


CEDEFOP

 European Centre for the Development
of Vocational Training

WORKS CONTRACT

CONTRACT NUMBER [to be completed]

The European Centre for the Development of Vocational Training, hereinafter referred to as “Cedefop”, which is represented for the purposes of the signature of this contract by Mr. Thierry Bernard-Guele, Head of Resources,

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

hereinafter referred to as "the contractor"), represented for the purposes of the signature of this contract by [name in full and function,]

of the other part,

HAVE AGREED

the Special Conditions and the General Conditions below and the following Annexes:

Annex I Tendering Specifications (Invitation to Tender No [complete] of [complete])

Annex II Contractor's Tender (No [complete] of [complete])

which form an integral part of this contract (“the contract”).

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by Cedefop, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

I - SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

I.1.1 The contract is for:

[brief description of the subject of the contract]

I.1.2 The contractor shall execute the works assigned to him in accordance with the technical specifications given in Annex I.1.

I.1.3 Cedefop hereby entrusts the contractor, who accepts, to perform in full the works described in detail in Annex 1 to this contract.

ARTICLE I.2 - DURATION

I.2.1 The contract shall enter into force on the date on which it is signed by the last contracting party.

I.2.2 A protocol will be drafted to mark the commencement and end of the works.

I.2.3 In no case may the performance of the contractual works commence before the date set in each works commencement report and only after the contract has entered into force.

I.2.4 The duration of the tasks shall not exceed **5 months**. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE I.3 - REMUNERATION

I.3.1 The [maximum] total amount to be paid by Cedefop under the contract shall be EUR [amount in figures and in words] covering the execution of the works referred to in Article I.1.

I.3.2 Prices shall be expressed in euros and shall not be affected by any changes in the rate of the euro against other currencies.

I.3.3 “NOT APPLICABLE”

I.3.4 “NOT APPLICABLE”

ARTICLE I.4 – CALCULATION OF PRICES FOR NEW OPERATIONS AND MATERIALS

“NOT APPLICABLE”.

ARTICLE I.5 – ACCEPTANCE OF WORKS AND ACCEPTANCE INSPECTIONS

I.5.1 When the contractor considers that he has completed the works, he shall request an on-site inspection together with representatives of Cedefop. At that time a **“provisional works completion report”** shall be signed, including:

- a) confirmation that the works have been carried out in accordance with the description in Annex I, with the possible exception of work which is incomplete or has visible faults;
- b) a description of the incomplete work or faults.

I.5.2 The problems described in the provisional works completion report will be remedied within no more than **7 days** of signature of that report, either directly by the contractor or by Cedefop with the contractor bearing the costs.

When the period of **7 days** after signature of that report has elapsed, if the contractor has fulfilled the above obligations, the contractor - or failing that, Cedefop - shall request an on-site inspection to be carried out jointly with Cedefop's representatives. The parties will then carry out a provisional acceptance inspection to check that the contractor has executed all the works according to the terms of the Annexes.

If the works fail the provisional acceptance inspection, Cedefop will be free to apply the terms of Article II.13 and to proceed to terminate the contract in accordance with the terms of Article II.14.

I.5.3 If the works pass the provisional acceptance inspection, a **“provisional acceptance inspection report”** will be signed.

The guarantee period referred to in Article I.10, during which all the checks preceding final acceptance must be carried out (as appropriate to the summer or winter season), will start to run from the date of the **“provisional acceptance inspection report”**, which will be the date of provisional acceptance of the works carried out.

I.5.4 With the signature of the provisional acceptance inspection report, Cedefop reserves the right to occupy or use the works, or part thereof, prior to final acceptance by proceeding to the early handover of the works, without prejudice to the contractor's obligations in respect of guarantee and maintenance.

The handover will be effected by means of a report drawn up jointly by Cedefop and the contractor. Cedefop will take possession of the premises handed over and assume the right to make use of them by signing this report.

In all cases, until the final acceptance inspection report is signed, the contractor shall be responsible, including financially, for generally maintaining the works in the proper condition and at the proper level of operational efficiency and in accordance with the basic design and construction characteristics.

