hosting of all necessary software products meeting all specific requirements
  - 3.1.2 Support Services: Hotline support, troubleshooting
  - 3.1.3 Updates / upgrades / patches alongside development roadmap of Moodle Workplace
- 3.2 Details regarding the scope of the operational services are specified in the Statement of Work.
- 3.3 The contractor shall provide the support via the communication channels, during the service times and within a response time set out in the constituent parts of this Agreement.

### **4. Change Requests**

- 4.1 EIT RawMaterials may at any time request changes in written form with respect to the Online Learning Platform. The contractor shall be obliged to accept the changes at fair and reasonable standard market conditions unless the implementation of the changes is unreasonable for the contractor.
- 4.2 In order to avoid disputes as to whether specifications requested by EIT RawMaterials are concretizing the agreed specifications and are covered by the scope of the Agreement or have an effect on the contractual remuneration and/or completion dates, contractor shall notify EIT RawMaterials in written form within one week after receipt of such request if the desired specification which is subject of the requested change is in contractor's opinion no longer covered by the scope agreed on in this Agreement and its constituent parts. If the contractor does not react within the aforementioned period or if the contractor starts the implementation or development without such notification or an agreement on amendment of the Agreement, the change shall be deemed to be covered by the contractual remuneration. If the desired specification is in contractor's opinion no longer covered by the scope, the Parties agree on an amendment of the Statement of Work including regulations concerning the additional remuneration.

## 5. Online Learning Platform Availability

- 5.1 The Online Learning Platform shall be available for an average of 99,5% per calendar quarter ("**Availability Time**").
- 5.2 The Availability Time is calculated based on a quarterly aggregate time (days in the respective quarter x 24 hours x 60 minutes) ("**Total Time**") deducted by the downtime in minutes (as defined in section 5.3) divided by the Total Time multiplied by 100 percent according to the following formula:

$$\frac{(\text{Total Time} - \text{Downtime})}{\text{Total Time}} \times 100\%$$

- 5.3 "**Downtime**" is the time during which the Online Learning Platform is not available. However, force majeure or other events beyond the contractor's control that were not foreseeable and could not have been prevented by the contractor shall not be considered as downtime.
- 5.4 Scheduled maintenance work that causes downtimes shall, if reasonably possible, be conducted during night times or on weekends and shall be announced for ten days before its beginning on the Online Learning Platform. In urgent cases, where immediate actions are necessary, e.g. in order to implement important security patches, the contractor may shorten such period reasonably or begin with the scheduled maintenance without prior notice. In any case downtimes shall be kept as minimal as possible.
- 5.5 The contractor shall use virus scanners and firewalls and implement further technical and organizational measures to prevent or stop unauthorized access to the data and the transmission of harmful data, especially viruses, as far as possible with reasonable economic and technical effort.

## 6. Rights of Use, Indemnification

- 6.1 The contractor grants EIT RawMaterials and its affiliates a worldwide, non-exclusive license for the duration of the Agreement to use the Moodle Workplace for the contractual purposes set out in the constituent parts of this Agreement (cf. section 2.2) and to grant licenses to users, which allow them to use Moodle Workplace for these purposes.
- 6.2 EIT RawMaterials grants to the contractor a worldwide, non-exclusive license for the duration of the Agreement to use the Circular Learning Space and its features currently existing and to be developed under this Agreement for the purposes of linking it to the Moodle Workplace in accordance with this Agreement.

