



**Agreement on the Provision and Operation of a
Learning Management System for European Raw
Materials Academy and European Advanced
Materials Academy**

entered into between

EIT RawMaterials

Knesebeckstr. 62-63

10719 Berlin

Germany

(**"EIT RawMaterials"**)

and

[•]

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

The Raw Materials Academy (**"RMA"**) and the Advanced Materials Academy (**"AMA"**), being two of EIT RawMaterials' flagship projects funded by the European Commission, are developing a portfolio of self-paced, online training content to upskill and reskill the raw and advanced materials workforce. To deliver this content at scale, EIT RawMaterials is establishing a Learning Management System (**"LMS"**) that will serve as the central hosting environment for the Academies' own training modules and as the reporting backbone for the learners trained through them.

The primary purpose of the LMS is to host training content developed by the Academies, including both technical learning journeys and self-paced learning modules aimed at broad audiences across the raw and advanced materials value chain. A second, equally important purpose is interoperability.

The combined ambition of the Academies is to train at least 300,000 learners (100,000 RMA, 200,000 AMA), drawn from both our own hosted courses and our third-party providers.

The contractor has years of experience with the provision LMS and wishes to provide services to EIT RawMaterials to launch such new LMS.

The Parties to this contract therefore conclude this Agreement on the Provision and Operation of a Learning Management System (**"Agreement"**):

1. Subject Matter of this Agreement

- 1.1 Subject to the terms set forth herein, contractor provides, implements and hosts a new **LMS** for EIT RawMaterials with functionalities specified in the service description (section 2.1.3). The implementation of the LMS shall be performed within the framework of iterative phases, each phase resulting in a finished, usable and deliverable product increment ("**Sprints**").
- 1.2 The parties agree that the first version of the LMS with functionalities specified in the service description (section 2.1.3) and the contractor's tender (section 2.1.4) will go live on [●].
- 1.3 The parties can agree on further development and implementation of further features of the LMS as additional services according to section 11.
- 1.4 The contractor shall provide support services directly to EIT RawMaterials and its employees as well as maintenance services in accordance with section 10.
- 1.5 The parties agree that all implementation works under this Agreement 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 Service Description
 - 2.1.4 the contractor's tender including the prices and all further constituent parts according to the tender letter
 - 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 contractor, documents not listed in paragraph 1 or any other correspondence, provision, expression or acknowledgment shall not constitute a part of this agreement, unless specifically agreed otherwise in text form.

3. Cooperation, Contact Persons

- 3.1 The parties agree on a cooperative and agile work approach. The parties have therefore agreed on the appointment of specific contact persons ("**Contact Person**") and its substitutes who are knowledgeable about the project. These are the following:

3.1.1 EIT RawMaterials contact:

Contact Person: [name, phone, e-mail]

Substitute: [name, phone, e-mail]

3.1.2 Contractor's contact:

Contact Person: [name, phone, e-mail]

Substitute: [name, phone, e-mail]

- 3.2 The parties shall inform each other immediately of any material circumstances affecting the performance of the Agreement. Any changes of contact persons according to section 3.1 shall take place, as far as possible, with a notice period of four (4) weeks.
- 3.3 EIT RawMaterials provides all documents and information reasonably requested by the contractor and necessary for the fulfillment of the Agreement.

4. Subcontractors

The contractor may only employ subcontractors with the prior written approval of EIT RawMaterials.

5. Sprint planning

- 5.1 The LMS shall be implemented iteratively and incrementally in sprints. Within each sprint a predefined number of tasks ("**User Stories**") shall be successfully completed. User stories are defined on the basis of the service description (section 2.1.3) and the contractor's draft product backlog which is part of its tender (section 2.1.4).
- 5.2 The parties agree on the sprints, the timeline, and the payment schedule ("**Project Plan**") within one week after the effective date ("**Planning Phase**"). The project plan shall be based on the contractor's tender (section 2.1.4), its draft product backlog and the initial sprint planning prepared during the procurement procedure according to the Service Description (section 2.1.3). The number and the content of sprints might be adjusted by the parties during the checkpoint phase as defined in the Service Description (section 2.1.3).

- 5.3 Each sprint shall consist of sprint planning, necessary implementation work (e.g. customization, configuration, development, testing, rollout), a sprint review and a sprint retrospective.
- 5.4 As part of the sprint planning the parties shall in due time before the actual implementation work determine and document the goal of each sprint and which product backlog items are to be implemented by the contractor (in whole or in part) during that specific sprint as the work result ("**Increment**").
- 5.5 The contractor shall implement each increment in accordance with the Agreement, in particular in accordance with the sprint planning and shall hand it over to EIT RawMaterials for approval in electronic or physical form (data carrier).
- 5.6 At the end of each sprint, there must be an increment of the LMS that is subject to a review by EIT RawMaterials. EIT RawMaterials decides on the achievement/non-achievement of a sprint goal in the sprint review and, if necessary, on reprioritization. It must be possible for the first increment of the LMS to run separately and independently of the increments to be implemented later. The approval of an increment shall not constitute a (partial or interim) acceptance in accordance with section 640 (1) BGB. Defects identified in the sprint review phase shall be resolved by the contractor at its own expense with the next sprint, if not agreed otherwise.
- 5.7 EIT RawMaterials may at any time request that new user stories are added to the product backlog and/or that the content of the user stories existing in the product backlog are changed, reduced or extended, reprioritized, removed or replaced or exchanged by new ones. The contractor may also propose changes to the product backlog to EIT RawMaterials at any time. Non-substantial changes or extensions of user stories and exchanges of user stories within the agreed total of person hours shall be implemented by the contractor with no entitlement to additional remuneration.

The product backlog shall be updated by the contractor on an ongoing basis, but at least at the end of each sprint, taking into account the clarifications, exchanges and changes requested by EIT RawMaterials.

6. Acceptance and Testing, Completion Date

- 6.1 The contractor shall make the fully implemented LMS available for acceptance on the agreed date according to the Project Plan ("**Completion Date**").
- 6.2 EIT RawMaterials shall be entitled to carry out a functional test within a reasonable period after the completion date and shall thereafter accept the work if it meets the agreed requirements. The acceptance must be submitted in writing.

- 6.3 The contractor shall assist EIT RawMaterials in the preparation and performance of the functional test.
- 6.4 After the completion date and successful testing EIT RawMaterials shall be entitled to determine a date for the launch ("**Launch Date**")

7. Terms of Payment

- 7.1 The services will be performed on a firm fixed price ("**Fixed Price**") and a monthly fixed price ("**Fixed Monthly Rate**") basis or a time and materials basis, as set out in the **price sheet**. Prices include all taxes, except VAT
- 7.2 EIT RawMaterials will receive monthly invoices based on the contractually services rendered in accordance with applicable German law. Invoices will contain a clear and transparent description of the services or works provided. Invoices are due and payable within 60 days of receipt.

8. Effective Date, Term and Termination

- 8.1 This Agreement shall become legally binding and effective as soon as the contractor is awarded the contract in the preceding procurement procedure ("**Effective Date**").
- 8.2 The contract shall on 31 July 2029. It may be terminated by either party at the end of a calendar year but for the first time effective 31 December 2027. Notice of termination must be given in writing no later than two months before the end of the calendar year. The contract may be extended, subject to mutual agreement by the parties and available funding.
- 8.3 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.
- 8.4 For EIT RawMaterials cause is given in particular where contractor
 - 8.4.1 is in breach of a material obligation.
 - 8.4.2 violates EIT RawMaterials' intellectual and property rights.
- 8.5 Any termination notice must be made in writing if not set out otherwise therein.

9. Default

- 9.1 The completion date, launch date and/or time slots for each individual sprint are specified in the project plan. Unless otherwise agreed, these dates shall be binding.
- 9.2 If the contractor fails to meet the completion date or the launch date, it shall be in default without a warning notice given by EIT RawMaterials. This shall not apply if the contractor is not responsible for the default.
- 9.3 In the event that the deadlines specified in the project plan are exceeded by more than seven calendar days, EIT RawMaterials shall be entitled to a contractual penalty of 0.2% of the indicative fixed price according to the price sheet for each calendar day on which the contractor is in default of meeting the deadlines. Sentence 1 shall equally apply to deviations from response and resolution times, provided that the penalty applies per hour of deviation. Sentence 1 shall also apply if additionally agreed partial acceptance dates are not met.

10. Support and Maintenance Services

- 10.1 The contractor shall provide support directly to EIT RawMaterials. The support includes technical support for the LMS. Support is offered via a ticketing system, e-mail and a hotline during service hours as specified in the contractor's tender (section 2.1.4).
- 10.2 The contractor provides the hotline to resolve any operating and technical problems linked to the use of the LMS. Hotline support is available during service hours (section 10.1).
- 10.3 The contractor shall respond within the response times depending on the priority levels set in the Service Description (section 2.1.3).
- 10.4 The contractor conducts training sessions for EIT RawMaterials employees in accordance with the Service Description (section 2.1.3). Additional training sessions after the completion date are subject to additional services according to section 11.
- 10.5 The contractor shall provide regular software maintenance services and carry out security updates and adjustments, including patches, updates, upgrades of new releases/versions of the standard software upon availability and customize them, if necessary.

11. Additional Services

- 11.1 The contractor shall provide the following additional services after the Completion Date during the Term upon request by EIT RawMaterials:
 - 11.1.1 Development;

- 11.1.2 Testing;
 - 11.1.3 Project management;
 - 11.1.4 Consulting services
 - 11.1.5 Remote support outside service hours;
 - 11.1.6 Additional training services;
 - 11.1.7 Additional tokens.
- 11.2 Additional services are compensated on a time and material basis according to the rates according to the price list (section 2.1.4) and be invoiced quarterly.

12. Availability

- 12.1 The LMS shall be available for an average of 99,8% per calendar quarter ("**Availability Time**").
- 12.2 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 12.3) divided by the Total Time multiplied by 100 percent according to the following formula:

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

- 12.3 "**Downtime**" is the time during which the LMS 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.
- 12.4 Scheduled maintenance work that causes Downtimes shall, if reasonably possible, be conducted during night times or on weekends and shall be announced to EIT RawMaterials seven days in advance. 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, provided, however, that EIT RawMaterials shall be informed as soon as possible. In any case Downtimes shall be kept as minimal as possible.
- 12.5 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.

13. Rights to Work Results, Software

- 13.1 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.
- 13.2 If the transfer of rights according to section 13.1 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.
- 13.3 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.
- 13.4 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.
- 13.5 The granting of rights according to this section 13.1 to 13.3 shall not apply to the third party software components listed in the software chart in the price sheet (section 2.1.4). The rights to which EIT RawMaterials is entitled in respect of these software components are set out in the price sheet (section 2.1.4).
- 13.6 The transfer of rights to the work results is covered by the payment of the agreed remuneration according to section 7.

14. Documentation, Backup

- 14.1 The contractor shall provide a documentation on the LMS and work results during the performance of the Agreement. The current documentation after each sprint and on request by EIT RawMaterials, will be made available to EIT RawMaterials on a shared platform as defined by the contact persons.
- 14.2 The contractor shall be responsible for making backups of the data and code.

15. EIT RawMaterials Material, Copyright, Trademarks

- 15.1 EIT RawMaterials remains owner of all texts, documents, logos, designs ("**Material**") provided to the contractor for the implementation of the LMS. The contractor shall only use this Material for the implementation and maintenance of the LMS.
- 15.2 The contractor shall ensure that the use of logos, images, trademarks and other material does not infringe third parties' rights and that relevant license conditions are met.

16. Warranties

- 16.1 In case of a defect the statutory warranty provisions apply.
- 16.2 The contractor warrants and represents that (i) the LMS 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.
- 16.3 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 (i) itself or by third parties remedy the defect at the expense of the contractor, (ii) terminate the Agreement for cause, (iii) demand a reduction of the remuneration and/or (iv) claim for damages. The obligation to pay damages shall not apply if the contractor has not at least caused the defect negligently.
- 16.4 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.

- 16.5 The contractor will not use any third-party pre-existing Intellectual Property in connection with this Agreement unless the contractor has the right to use it for EIT RawMaterials's benefit. The contractor grant to EIT RawMaterials a non-exclusive, worldwide license to use, modify, adapt these third-party Intellectual Property for the contractual purposes.

17. Indemnification

If third parties claim that their rights have been infringed by the use of the work results and software by EIT RawMaterials, the contractor shall indemnify EIT RawMaterials against these claims and reimburse EIT RawMaterials for the costs of a reasonable legal defence.

18. Liability

- 18.1 Unless otherwise stipulated in this Agreement, the parties shall be liable in accordance with the statutory provisions.
- 18.2 The total liability of a party for damages due to slight negligence in connection with this Agreement (all claims combined) shall be limited to the indicative fixed price added by twelve times the monthly fixed rate according to the price sheet (section 2.1.4).
- 18.3 The limitations of liability shall also apply in favour of the parties' employees and for companies affiliated with the party.
- 18.4 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.
- 18.5 The contractor shall obtain and maintain adequate insurance to cover liability arising out of or in connection with this Agreement.

19. Confidentiality

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

19.2 Each party shall:

- 19.2.1 not use confidential information and documents for any purpose other than fulfilling its obligations under this Agreement;
- 19.2.2 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;
- 19.2.3 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.

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

- 19.3.1 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);
- 19.3.2 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
- 19.3.3 the respective party had received from a third party who was entitled to disclose this information without restriction.

20. Data Protection

- 20.1 The parties shall comply with all applicable data protection regulations.
- 20.2 The parties agree that in the event that the contractor is to have access to personal data that constitutes a controller-processor-relationship, e.g. when providing support services, storing of requests, the parties will enter into a respective data processing agreement prior to the commencement of the processing, which is enclosed as constituent part of this contract (section 2.1.1). If the contractor processes personal data outside the European Union and European Economic Area, the parties shall, in good time before the start of the services, conclude the standard contractual clauses ("**SCC**") for the transfer of personal data to processors in third countries in accordance with the Commission Implementing Decision 2021/914/EU on standard contractual clauses for the transfer of personal data to third countries pursuant Regulation (EU) 679/2016.

20.3 The contractor warrants that all data is encrypted and hosted in EU data centers.

21. Absence of Restrictions; Conflict of interest

21.1 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.

21.2 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.

22. Auditing, Investigations

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 and investigations towards it under the FPA (Framework Partnership Agreement) that EIT RawMaterials has concluded with the EIT. Such rights are described in Articles 28 and 29 of the FPA attached to this Agreement (section 2.1.6).

23. Governing Law, place of jurisdiction

23.1 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).

23.2 The place of jurisdiction is Berlin.

24. Miscellaneous

24.1 The Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties.

24.2 Contractor's terms & conditions shall not apply.

- 24.3 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.
- 24.4 If this Agreement requires a written form (section 126 BGB) e-mail communication or text form shall be sufficient if not explicitly set out otherwise.
- 24.5 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's prior written (e-mail or text form is not sufficient) consent.
- 24.6 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.
- 24.7 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

Date:

.....

Name:

Position:

Contractor

Date:

Date:

.....

.....

Name:

Name:

Position:

Position: