AI\_7.4 EAGA(18)11-33 2018-10-29-contract\_experienced\_participant

**Agreement**

**on Benchmarking Services**

between the

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| **Federal Republic of Germany**,  represented by the Federal Minister  for Economic Affairs and Energy,  the latter represented by the President of the  **Federal Institute for Materials Research and Testing (BAM)**,  Unter den Eichen 87,  12205 Berlin |

- hereinafter referred to as the BAM -

and

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|  |

- hereinafter referred to as Client -

The BAM and the Client may also be referred to hereinafter individually as "Party" or collectively as "Parties".

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| **Project code**  **“**  **wDL** |

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**Preamble**

The Federal Institute for Materials Research and Testing (BAM) is a senior scientific and technical Federal Institute with responsibility to the Federal Ministry for Economic Affairs and Energy (BMWi). The particular remit of the BAM is to advance safety in technology and chemistry, to test materials and systems (thereby analysing the test results based on the applied principles of physics and chemistry and providing reference methods and reference materials), to promote the transfer of knowledge and technology in its key fields of research, to collaborate on the development of statutory regulations (e.g. safety standards and threshold limits) and to advise the German government, industry, national and international organisations on materials science and chemistry.

The BAM shall be carrying out work in the field of **benchmarking of European accreditation bodies**.

Now therefore, the Parties to the contract agree to work together on the basis of the provisions set out below:

**Article 1**

**Definitions**

**Know**-**how** This term denotes the entire body of non-patented, practical knowledge which is gleaned by experience and experiment and which is restricted (i.e. it is not common knowledge and not easily accessible), essential (i.e. it is of fundamental importance and avail for the subject of the agreement) and identified (i.e. it is specified in sufficient detail to be able to verify whether it is "restricted" and "essential").

**Benchmarking findings** This term refers to the results of the benchmarking work which originate

during the implementation of this contract and which relate to the brief set out in the work schedule.

**Classified Information** An Information which is clearly identifiable and/ or marked as confidential or classfied.

**Article 2**

**Subject matter of the contract**

2.1 The BAM undertakes to carry out the work on a benchmarking project for European accreditation bodies.

2.2 This objective and the exact remit of the work to be carried out by the BAM are outlined in the work schedule in Appendix 1 to this contract. Article 5 of this contract shall apply if changes to the work are required which necessitate more than a mere adjustment of the work schedule.

2.3 This contract applies to accreditation bodies which took part in the pilot study of the benchmarking project for European accreditation bodies.

**Article 3**

**Working processes**

3.1 The Parties agree that the work on the project is characterised by benchmarking studies of several European accreditation bodies. With the aim to identify best practises and support the harmonisation of the European accreditation. The BAM shall therefore carry out the work to the best of its ability on the basis of the latest science and technology, applying its own experience and insights, such as already existed or were gained during the collaboration.

3.2 The BAM shall not be entitled to subcontract parts of the work to third parties without the consent of the Client.

3.3 The Parties to the contract shall duly provide each other with all the information needed to carry out the work after prior discussion and agreement. Any documents, objects and other resources provided by one Party to the other Party to carry out the work shall be made available on loan. Said items may only be used to carry out the work and given back to the respective Party at the end of the work on request.

**Article 4**

**Remuneration**

4.1 The BAM shall be paid a fee for the work in accordance with the financial plan in Appendix 2 amounting to

EUR 5.085,99

without the statutory value added tax amount valid at the time at which the service is rendered. The fee for the work amounting stipulated shall be net remuneration insofar as the Partner holds a valid VAT identification number and has submitted it to the BAM. In this case, the tax liability would be transferred to the beneficiary (the “Partner”) in accordance with Section 13b UStG [German Value Added Tax Law] (“reverse-charge procedure”). The BAM shall therefore issue their invoices without VAT.

4.2 The Client hereby agrees that any funds not spent by the end of the benchmarking project and after submission of the final report shall remain at the BAM's disposal for research in the field of accreditation. In this case the Client shall not require a breakdown of spending as set out in paragraph 4.

4.3 The provisions set out in Appendix 2 shall also apply in addition to those in paragraph 4. Appendix 2 specifically sets out the payment plan. Appendix 2 is an integral part of this contract.

**Article 5**

**Result Workshop /**

An important part of the benchmarking services is the implementation of a results workshop. The results of the workshop cannot be postponed by the client. This agreement is terminated automatically, if the client does not attend the results workshop. In this case the client is obligated to reimburse the BAM for already invoiced cost items.

**Article 6**

**Results, property rights and know-how**

6.1 The benchmarking findings obtained in the course of the contract shall be documented in a final report and submitted to all participants. The Parties agree that the BAM shall obtain a non-exclusive, non-transferable, gratuitous right, without restrictions as to time and content, to use the research findings for its own research work and for the purposes within the BAM remit (which also includes contract research and testing assignments for third parties).

6.2 The Parties do not expect findings to emerge in the course of the assignment which will generate property rights or know-how in relation to the subject matter of the agreement.

6.3 The Parties accept that all accreditation bodies which take part in the project may use the benchmarking results for their own internal purpose.

6.4 The BAM is entitled to publish the findings and results of the results workshop. Findings and results will be published in anonymous form, if this is mandatory to protect the legitimate interests of the client.

**Article 7**

**Confidentiality**

7.1 The Parties undertake not to disclose, during the term of the project and for a further 3 (three) years after the termination of the project, any of the non-anonymised information made accessible to them in connection with this agreement which is marked classified or which is otherwise plainly identifiable as the trade or business secrets of one Party, and not to record, circulate or use it, unless required to do so to fulfil the objective of the agreement. For the avoidance of doubt, it is expressly agreed between the parties that anonymised Benchmarking Findings are not treated as classified information.

7.2 The Parties undertake to deny parties not participating in the project access to all classified information and to use it for the intended purpose only.

7.3 The Parties shall only allow their staff and employees access to classified information to the extent required for the collaboration in any given case and shall impose the same duty of secrecy on these staff and employees.

7.4 The above obligations shall not apply to information or individual items of information in the following cases:

(a) Information known to the recipient before the date of receipt;

(b) Information made public or generally accessible before the date of receipt;

(c) Information in the public domain or generally accessible after the date of receipt without having been disclosed by the receiving Party;

(d) Information made accessible to the Parties at any given time by an authorised third party not subject to a duty of confidentiality;

(e) Information which was or is independently generated by an employee of the receiving Party who had or has no access to the disclosed classified information;

(f) Information disclosed by virtue of a court order, a legitimate request by an authority, or by act of law, albeit only to the extent decreed. In this case, however, the receiving Party shall be required to inform the disclosing Party in due time before the disclosure.

Classified information consisting of individual items shall only be exempt from the duty of confidentiality insofar as the items as a whole fall under at least one of the exceptions set out in subsections (a) to (f).

The burden of proof shall rest with the Party citing one of the above exceptions.

7.5 Information which has been exchanged may not be used by the Client to register property rights and shall not constitute a right based on prior use.

7.6 The provisions set out in paragraph 7 above constitute the entire content of the agreements between the Parties in respect of the obligation to maintain confidentiality with regard to information disclosed under the development contract, and they shall take precedence over and supersede all previous or contemporaneous arrangements or agreements, be they written or verbal, in relation to or in connection with the non-disclosure of information.

**Article 8**

**Warranty of title and quality**

8.1 The BAM shall perform its obligations under this contract on the basis of the recognised standards, applying the latest research techniques known to it at the time of execution and bringing its knowledge of science and technology to bear to optimum effect.

8.2 In the case of any undertakings as to quality, the Client shall first allow the BAM the opportunity to make improvements.

8.3 Under no circumstances does the BAM give guarantees and/or assurances in respect of the subject of the agreement.

8.4 Claims for damages in lieu of performance owing to initial impossibility or quality defects pursuant to section 311a (2) of the German Civil Code (BGB) shall be limited to loss or damage incurred by relying on the validity of a declaration.

8.5 Claims for damages asserted by either Party against the other shall be limited to such as are typical under such agreements. Claims may not be made for compensation for loss of profit. These limitations shall not apply if one Party to the contract has acted with deliberate intent or gross negligence. Major contractual obligations are such as are necessary to fulfil the objective of the agreement.

8.6 The above limitations of liability shall not apply in case of injury to life, limb or health. Nor shall they apply to claims under the Product Liability Act.

Article 9

Acceptance

- not applicable -

**Article 10**

**Deadlines**

The working timetable and schedule, including the final deadline, are set out in the work schedule in Appendix 1 to this contract. This schedule may be updated by the Parties to the contract by mutual consent.

**Article 11**

**Requirements as regards form**

Notice of cancellation of this agreement, and amendments and additions to this agreement must be made in writing to be legally effective. Any waiver of this requirement of form must be stated in writing.

**Article 12**

**Place of jurisdiction, applicable law**

11.1 The Client is aware of the remit and objectives of the BAM as stated by the Federal Ministry for Economic Affairs and Energy (BMWi) in its official decree, as amended. Due regard shall be had to said remit and objectives in any interpretation of the agreement.

11.2 The Parties shall make every effort to settle any differences amicably should dissension arise as to the purport of the agreement.

11.3 The agreement shall be governed exclusively by German law.

11.4 Berlin is hereby agreed as the place of jurisdiction in the event that a difference of opinion cannot be settled out of court.

**Article 13**

**Other provisions**

Should individual provisions of this agreement be or become invalid, this shall not affect the validity of the other provisions.

**Article 14**

**Entry into force**

14.1. This contract shall enter into force on being signed by both Parties with effect from

*1st January 2019*.

14.2 The contract can be cancelled by BAM with a notice period of 14 days to the end of the month.

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| **Federal Institute for Materials Research and Testing (BAM)** | |
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| Confirmation of legal liability and  administration  pp.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
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| Head of Section Z.9 Research Services |
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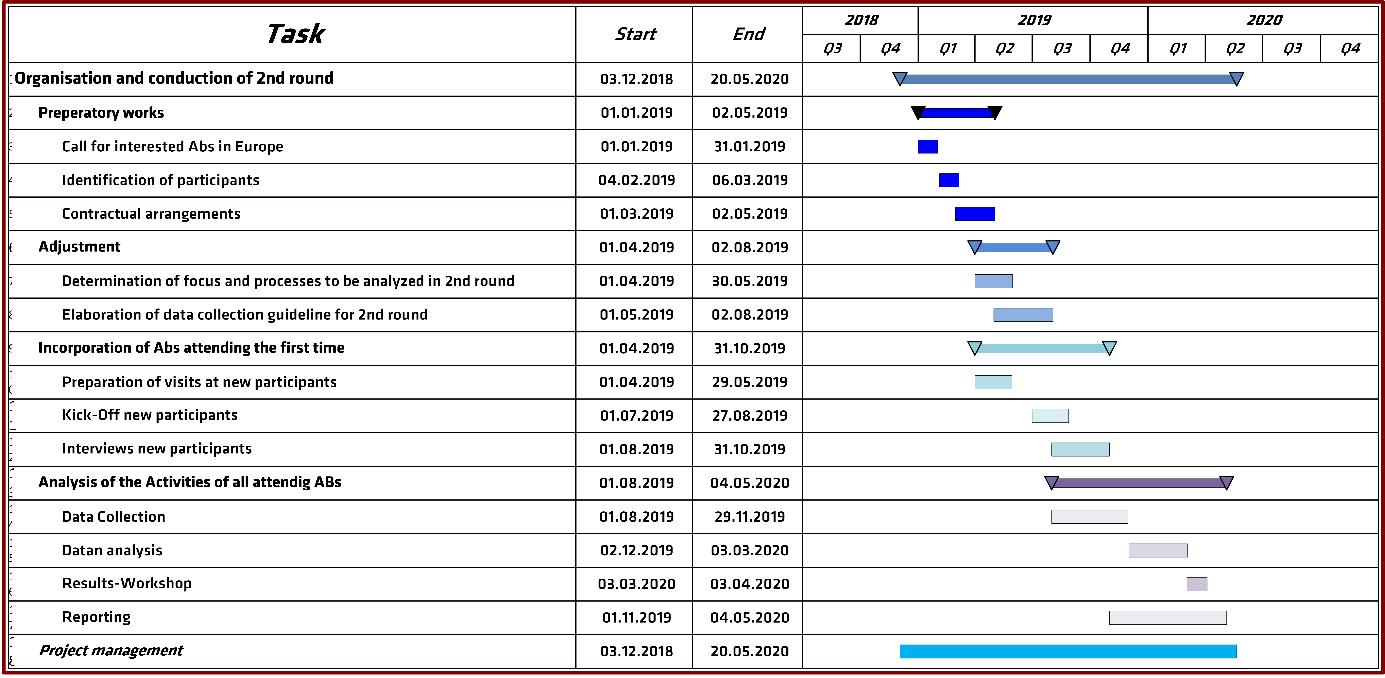
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| **Appendices**  **Appendix 1** – Work Schedule  **Appendix 2** - Financial Plan |  |