- 6.3 The contractor shall in no case use the Circular Learning Space in any other ways than those explicitly set out in this Agreement or amendments to this Agreement. Without limiting the generality of the foregoing, contractor shall in particular not (i) use the Circular Learning Space or parts thereof for any other purposes than for the fulfillment of this Agreement; (ii) distribute, sell, resell, lease, rent, loan or otherwise transfer, sublicense or assign the Circular Learning Space or parts thereof to any third party without the prior written approval (e-mail or text form is not sufficient) of EIT RawMaterials; (iii) disclose the Circular Learning Space or parts thereof or make it available to third parties; (iv) make copies of the Circular Learning Space or parts thereof except for those necessary to use the Circular Learning Space in accordance with this Agreement; (v) use the Circular Learning Space or its output for the purpose of developing a competitive product or service; (vi) disable, modify or circumvent any license management system or security mechanism provided with the Circular Learning Space; (vii) disclose results of any test or benchmark of the Circular Learning Space without the consent of EIT RawMaterials, (viii) access or use the Circular Learning Space to provide data processing or batch processing services to others, or (ix) remove, modify or conceal any proprietary or copyright notices, legends or trademarks of EIT RawMaterials or its licensors.
- 6.4 EIT RawMaterials retains ownership in all intellectual property rights in and to the Circular Learning Space as they presently exist, as well as with regards to future developments, additions, and modifications -- including as they pertain to the Circular Learning Space -- and the technology contained and any documentation thereof. Third party software remains in the ownership of the respective third party.
- 6.5 The right to register any intellectual property right in connection with the Circular Learning Space or any modifications thereof shall remain exclusively with EIT RawMaterials.
- 6.6 The contractor shall be liable for any breach of this Agreement by the contractor or its employees and shall indemnify and hold harmless EIT RawMaterials from any claims brought against EIT RawMaterials by third parties due to an infringement of this section 6.

## **7. Rights to Work Results**

- 7.1 The parties agree that all work results created individually by the contractor for EIT RawMaterials, irrespective of whether they may be the subject of industrial property rights ("**Work Results**"), shall belong exclusively to EIT RawMaterials. EIT RawMaterials shall be enabled in the most comprehensive manner to exploit the work results in the original or modified form in any respect, whether itself or by transferring the rights to it to third parties. For clarification: Changes, adaptations and further developments of Moodle Workplace itself are not considered work results.

- 7.2 If the transfer of rights according to section 7.1 is not possible the contractor grants EIT RawMaterials an exclusive, irrevocable, transferable right of use to the work results, unlimited in time, place and content, for all known and unknown types of use. The rights of use include, but are not limited to, the right of reproduction, the right of distribution, the right of exhibition, the right of lecture and demonstration, the right of making the work results publicly available, the right of broadcasting, the right of reproduction by means of visual and audio media, the right of radio broadcasting and the right of granting public access. The contractor allows EIT RawMaterials to modify the work results, to integrate them partially or entirely into other works, to translate them and to change the title of the work results. EIT RawMaterials is permitted to transfer the rights to the work results in part or in whole to third parties and to grant sublicenses.
- 7.3 If the work results may be subject to a registered intellectual property right, the contractor shall transfer them to EIT RawMaterials in advance. EIT RawMaterials shall be entitled but not obliged to file such applications. The contractor shall not be entitled to file applications for intellectual property rights in its own name.
- 7.4 EIT RawMaterials shall be entitled to assert claims in its own name out of court and/or in court in the event of infringements of the rights to the work results by third parties. The contractor shall be obliged to provide EIT RawMaterials with all documents and information required for the enforcement of the rights and to make any necessary declarations, including affidavits, if required.
- 7.5 The transfer of rights to the work results is covered by the payment of the agreed remuneration according to section 8.
- 7.6 Source code and object code regarding the Circular Learning Space shall be stored by contractor at an online storage space to be designated by EIT RawMaterials on a monthly basis, at any time upon EIT RawMaterials' request and upon completion of the work under this Agreement. The contractor is obliged to provide EIT RawMaterials a complete and detailed documentation regarding any adjustments and developments of the Circular Learning Space on a yearly basis and upon termination of this Agreement.

## **8. Terms of Payment**

- 8.1 The services will be performed on a firm fixed price basis and a time and materials basis, as indicated in the price sheet of the Tender.
- 8.2 EIT RawMaterials will receive quarterly invoices based on the services rendered according to the price sheet of the Tender. Invoices will contain a clear and transparent description of the services or works provided.