Throughout the above period, the contractor shall guarantee the works and the supplies provided, undertaking to replace material non-compliant with the terms of the contract and to repair any damage or deterioration reported, including that subsequent to use of the works, provided that it was proper use.

- I.5.5** In the period between signature of the provisional acceptance inspection report and the final acceptance inspection report, Cedefop will request all the evidence it deems necessary and appropriate.
- I.5.6** Final acceptance will take place upon expiry of the guarantee period.
- I.5.7** Cedefop may decide to appoint independent experts to carry out the relevant tests.
- I.5.8** Cedefop shall have to bear the costs of the final acceptance inspection. For its part, the contractor will provide the assistance necessary at its own expense.
- I.5.9** When the results of the final acceptance inspection are fully satisfactory to Cedefop, a report will be drawn up and signed by both parties (the **final acceptance inspection report**), which will be the effective acceptance document.

All the technical authorisation documentation, certificates and conformity certificates needed for the works to be used will be annexed to this report.

Cedefop will effect final acceptance of the works carried out by signing the final acceptance inspection report and releasing the guarantee referred to in Article I.6.5.

ARTICLE I.6 – PAYMENTS AND FORMALITIES

Payments under the Contract shall be made in accordance with Article II.16. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

I.6.1 Prefinancing

Within 45 (forty-five) days of the signature of the contract by the last contracting party, a prefinancing payment of EUR [amount in figures and in words] equal to 25% of the total amount referred to in Article I.3.1 shall be made.

1.6.2 Payment of the balance

In order for the request for payment of the balance to be valid, the contractor must send the following accompanying documentation:

the “**provisional acceptance inspection report**”, signed by both parties, as referred to in I.5.3,

and the relevant invoices.

After receiving the above documents, Cedefop shall have forty-five days to approve or reject them. In case of rejection, the contractor shall have a period of forty-five days to present new documents.

Within 45 (forty-five) days of the date on which the documents accompanying a request for payment are approved by Cedefop, the payment of the balance equal to 75% of the total amount referred to in Article I.3.1 shall be made.

I.6.3 Invoices must state the following:

- the price in EUR and the total price excluding VAT
- the VAT amount in EUR separately
- the IBAN code and the BIC as identified in the contract (see article I.5 below); in case of change, prior information and a new Financial Identification Form must be duly addressed to Cedefop before the dispatch of the invoice
- that the amount invoiced is exempt from VAT under the Articles 3 and 4 of the PPI. The current provisions in Greece shall apply to VAT exemption. Only in cases where the Contractor is from Greece, Cedefop pays VAT to the Contractor and takes in charge the formalities for its re-imbursement from the competent Greek Authority.

I.6.4 Invoices for payment must be sent to the following address:

Cedefop

European Centre for the Development of Vocational Training (Cedefop)
ICTF
Office 4.19
PO Box 22427
GR – 55 102 Thessaloniki

I.6.5 Performance guarantee

A guarantee for an amount of [EUR complete amount in figures and in words] shall be issued by a bank, an authorised financial institution or a third party in favour of Cedefop. It shall be released 5 (five) days after final acceptance of the works (see I.5.9). It shall cover performance of the Contract in accordance with the terms set out in Annex I.

ARTICLE I.7 - BANK ACCOUNT

1.7.1 Payments shall be made to the contractor's bank account denominated in euros, identified as follows:

Name of bank: [to be completed]
Address of branch in full: [to be completed]
Exact designation of account holder: [to be completed]
Full account number including codes: [to be completed]
IBAN code: to be completed
BIC code:

1.7.2 The account number indicated in the contract must be mentioned on all invoices.

The same bank account number shall be indicated on each invoice.

All invoices shall indicate the Contractor's VAT number.

ARTICLE I.8 - AMENDMENTS, ADDITIONAL WORKS

Notwithstanding Article II.23 of the general conditions, the following applies:

- I.8.1** Unless he has valid reasons, the contractor may not refuse to consent to amendments or additions to the contract requested by Cedefop.
- I.8.2** To that end, the contractor must send Cedefop written notification as soon as possible if an amendment is likely to affect the amount mentioned in the contract or its expiry deadlines. In this case, the contracting parties will consult in order to fix new prices and deadlines.
- I.8.3** If the effect of an amendment is to increase the amount of the contract by no more than 10%, the amendment shall become effective following a simple exchange of letters signed by the technical representative for this contract, as identified in Article I.11.