**APPENDIX 1**

to the Contract for Benchmarking Services of  (date of entry into force)

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| Contract number:    wDL |

**Work Schedule**

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Project  
***Analysis of the operation of accreditation bodies in Europe***

***Round 2***

***Project goal:***

The long-term goal of the benchmarking project for European accreditation bodies is twofold: First of all, the project is supposed to help the European accreditation attending bodies to improve their processes by identifying best practices and by learning from others. Possibly Secondly, the results of the analysis can be used by the European Cooperation for Accreditation (EA) to identify differences in the operation of the European accreditation bodies and based on this knowledge to promote harmonization of accreditation activities in Europe.

***Introduction:***

In autumn 2014 the German federal institute Bundesanstalt für Materialforschung und –prüfung (BAM) in cooperation with the German accreditation body Deutsche Akkreditierungsstelle GmbH (DAkkS) initiated a project to compare the operations of accreditation bodies (ABs) in Europe. The aim of this project was to develop a tool based on measurable criteria and indicators, which can be used to analyze the operations of ABs. As prerequisite for this 1st benchmarking round a management tool was designed to systematically assess European ABs, enabling a comparative analysis to be made. By investigating current practices, the analysis generates discussion amongst ABs on how to improve the efficiency and effectiveness of operations and helps to identify and promote best practices.

Eight European ABs attended the first benchmarking round in 2016. By means of the *Process Maturity Benchmarking Tool* (PMBT), a set of relevant processes was identified and analyzed using indicators based on data from data records and the maturity of the investigated processes. A Results-Workshop was conducted with experts from the ABs to identify best practices and discuss different modes of operation.

The positive feedback of the participants and the wish to participate in the benchmarking expressed by several other European ABs, caused the BAM to start planning the 2nd round of benchmarking the operation of European ABs.

***Project outline:***

The 2nd benchmarking round of the project “Analysis of the operation of accreditation bodies in Europe” is envisaged for 2019. In contrast to the 1st round, the BAM will conduct this benchmarking solely without the DAkkS as partner. The 2nd round will make use of the Process Maturity Benchmarking Tool PMBT, the management tool which was developed for and applied in the 1st round. The PMBT will be optimized in advance based on the suggestions and experiences gathered in the benchmarking conducted in 2016.

The 2nd benchmarking round is subdivided into four work packages, which are organized in three consecutive phases:

Work package 1: Adjustment

In the first phase of the project, the exact contents of the 2nd round will be identified. In order to achieve this, representatives of the ABs, which took part in the first round and therefore have sufficient experience with the process and the PMBT, will discuss the focus and the processes to be analyzed in 2019. To avoid unnecessary costs and to make a direct exchange between the representatives possible it is proposed to conduct a small workshop subsequent to the EA General Assembly in May 2019. Representatives of ABs interested in first-time participation will be invited to join the workshop as guests.

Based on the outcome of this workshop a revised “Data Collection Guideline” will be elaborated.

Work package 2: Incorporation of ABs attending the first time

In the second phase, the ABs which did not take part in the first round will be introduced to the PMBT-approach. Based on the experiences from the first round two visits will be performed at the site of each AB attending the benchmarking for the first time. The first visit is the kick-off of the project. In a 2-hour-lasting presentation the relevant process owners and managers of the AB are introduced to the concept, the approach and the upcoming steps of the benchmarking. A few weeks later the first data acquisition at the ABs is conducted in the course of interviews with the process-responsible person or team. This practice has been approved as very useful in the first round, as the possibility to clarify the details and the handling of the PMBT-approach helped the participants in preparation of their answers and assured a common understanding of the benchmarking criteria.

Work package 3: Data acquisition from ABs which attended the first round

Parallel to task 2 as part of the second project phase, all ABs which have attended the first round will be provided with the personalized data collection guidelines. Data acquisition and the transfer of the data in an excel-file can be done by the experienced bodies without on-site assistance of the BAM, nevertheless, assistance by email or phone will be provided by BAM. The personalization of the guidelines will be done in close cooperation with the ABs.

Work package 4: Data analysis and workshop:

The third phase of the 2nd benchmarking round is used for data analysis and learning. The data of all attending ABs will be analyzed and evaluated using descriptive statistics. This analysis will be used to prepare a tailor-made two-day workshop focusing on the results of the benchmarking.

***Deliverables: Results-Workshop and Final Report:***

The Results-Workshop will be organized in Berlin to present the major results of the benchmarking and to trigger discussions about differing approaches and current practices and to identify best practices. This workshop with structured sessions focusing on defined processes and aspects will give all participants the chance to exchange experiences and to learn from each other in an open-minded atmosphere. The identification of good and best practices will be moderated by the BAM in a way, that is intended to be fruitful and inspiring for the participants.

The main results of the workshop and the evaluation will be summarized in an internal Final Report and submitted to all attending ABs.

**Scheduling:**

The schedule in Annex 1 shows tasks and work packages in a time-based bar chart.

**Workload for the participants:**

All attending ABs are asked to designate a contact person, which will organize the exchange of information between BAM and the AB.

All attending ABs have to invest time for data acquisition. This work can be done at the premises of the AB, the time schedule gives the ABs sufficient time for gathering the data.

For new participants two visits by a BAM employee are to be organized: A kick-off event to inform the employees of the AB about the project, its objectives, and the PMBT-approach. This event will take 2-3 hours. It is suggested to invite 5 to 15 people to this event, depending on size and distribution of tasks in the AB. The second visit will be used for data acquisition. For each process to be analyzed in the benchmarking round there will be an interview with the process-responsible person or time. Experience shows, that these interviews last 1 to 3 hours.

All attending AB are supposed to send participants to the two-day Results-Workshop. As the discussions at this workshop are one of the most important elements of the PMBT-approach applied in the benchmarking, it is expected that each AB sends at least 2 and up to 5 members to the workshop.

**Publication of results and treatment of confidentiality:**

The BAM is interested to make the results of the 2nd benchmarking round available to the public in a suitable form. Apart from the ABs themselves, the European Commission, EA, ILAC, and IAF, key addressees are also the ministries of the Member States responsible for the national accreditation bodies. When preparing the results to be published care must be taken both to safeguarding data protection standards and to reporting the project results in a manner addressing the needs of the target group.

As the information provided by the ABs is treated strictly confidential, there will be no disclosure of information without the consent of each AB. If an AB does not agree with the publication of specific data, these will be anonymized in a way that the identification of a specific AB is not possible.

**Processes and internal communication:**

At the project start ways of communication, information and reporting between the BAM and each attending AB will be determined and responsibilities will be addressed.

In order to facilitate communication and the shared work on documents, the BAM will set up and manage an Internet Portal on the basis of MS SharePoint. This platform enables the ABs to access data and graphics easily.

This Appendix is an integral part of the aforementioned contract.

**APPENDIX 2**

to the Contract for Research Services of  (date of entry into force)

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| Contract number:    wDL |

**Financial Plan**

1. The BAM shall be paid the following amount in remuneration for the work:

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| EUR 5.085,99  ------------------------------------  (in words: five thousand and eighty five EURO and ninety nine CENT) without the statutory value added tax amount valid at the time at which the service is rendered. The fee for the work amounting stipulated shall be net remuneration insofar as the Partner holds a valid VAT identification number and has submitted it to the BAM. In this case, the tax liability would be transferred to the beneficiary (the “Partner”) in accordance with Section 13b UStG [German Value Added Tax Law] (“reverse-charge procedure”). The BAM shall therefore issue their invoices without VAT. |

1. The payments shall be made as and when requested by the BAM and as set out in the following payment plan.

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| 50 % at the beginning of the project  50 % one month after the result workshop  The above amounts do not include the statutory value added tax applicable at the time of completing the work in any given case |

1. The BAM hereby affirms that the projected costs have been calculated according to the principles of economic efficiency and thrift.
2. Terms of amendments to contractual obligations are set out in paragraph 5 of the contract.

This Appendix is an integral part of the aforementioned contract.