8.3 Invoices are due and payable within 60 days of receipt.

8.4 Prices include all taxes, except VAT.

## 9. Confidentiality

9.1 EIT RawMaterials and Service Provider shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the Framework Agreement and identified as confidential and/or proprietary.

9.2 Each Party shall:

9.2.1 not use confidential information and documents for any purpose other than fulfilling its obligations under this Agreement;

9.2.2 ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;

9.2.3 not disclose directly or indirectly confidential information and documents to third parties without prior written consent of EIT RawMaterials other than to those approved subcontractors appointed pursuant to clause 2.4 above or to its affiliated companies as far as those require access to this information for the performance of the contract.

9.3 The term "Confidential Information" does not include such information which:

9.3.1 is available in the public domain or generally at the time the respective Party was provided with such information (except by reason of any breach of this agreement by the respective Party or its representatives);

9.3.2 was already legitimately in the possession of the respective Party and not subject to a duty of confidentiality, before the respective Party received the information from the other Party; or

9.3.3 the respective Party had received from a third party who was entitled to disclose this information without restriction.

## 10. Effective Date, Term and Termination

10.1 This Agreement shall become legally binding and effective as soon as the contractor is awarded in the preceding procurement procedure ("**Effective Date**"). This Agreement shall



terminate on 31 December 2026 without the need of ordinary notice of termination ("**Initial Term**").

- 10.2 EIT RawMaterials is entitled to unilaterally extend this Agreement two times for a maximum period of 12 months each time. The exercise of this right shall be at the sole discretion of EIT RawMaterials and shall be effected by written notice to the contractor no later than two months before the expiry of a contract year ("**Renewal Period**", together with the Initial Term "**Term**").
- 10.3 This Agreement may be terminated for cause at any time with immediate effect by either Party, if circumstances arise that considering the nature and purpose of this Agreement, the circumstances of the relationship and the interest of both Parties, make the continuation of this Agreement unacceptable for one or both Parties.
- 10.4 For EIT RawMaterials cause is given in particular where contractor
- 10.4.1 is in breach of a material obligation.
- 10.4.2 violates EIT RawMaterials' intellectual and property rights.
- 10.5 Any termination notice must be made in writing if not set out otherwise therein.

## 11. Warranties

- 11.1 In case of a defect the statutory warranty provisions apply.
- 11.2 Contractor warrants and represents that (i) the Moodle Workplace, software developments regarding the Ad-Hoc-Features and documentation shall have the agreed quality and shall not have any defects which impair the suitability for the purpose assumed under the Agreement or the usual usability, taking into account the purpose of the Agreement pursued, (ii) it is entitled and able to transfer the rights to the extent set out in this Agreement and (iii) it will perform all Services in a good, workmanlike and professional manner using employees having the proper expertise, skills and training to render the Services. In case of a defect the contractor shall re-perform any work not in compliance with this warranty brought to its attention in writing within a reasonable time period set by EIT RawMaterials. If substantial defects are not remedied by the contractor within this period and the contractor does not provide a reasonable equivalent workaround, EIT RawMaterials may itself or by third parties remedy the defect at the expense of contractor, terminate the Agreement for good cause, demand a reduction of the remuneration and/or claim for damages. The obligation to pay damages shall not apply if the contractor has not at least caused the defect by simple negligence.

- 11.3 The contractor shall ensure not to use any open source software in a manner that causes an obligation of EIT RawMaterials to license the source code of the Software under open source conditions to third parties and/or to disclose the source code (Copyleft). The parties shall mutually agree on the use of any open source software.
- 11.4 If third parties claim that their rights have been infringed by the use of the work results by EIT RawMaterials, the contractor shall indemnify EIT RawMaterials against these claims and reimburse EIT RawMaterials for the costs of a reasonable legal defence.