Amendments performed without signed letters being exchanged will be neither recognised nor reimbursed.

- I.8.4** If the effect of an amendment is such as to increase the amount of the contract by more than 10%, the amendment may become effective only through an additional agreement signed by a qualified representative of each of the two parties. If the sum of the amendments of less than 10% has the effect of increasing the initial amount of the contract by more than 10%, these amendments must take the form of an additional agreement.
- I.8.5** Any conclusion of an amendment or additional agreement does not modify, affect or defer the terms and conditions of the present contract if not stipulated expressly otherwise therein. They continue to apply on the present contract and, as far as not otherwise provided for, to the amendment or additional agreement.

Amendments carried out outside the above rules will be neither recognised nor reimbursed.

ARTICLE I.9 – SUSPENSION OF WORKS AND EXTENSIONS

Notwithstanding Article II.24 of the general conditions, the following applies:

- I.9.1** The contractor may suspend works only in cases of force majeure, as defined in Article II.15 of the General Conditions, likely to prevent the timely execution of the works. In such cases, the contractor is required to notify Cedefop of the reasons why work may not proceed by registered letter with acknowledgement of receipt. This notification must be sent in duplicate to the addresses given in Article I.11.
- I.9.2** The suspension of the works must in each case be formally authorised by Cedefop in the form of a “works suspension report” signed by both parties. Deadlines for the completion of the works may be extended by the number of days indicated in the works suspension report.
- I.9.3** The same procedure applies in the case of suspension or delay attributable to Cedefop.

ARTICLE I.10 - GUARANTEE

The contractor undertakes to ensure a guarantee period of **12 months** for the works executed.

This period starts to run from the date when the provisional acceptance inspection report is signed according to Art. II.9.

ARTICLE I.11 - GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the contract must be made in writing and must bear the number of the contract. Ordinary mail shall be considered as having been received by Cedefop on the date it is registered by the department responsible mentioned below. All communications must be sent to the following addresses:

For Cedefop - Concerning administrative matters:

European Centre for the Development of Vocational Training (Cedefop)
Procurement Service (C4T)
Office 4.19
PO Box 22427
GR – 55 102 Thessaloniki
For the attention of Mr George Paraskevaïdis, Head of Finance & Procurement

Concerning technical matters:

European Centre for the Development of Vocational Training (Cedefop)
ICTF (Information Communication Technologies & Facilities)
Office 4.19
PO Box 22427
GR – 55 102 Thessaloniki

For the attention of Mr Lazaros Tossounidis, Head of ICTF

For the contractor:Contractor:

Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Official address in full]

Concerning administrative matters:

Mr/Mrs/Ms [to be completed][Function][Company name][Official address in full]

Concerning technical matters:

Mr/Mrs/Ms [to be completed][Function][Company name][Official address in full]

ARTICLE I.12 – APPLICABLE LAW AND JURISDICTION

I.12.1 The contract shall be governed by the national substantive law of Greece.

I.12.2 Any dispute between the parties resulting from the interpretation or application of the contract which cannot be settled amicably shall be brought before the courts of Thessaloniki.

ARTICLE I.13 - SUBCONTRACTING

The contractor may enter into subcontracts in accordance with the provisions of Article II.1.

ARTICLE I.14 – DATA PROTECTION

Any personal data included in the Contract will be processed in accordance with the requirements of Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movements of such data. The data will only be processed for the purposes of the performance, management and follow up of the Contract by the Contracting Authority(-ies), as data controller, without prejudice to a possible transmission to the bodies in charge of a monitoring or inspection task in conformity with Community law. The Contractor may, upon request, obtain the communication of his personal data and rectify any inaccurate or incomplete personal data. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the Head of Finance and Procurement. As regards the processing of his personal data, the Contractor has a right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.16 – OTHER SPECIAL CONDITIONS

The following persons are empowered to supervise the performance of this contract:

for Cedefop:

for the Contractor:

II - GENERAL CONDITIONS

ARTICLE II.1 - SUBCONTRACTING

- II.1.1.** The Contractor shall not subcontract without prior written authorisation from Cedefop nor cause the Contract to be performed in fact by third parties.
- II.1.2.** Even where Cedefop authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to Cedefop under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.1.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which Cedefop is entitled by virtue of the Contract, notably Article II.17.
- II.1.4** The contractor is required to ensure that any subcontractors comply with the provisions of this contract in their dealings with their staff.

ARTICLE II.2 – AUTHORISATIONS REQUIRED, SITE

- II.2.1** Before the start of the works, the contractor shall have obtained the administrative authorisations required for their performance.
- II.2.2** The contractor shall have sole responsibility for ensuring compliance with safety rules and maintaining order on the site.

ARTICLE II.3 – OFFICIAL SECRECY

- II.3.1** The contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract. The contractor shall continue to be bound by this undertaking after completion of the tasks.
- II.3.2** The contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.4 - CONFLICT OF INTERESTS

- II.4.1.** The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to Cedefop in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

Cedefop reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the

Contractor shall replace, immediately and without compensation from Cedefop, any member of his staff exposed to such a situation.

II.4.2. The Contractor shall abstain from any contact likely to compromise his independence.

II.4.3. The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

II.4.4. The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to Cedefop should it so request.

ARTICLE II.5 – PERFORMANCE OF THE CONTRACT

II.5.1. The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.

II.5.2. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.

II.5.3. Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

II.5.4. The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.

II.5.5. The Contractor shall neither represent Cedefop nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.

II.5.6. The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by Cedefop;
- Cedefop may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of Cedefop any right arising from the contractual relationship between Cedefop and the Contractor.

- II.5.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Cedefop premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. Cedefop shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- II.5.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to Cedefop. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.5.9.** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, Cedefop may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, Cedefop may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.6 – TIME LIMITS FOR PERFORMANCE

If not specified, the time limits for performance set in the contract shall run from the date it is signed.

The deadlines may be extended in the case of force majeure: the parties shall set new deadlines in additional clauses in accordance with Article II.23.

ARTICLE II.7 - PATENTS, REGISTERED DESIGNS, TRADEMARKS AND BRAND NAMES, INDUSTRIAL DESIGNS AND MODELS

- II.7.1** Should performance of the contract involve the use of patents, registered designs, trademarks or brand names, or industrial designs or models belonging to third parties, the contractor shall indemnify Cedefop against any action for infringement which may be brought against it.

Such indemnification shall not apply in cases where:

- (i) Cedefop imposes the use of any of the aforementioned industrial property rights belonging to a third party;
- (ii) Cedefop, contrary to a specific provision contained in the contract, uses all or any of the supplies related to the performance of the works under this contract for a purpose other than that specified in the contract;
- (iii) Cedefop refuses to agree to the substitution or modification proposed by the contractor in order to avoid infringement, even though such substitution or modification would in no way change the technical specifications laid down in the contract.

In such cases, the obtaining of the necessary authorisations, the payment of royalties or indemnities, the performance of whatever procedures may be required and compensation to the supplier for any damage suffered by the contractor shall be the responsibility of Cedefop.

Cedefop and the contractor shall notify each other of any information leading them to believe that an industrial property right could impede performance of the contract.

- II.7.2** At the first indication of any action by a third party, in particular the lodging of a claim, even after performance of the contract, the party implicated shall notify the other party without delay, whereupon both parties shall act conjointly and shall exchange all information and evidence which they may possess or obtain.

ARTICLE II.8 - MATERIALS, COMPONENTS, APPLIANCES, DESIGNS, SAMPLES, TYPES OF SUPPLY, MODELS, TEMPLATES AND PATTERNS BELONGING TO CEDEFOP AND HELD BY THE CONTRACTOR

- II.8.1** The contractor shall be liable in the event of loss of or damage to any materials, components, appliances, designs, samples, types of supply, models, templates and patterns belonging to Cedefop which he holds for the purpose of performance of the contract, whether delivered to him for such purpose or purchased by him on behalf of Cedefop.

- II.8.2** Compensation shall be effected, according to the preference expressed by Cedefop after consulting the contractor, either in kind (replacement or repair) or by payment of a sum equivalent to the replacement cost at the date of the loss or damage plus any duties or taxes demanded by the national authorities.

Where the items are subject to depreciation, account shall be taken of their current value only.

ARTICLE II.9 - ACCEPTANCE

- II.9.1** The acceptance procedure is intended to check, in accordance with the provisions of the contract and/or the special terms and conditions or equivalent documents, that the works have been executed in compliance with the terms and conditions of the contract and, in particular, with the technical specifications.

- II.9.2** Where the special terms and conditions or equivalent documents do not specify the arrangements and time limits for acceptance, acceptance may be effected, at the request of Cedefop or the contractor, when 95% of the works have been completed.

- II.9.3** As a rule, acceptance is effected in the presence of the contractor and is recorded in a report drawn up by both parties and signed by the contractor and Cedefop staff specifically designated for the purpose.

- II.9.4** However, if the contractor has been asked to attend - by registered letter with acknowledgement of receipt at least two weeks before the date set for acceptance - acceptance may be effected in the absence of the contractor if he fails to arrive on the day and at the time specified. The acceptance report shall be sent to the contractor immediately thereafter.

- II.9.5** However, acceptance shall not be effected if the unfinished works are such as to prevent the subject of the contract from being used in its entirety.

- II.9.6** Acceptance shall entail the transfer to Cedefop of all risks except those covered by the guarantee referred in to Article II.11.

ARTICLE II.10 – ACCEPTANCE OF SUPPLIES WHICH UNDER THE CONTRACT REQUIRE ASSEMBLY, INSTALLATION, COMMISSIONING, ADJUSTMENT OR ANY OTHER ACTION BY THE CONTRACTOR AT THE PLACE OF DELIVERY

- II.10.1** Save as otherwise provided in the Special Conditions, these operations shall include unloading and checking the equipment on site, storing it on arrival, transporting it from the storage area to the places where the action in question is to be performed and supervising it throughout all these operations.
- II.10.2** The contractor shall also be responsible for setting up and equipping the worksite. The provision of premises, material, equipment or consumables by Cedefop shall be governed by the technical specification annexed to the Special Conditions.
- II.10.3** If, for reasons attributable to Cedefop, the contractor is unable to carry out the work after the equipment has arrived on site, within the period laid down in the contract, he shall be compensated in respect of the additional expenses incurred as a result.
- II.10.4** The contractor shall notify Cedefop of the person responsible for the operation and shall facilitate the task of Cedefop staff responsible for carrying out inspections.

Before starting work the contractor must establish *in situ* that the condition of the premises and the work required conform to the provisions of the contract and, where applicable, to the dimensions and other information shown on the contract plans.

- II.10.5** Acceptance shall be effected when the contractor has stated that the operation is completed and Cedefop has checked that the terms and conditions referred to in Article II.9 and/or Article II.10 have been complied with.
- II.10.6** Acceptance shall entail the transfer to Cedefop of all risks except those covered by the guarantee referred in to Article II.11.

ARTICLE II.11 - GUARANTEE

- II.11.1** The contractor shall be required to replace, repair and adjust the works performed for a minimum guarantee period of one year commencing on the date of provisional and/or final acceptance or other date specified in the Special Conditions, unless stipulated otherwise in the applicable legislation.

In the event of replacement or repair, a further guarantee period shall run from the date of the replacement or repair.

The above time limits may be extended in accordance with the Special Conditions of the special terms and conditions or equivalent documents.

- II.11.2** The contractor shall bear the cost of the guarantee, unless he can prove that the breakdown or faulty operation is due to force majeure, abnormal use, or repair or modification carried out by Cedefop without the contractor's written consent.
- II.11.3** Unless specified otherwise in the Special Conditions, an amount equivalent to 10% of the contract price may be withheld until expiry of the period of guarantee.
- II.11.4** In the case of building works, the preceding provisions shall in no way prejudice the long-term guarantee provided for in the national laws applicable to the contract.

ARTICLE II.12 - LIABILITY

- II.12.1.** Cedefop shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of Cedefop.
- II.12.2.** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. Cedefop shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.12.3.** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against Cedefop by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.12.4.** In the event of any action brought by a third party against Cedefop in connection with performance of the Contract, the Contractor shall assist Cedefop. Expenditure incurred by the Contractor to this end may be borne by Cedefop.
- II.12.5.** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to Cedefop should it so request.

ARTICLE II.13 - LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to Cedefop's right to terminate the Contract, Cedefop may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by Cedefop within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. Cedefop and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

ARTICLE II.14 – TERMINATION OF THE CONTRACT BY CEDEFOP

- II.14.1.** Cedefop may terminate the Contract in the following circumstances:
- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;

- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where Cedefop seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by Cedefop as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in Cedefop's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by Cedefop;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

II.14.2. In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

II.14.3. Prior to termination under point e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.14.4. Consequences of termination:

In the event of Cedefop terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

Cedefop may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination Cedefop may engage any other contractor to complete the services. Cedefop shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.15 – FORCE MAJEURE

- II.15.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.15.2.** Without prejudice to the provisions of Article II.5.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.15.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.15.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.16 - PAYMENT

II.16.1 Definitions

Itemised works: works which are carried out on the basis of conventional units of measurement (m, m², m³, kg, t, unit, etc.) as given in Annex I.

Works on a flat-rate basis: works not carried out on the basis of conventional units of measurement (m, m², m³, kg, t, unit, etc.) but instead considered on a flat-rate basis and, if necessary, dependent on expected performance.

Works on a rolling basis: works deemed necessary by Cedefop that are of a scope and value which cannot be determined individually in advance.

II.16.2 Charging for works

The different types of works are charged differently, as follows:

- **Itemised works** are charged at each stage of progress of the works, by applying the listed prices to the quantities of the items concerned.

- **Works on a flat-rate basis** are charged at each stage of progress according to the percentage of work performed out of the quota for that type of work as shown in the table in Annex I to the contract, with reference to individual flat-rate tasks.

- **Social security** charges will be paid in proportion to the state of progress of the works in relation to the contractual amount.

- **Works on a rolling basis** carried out by the contractor on Cedefop's orders will be paid according to the relevant daily reports countersigned by Cedefop, represented by the ICTF Service, to be included in the works' accounts, applying the prices given in Annex I, if applicable, or failing that, the prices will be obtained in accordance with the provisions of the Article I.4.

No payment will be made for works on a rolling basis performed by the contractor without the written authorisation of Cedefop, as represented by the ICTF Service.

II.16.3 Works charging procedure

The contractor must cooperate fully to assist the charging for works and must in each case notify Cedefop, represented by the ICTF Service, in writing by registered letter with acknowledgement of receipt, or equivalent, that the period mentioned in Annex I and/or the Special Conditions which gives entitlement to payment for the amounts due has elapsed, attaching to the notification a detailed bill of quantities and drawings showing the works as built, which Cedefop, represented by the ICTF Service, will use for the necessary checks and for calculating the charges for the works.

The drawings must give a faithful representation of the works performed which are to be charged. Cedefop, represented by the ICTF Service, shall have the option of refusing to countersign them if they are not accurate.

II.16.4 Prefinancing

Where required by Article I.6.1, the contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the contract. This guarantee may be replaced by a guarantee provided by a third party.

The guarantor shall pay to Cedefop, at its request, an amount corresponding to payments made by it to the contractor which have not yet been covered by equivalent work on his part.

The guarantor shall stand as first-call guarantor and shall not require Cedefop to have recourse against the principal debtor (the contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the contractor receives the prefinancing. Cedefop shall release the guarantor from its obligations as soon as the contractor has demonstrated that any prefinancing has been covered by equivalent execution of services. The guarantee shall be retained until the

prefinancing has been deducted in proportion from interim payments and/or in full from payment of the balance to the contractor. It shall be discharged the following month. The cost of providing the guarantee shall be borne by the contractor.

II.16.5 Interim payments

At the end of each of the periods indicated in Annex I and/or in the Special Conditions, the contractor shall submit to Cedefop for approval a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions and/or in Annex I:

- the documents concerning the state of progress of the works corresponding to the instructions given in Annex I and/or in the Special Conditions, signed for acceptance by Cedefop, represented by the ICTF Service,
- the provisional works completion report,
- the provisional acceptance inspection report,
- the relevant invoices indicating the reference number of the contract to which they refer;

Where such documents are considered necessary to payments, after receiving them, Cedefop shall have the period given in the Special Conditions to:

- either approve them, with or without comments, reservations or suspend the period and request additional information;
- or reject them and request new documents.

If Cedefop does not react within this period, the documents shall be deemed to have been approved. Approval of the documents does not imply recognition either of their regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where Cedefop requests new documents, having rejected previous documents, they shall be submitted within the period of time indicated in the Special Conditions. The new documents shall likewise be subject to the above provisions.

II.16.6 Payment of the balance

Within sixty days of completion of the tasks referred to in Annex I the contractor shall submit to Cedefop a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- the final test report complying with the instructions given in Annex I and in the provisions of the Special Conditions;
- the relevant invoices indicating the reference number of the contract to which they refer;

Where such documents are considered necessary to payments, after receiving them, Cedefop shall have the period given in the Special Conditions to:

- either approve them, with or without comments, reservations or suspend the period and request additional information;

- or reject them and request new documents.

If Cedefop does not react within this period, the documents shall be deemed to have been approved. Approval of the documents does not imply recognition either of their regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where Cedefop requests new documents, having rejected previous documents, they shall be submitted within the period of time indicated in the Special Conditions. The new documents shall likewise be subject to the above provisions.

ARTICLE II.17 - GENERAL PROVISIONS CONCERNING PAYMENTS

II.17.1. Payments shall be deemed to have been made on the date on which Cedefop's account is debited.

II.17.2. The payment periods referred to in Article I.4 may be suspended by Cedefop at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, Cedefop may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

Cedefop shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

II.17.3. In the event of late payment the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("*the reference rate*") plus three and a half percentage points ("*the margin*"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by Cedefop may not be deemed to constitute late payment.

ARTICLE II.18 – DISPUTES, EXPERT REPORTS

II.18.1 In the event of a dispute requiring verification of the facts or technical examination, either party may obtain an expert's report before taking legal action.

II.18.2 To this end, it shall inform the other party in writing of the subject of the dispute and shall propose the name of an expert.

II.18.3 The other party shall indicate within fifteen working days whether or not it accepts the proposed expert and, if it does not, shall make a counterproposal, which must be replied to within fifteen working days.

- II.18.4** Such correspondence shall be conducted by registered letter with acknowledgement of receipt. If the two parties fail to reach an agreement, the expert shall be appointed, at the request of the party which first made application, by the President of the Court of Justice of the European Communities.

ARTICLE II.19 - RECOVERY OF UNDUE PAYMENTS

- II.19.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by Cedefop.
- II.19.2.** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.17.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- II.19.3.** Cedefop may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. Cedefop may also claim against the guarantee, where provided for.

ARTICLE II.20 - TAXATION

- II.20.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.20.2.** The Contractor recognises that Cedefop is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.
- II.20.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.20.4.** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.21 - ASSIGNMENT

- II.21.1** The contractor shall not assign the rights and obligations arising from the contract, in whole or in part, without prior written authorisation from Cedefop.
- II.21.2** In the absence of the authorisation referred to in paragraph 1, or in the event of failure to observe the terms thereof, assignment by the contractor shall not be enforceable against and shall have no effect on Cedefop.

ARTICLE II.22 - CHECKS AND AUDITS

- II.22.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.

- II.22.2.** Cedefop or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.22.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ARTICLE II.23 - AMENDMENTS

Any amendment to the contract shall be the subject of a written agreement concluded by the contracting parties. No oral agreement will be binding on the contracting parties.

ARTICLE II.24 – SUSPENSION OF THE CONTRACT

Without prejudice to Cedefop's right to terminate the Contract, Cedefop may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. Cedefop may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the contractor

For Cedefop,

[Company name/forename/surname/function]

[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at , [date]

Done at Thessaloniki, [date]

In duplicate in [language].

ANNEX I

Technical Specifications

ANNEX II

Contractor's Tender