## **12. Liability**

- 12.1 Unless otherwise stipulated in this Agreement, the parties shall be liable in accordance with the statutory provisions.
- 12.2 The total liability of a party for damages due to simple negligence in connection with this Agreement (all claims combined) shall be limited to the amount of the contract volume of this Agreement.
- 12.3 The limitations of liability shall also apply in favour of the parties' employees and for companies affiliated with the party.
- 12.4 The limitations of liability do not apply to (a) damages caused by the breach of a warranty given at the time of the conclusion of the Agreement and (b) the obligation to compensate damages resulting from injury to life, body or health.

## **13. Data Protection**

- 13.1 The parties shall comply with all applicable data protection regulations.
- 13.2 The parties agree that the contractual relationship constitutes a controller-processor-relationship. The Parties will enter into a respective data processing agreement, which is constituent part of this Agreement.
- 13.3 The contractor warrants that all data is encrypted and hosted in EU data centers.

## **14. Indemnification**

Contractor shall indemnify and hold harmless EIT RawMaterials from any claims brought by users directly towards EIT RawMaterials or an Affiliate and shall reimburse reasonable

attorneys' fees, especially if those claims are caused by contractor's failure to comply with this Agreement.

## **15. Absence of Restrictions; Conflict of interest**

- 15.1 Contractor represents that it is presently under no contractual or other restriction or obligation which is inconsistent with contractor's execution of this Agreement or the performance of the services, and during the term of this Agreement, contractor will not enter into any factual or legal relationship, obligation or agreement, either written or oral, which conflicts with this Agreement.
- 15.2 Contractor shall report to EIT RawMaterials in written form on any conflict of interest arising during the term of Agreement and shall take any reasonable measure to avoid those conflicts, as mutually agreed between the parties acting always reasonably and in good faith.

## **16. Auditing of ECA and OLAF**

The Contractor acknowledges and agrees that the EIT, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise certain auditing towards it under the FPA (Framework Contractorship Agreement) that EIT RawMaterials has concluded with the EIT. Such rights are described in Articles 28 and 29 of the FPA which is constituent part of this Agreement.

## **17. Governing Law, place of jurisdiction**

- 17.1 This Agreement shall exclusively be governed by and construed in accordance with the laws of Germany under exclusion of its rules of conflict of laws and the provisions on the Uniform Law on the International Sale of Goods (CISG).
- 17.2 The place of jurisdiction is Berlin.

## **18. Miscellaneous**

- 18.1 The Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties.
- 18.2 Contractor's terms & conditions shall not apply.

- 18.3 The Agreement constitute the entire agreement between the parties. No modification, waiver or discharge hereof shall be valid unless it is in writing (e-mail or text form is not sufficient) and is executed by an authorized and empowered representative of the party against whom such a change, waiver or discharge is sought to be enforced. This also applies to the modification of this written form requirement.
- 18.4 If this Agreement requires a written form (section 126 BGB German Civil Code) e-mail communication or text form shall be sufficient if not explicitly set out otherwise.
- 18.5 Contractor shall not assign or transfer the Agreement or parts of it or any rights or obligations set out therein to third parties without EIT RawMaterials' prior written (e-mail or text form is not sufficient) consent.
- 18.6 No delay or omission by either party hereto to exercise any right or power or curing upon any non-compliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or to be construed to be a waiver thereof.
- 18.7 Should any provision of this Agreement be or become invalid or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected thereby. The invalid or unenforceable provision shall be deemed to be substituted by a suitable and equitable provision, which, to the extent legally permissible, comes as close as possible to the economic intent and purpose of the invalid or unenforceable provision. The same applies in case of an unintended gap.

## Signatures

### EIT RawMaterials GmbH

Date: ..... Date:

.....

Name: Bernd Schäfer

Name: Dr Andreas Klossek

Position: CEO

Position: COO

### Contractor

Date: ..... Date: .....

.....

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Name:

Name:

Position:

Position: