


**CEDEFOP**
**European Centre for the Development  
of Vocational Training**

## **DRAFT SUPPLY CONTRACT**

CONTRACT NUMBER – **[complete]**

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 **[forename, surname, function, department]**,

of the one part,

and

**[official name in full]**

**[official legal form]<sup>1</sup>**

**[statutory registration number]<sup>2</sup>**

**[official address in full]**

**[VAT registration number]**

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this contract by **[forename, surname and function,]**

**[The parties identified above and hereinafter collectively referred to as ‘the Contractor’ shall be jointly and severally liable vis-à-vis Cedefop for the performance of this contract.]**

of the other part,

<sup>1</sup> Will be deleted if the contractor is a natural person or a body governed by public law.

<sup>2</sup> Will be deleted if the contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

## HAVE AGREED

the **Special Conditions** and the following Annexes:

- Annex I**      (a)      General Conditions for supply contracts  
                      (b)      Undertaking of Confidentiality and Non-Disclosure
- Annex II**      Tender Specifications (Invitation to Tender No **AO/RES/ASAIN/Recover2/009/2012** of **[date]** incl. the whole Tender Dossier (incl. all Annexes) and the published Cedefop Answers to the Clarification Questions, raised by the potential tenderers)
- Annex III**      Contractor's Tender, incl Financial Proposal, (No **[complete]** of **[date]**) and the received Clarifications (**[date]**, **[date]**) and **[date]**) from the Contractor on the Technical Proposal (IF ANY)
- Annex IV**

which form an integral part of this contract (hereinafter referred to as “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 other Annexes.
- The terms set out in the Tender Specifications (Annex II) shall take precedence over those in the Tender (Annex III).

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 subject of the Contract is

*‘Audio-Visual & Conference Infrastructures Systems’ Delivery, Installation, & Supporting Services’.*

**I.1.2** The Contractor shall deliver and assemble the supplies and shall provide the services related to them in accordance with the Tender Specifications annexed to the Contract (Annex II).

### **ARTICLE I.2 - DURATION AND DELIVERY**

**I.2.1** The Contract shall enter into force on the date on which it is signed by the last contracting party, i.e. Cedefop.

**I.2.2** Under no circumstances may implementation commence before the date on which the Contract enters into force.

**I.2.3** The Contract shall have a total duration of **4 years**, whereby:

- 1 year for delivery, installation, set up, configuration, putting into operation, fine-tuning / optimisation, commissioning, training and acceptance of the delivered audio, video and lighting systems and their installation;
- 1 year for full the warranty maintenance of all equipment, systems and installations, which shall begin after the completion of the installation, commissioning and the acceptance by Cedefop of the audio, video and lighting systems;
- 2 years for the provision of after warranty preventive and corrective maintenance that shall begin after the expiration of the period of warranty maintenance.

**I.2.4** Delivery of supplies and provision of related services shall begin after the signature of the Contract by both Contracting Parties and shall be in line with the provisions specified in point 2.3 “Commencement Date and Implementation Period” in Section 2 of the Technical Specifications (point 2 of the Tender Specifications of the tender document). The periods specified in the Contract are calculated in calendar days. The execution of the tasks is divided in “phases” (per room), as specified in points 2.3.2 to 2.3.5 in Section 2 of the Technical Specifications (point 2 of the Tender Specifications in the Tender Document).

The supplies shall be delivered at Cedefop premises, 123 Europa str., Pylea, Thessaloniki, Greece and the Incoterm shall be DDP (Incoterms 2010 of the International Chamber of Commerce).

The Contractor shall notify Cedefop of the exact date of delivery at least seven days in advance. All deliveries shall be made between 08.00h and 17.30h at the agreed place of delivery (Cedefop).

### **ARTICLE I.3 - CONTRACT PRICE**

**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 delivery and assembly of all the equipment, parts and supplies, the corresponding installation services, the training, the provision of 1 year full warranty, and the provision of after warranty preventive and corrective maintenance and spare parts for 2 years.

**I.3.2** Prices shall be expressed in EUR.

### **ARTICLE I.4 –PAYMENTS**

#### **I.4.1. Payments**

The Contractor shall submit an admissible invoice indicating the reference number of the Contract for an interim / partial payment of EUR [amount in figures and in words] after the completion of the respective “(per room) phases” of the contract implementation. The completed deliveries and associated services / tasks should be invoiced to Cedefop after prior acceptance by the Facilities Service of Cedefop.

Cedefop shall make payments to the contractor as follows:

- > for **Europa** - after 100% completion and partial acceptance of supply, provision and installation of hardware, software, data network, equipment enclosures, cable containment, signal cabling and additions to existing mains power distribution installation of the systems, training and documentation);
- > for **Montessori and Rousseau** - upon 100% completion and acceptance of supply, installation of hardware, software, data network, equipment enclosures, cable containment, signal cabling and additions to existing mains power distribution installation of the systems, training, documentation;
- > for **Library on 1st floor** (A’ ISOGEIO - 0.A.15), **Meeting Room on 1st floor** (A’ ISOGEIO - 0.A.40), **Personnel Room on 2nd floor** (B’ ISOGEIO - 1.B.24) upon 100% completion and acceptance of supply, installation of hardware, software, data network, equipment enclosures, cable containment, signal cabling and additions to existing mains power distribution installation of the systems, training, documentation;
- > for **preventive and corrective maintenance** - at the end of each year upon completion of the preventive and corrective maintenance (incl. spare parts, if any).

As soon as possible and in any case not later than 30 days of the date of receipt of the relevant invoice, the corresponding payments shall be made.

#### **I.4.2. Invoices must state:**

- the price in EUR and the total price excluding VAT
- that the amount invoiced is exempt from VAT under the Articles 3 and 4 of the Protocol on Privileges and Immunities of the European Communities (PPI). The current provisions in Greece shall apply to VAT exemption.

*[For contractors based in Greece, invoices should include VAT which will be paid by Cedefop and later reimbursed by the State.][For contractors established in other countries the VAT exemption is direct (invoices should be submitted without 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.

**ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the Contractor's bank account denominated in EUR, identified as follows:

Name of bank:  
 Address of branch in full:  
 Exact designation of account holder:  
 Full account number including codes:  
 IBAN code:  
 BIC code:

**ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract shall be made in writing in paper or electronic form and shall bear the Contract number. Ordinary mail shall be deemed to have been received by Cedefop on the date on which it is registered by the department responsible indicated below.

Electronic communication must be confirmed by paper communication when requested by any of the parties. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses:

Cedefop:  
 European Centre for the Development of Vocational Training (Cedefop)  
 Procurement Service, Office 4.19  
 PO Box 22427  
 GR – 55 102 Thessaloniki  
 Fax: +30 2310 490028 / e-mail: [c4t-services@cedefop.europa.eu](mailto:c4t-services@cedefop.europa.eu)

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

**ARTICLE I.7 - APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.7.1** The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Greece.

**I.7.1a Mediation**

Without prejudice to Article I.7.2, in the event that any dispute arises between the parties resulting from the interpretation or application of the Contract and the dispute is not resolved by negotiation, the parties may agree to submit the dispute to mediation.

If a party to the dispute gives written notice to the other parties of its desire to commence mediation, and the other parties agree in writing, the parties shall jointly appoint a mutually acceptable mediator within two weeks of the date of the said written agreement. If the parties are unable to agree upon the appointment of a

mediator within that time period, any party may apply to the Court of Justice of the European Union and in particular to the General Court for the appointment of a mediator.

The mediator's written proposal or his written conclusion stating that no proposal can be made shall be produced within two months of the date of the written agreement by the other parties to commence mediation. The mediator's proposal or conclusion shall not be binding for the parties, who reserve the right to bring the dispute before the courts, as per Article I.7.2.

Within two weeks of the date of notification of the proposal by the mediator, the parties can conclude a written agreement, duly signed by all parties, based on the proposal.

The parties further agree to share equally the costs of mediation by the mediator, which costs will not include any other costs incurred by a party in connection with the mediation.]

- I.7.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the Court of Justice of the European Union.

#### **ARTICLE I.8 – DATA PROTECTION**

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 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. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Head of Finance & Procurement Service acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

#### **ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY**

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving one month formal prior notice. Should Cedefop terminate the Contract, the Contractor shall only be entitled to payment corresponding to the supplies delivered before the termination date. Article II.13.4 applies accordingly.

#### **ARTICLE I.10 – CONTRACT CONCLUDED DURING STANDSTILL PERIOD**

In case this Contract was signed by **both Cedefop and the Contractor** before the expiry of 14 calendar days from the day after simultaneous dispatch of information about the award decisions and decisions to reject (non-award decisions), this Contract shall be null and void.

This article is not applicable for contracts not covered by Directive 2004/18/EC and in cases indicated in Article 158a(2) of the rules for the implementation of the Financial Regulation (Regulation No 2342/2002).

## **ARTICLE I.11 – OTHER SPECIAL CONDITIONS**

### **I.11.1 Confidentiality of information**

Notwithstanding the provisions of Article II.4, the Contractor must sign the “Undertaking of Confidentiality and Non-Disclosure for the Contractor” found in Annex I (b).

Each member of the Contractor’s staff that will be assigned to Cedefop for the implementation of the Contract must sign the “Undertaking of Confidentiality and Non-Disclosure for the Contractor’s staff” found in Annex I (b).

### **I.11.2 Contract supervision**

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

For Cedefop: Mr./Mrs.....

For the Contractor: Mr./Mrs.....

### **SIGNATURES**

For the Contractor,

[Company name/forename/surname/function]

For Cedefop,

[forename/surname/function]

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done at ....., [date]

Done at Thessaloniki, .....[date]

In duplicate in English.

## **ANNEX I (a)**

### **II – GENERAL CONDITIONS FOR SUPPLY CONTRACTS**

#### **ARTICLE II.1 - PERFORMANCE OF THE CONTRACT**

##### **II.1.1 Delivery**

a) Time allowed for delivery

The time allowed for delivery shall be calculated in accordance with Article I.2.

b) Date, time and place of delivery

Cedefop shall be notified in writing of the exact date of delivery within the period indicated in Article I.2. All deliveries shall be made at the agreed place of delivery during the hours indicated in Article I.2.

The Contractor shall bear all costs and risks involved in delivering the supplies to the place of delivery.

c) Consignment note

Each delivery shall be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor or his carrier, giving the Contract number and particulars of the supplies delivered. One copy of the consignment note shall be countersigned by Cedefop and returned to the Contractor or to his carrier.

##### **II.1.2 Certificate of conformity**

Signing of the consignment note by Cedefop, as provided for in subparagraph II.1.1 c) above, is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the supplies with the Contract.

Conformity of the supplies delivered shall be evidenced by the signing of a certificate to this effect by Cedefop no later than one month after the date of delivery, unless provision is made for a different period<sup>3</sup> in the Special Conditions or in Annex II.

Conformity shall be declared only where the conditions laid down in the Contract are satisfied and the supplies conform to Annex II.

Where, for reasons attributable to the Contractor, Cedefop is unable to accept the supplies, the Contractor shall be notified in writing at the latest by the deadline for conformity.

##### **II.1.3 Conformity of the supplies delivered with the Contract**

a) The supplies delivered by the Contractor to Cedefop must be in conformity in quantity, quality, price and packaging with the Contract.

b) The supplies delivered must:

- correspond to the description given in Annex II and possess the characteristics of the supplies supplied by the Contractor to Cedefop as a sample or model;
- be fit for any specific purpose required of them by Cedefop and made known to the Contractor at the time of conclusion of the Contract and accepted by the Contractor;
- be fit for the purposes for which supplies of the same type are normally used;

---

3 Where the supplies or equipment delivered are particularly complex, it is preferable for acceptance not to be declared until after a continuous period of satisfactory performance so that reliability and any performance guarantees can be checked.

- demonstrate the quality and performance which are normal in supplies of the same type and which Cedefop can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the Contractor, the producer or his representative, particularly in advertising or on labelling;
- be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

#### **II.1.4 Remedy**

- a) The Contractor shall be liable to Cedefop for any lack of conformity which exists at the time the supplies are verified.
- b) In case of lack of conformity, without prejudice to Article II.11 regarding liquidated damages applicable to the total price of the supplies concerned, Cedefop shall be entitled:
  - either to have the supplies brought into conformity, free of charge, by repair or replacement;
  - or to have an appropriate reduction made in the price.
- c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to Cedefop, taking account of the nature of the supplies and the purpose for which they are required by Cedefop.
- d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

#### **II.1.5 Assembly**

If required by Article I.1.2 of the Special Conditions, the Contractor shall assemble the supplies delivered within a period of one month unless otherwise specified in the Special Conditions or in Annex II.

Any lack of conformity resulting from incorrect installation of the supplies delivered shall be deemed to be equivalent to lack of conformity of the supplies if installation forms part of the Contract and the supplies were installed by the Contractor or under his responsibility. This shall apply equally if the product was to be installed by Cedefop and was incorrectly installed owing to a shortcoming in the installation instructions.

#### **II.1.6 Services provided to supplies**

If required by Article I.1.2 or Annex II, services to supplies shall be provided accordingly.

#### **II.1.7 General provisions concerning supplies**

##### **a) Packaging**

The supplies shall be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, shall not weigh more than 500 kg.

Unless otherwise specified in the Special Conditions or in Annex II, pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- Cedefop and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;

- EC code number of article.

#### b) Guarantee

The supplies shall be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in Annex II.

The Contractor shall guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

The Contractor shall replace at his own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other supplies that are part of the Contract, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

### **II.1.8 General provisions on performance of the Contract**

- a) 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.
- b) 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.
- c) The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for execution of the tasks assigned to him.
- d) In the event of disruption resulting from the action of a member of the Contractor's staff working on Cedefop's 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.
- e) Should any unforeseen event, action or omission directly or indirectly hamper execution of the Contract, either partially or totally, the Contractor shall immediately and at 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.

- f) Should the Contractor fail to perform his obligations under the Contract, 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 claim compensation or impose liquidated damages provided for in Article II.11.

## **ARTICLE II.2 - LIABILITY**

- II.2.1** 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.2.2** The Contractor shall be liable for any loss or damage sustained by Cedefop in performance of the Contract, including in the event of subcontracting under Article II.6 but only up to three times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.
- II.2.3** 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.2.4** 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.2.5** 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.3 - CONFLICT OF INTERESTS**

- II.3.1** 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 that additional measures 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 interest. 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.3.2** The Contractor shall abstain from any contact likely to compromise his independence.
- II.3.3** The Contractor declares:
- that he has not made, and will not make, any offer of any type whatsoever, from which an unjustified 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 the performance of the Contract.

**II.3.4.** 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.

#### **ARTICLE II.4 – CONFIDENTIALITY**

**II.4.1** 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 performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

**II.4.2** 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.

#### **II.5 DATA PROTECTION**

**II.5.1** The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, he shall address them to entity acting as data controller provided for in Article I.8.

**II.5.2** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

**II.5.3** Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

**II.5.4** The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

**II.5.5** The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
  - aa) unauthorised reading, copying, alteration or removal of storage media;
  - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - ac) unauthorised use of data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;

- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

#### **ARTICLE II.6 – SUBCONTRACTING**

- II.6.1** The Contractor shall not subcontract without prior written authorisation from Cedefop nor cause the Contract to be performed in fact by third parties.
- II.6.2** 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.6.3** 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.18.

#### **ARTICLE II.7 - AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties.

#### **ARTICLE II.8 – ASSIGNMENT**

- II.8.1** 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.8.2** In the absence of such authorisation, 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.9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT**

- II.9.1.** The Contractor shall authorise Cedefop to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in the Contract, in particular the identity of the Contractor, the subject matter, the duration and the amount paid. Where personal data is concerned, Articles I.8 and II.5 shall apply.
- II.9.2.** Unless otherwise provided by the Special Conditions, Cedefop shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to distribute or publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from Cedefop.
- II.9.3.** Any distribution or publication of information relating to the Contract or use of outcome of the implementation of the Contract and provided as such by the Contractor shall require prior written authorisation from Cedefop and, if so requested, shall mention that it was produced within a contract with Cedefop. It shall state that the opinions expressed are those of the Contractor only and do not represent Cedefop's official position.

- II.9.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless Cedefop has specifically given prior written authorisation to the contrary.

#### **ARTICLE II.10– FORCE MAJEURE**

- II.10.1** 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.10.2** Without prejudice to Article II.1.8 (e), 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.10.3** 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 for the supplies actually delivered and any service provided.
- II.10.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

#### **ARTICLE II.11 - 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 per calendar day of delay according to the following formula:  $0.3 \times (V/d)$

$V$  is the amount specified in Article I.3.1;

$d$  is the duration specified in Article I.2.3 expressed in days

The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgment 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.12 – SUSPENSION OF THE CONTRACT**

Without prejudice to Cedefop's right to terminate the Contract, where the Contract is subject to substantial error, irregularity or fraud Cedefop may suspend execution of 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 shall as soon as possible give

notice to the Contractor to resume the execution suspended or inform that it is proceeding with contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

## **ARTICLE II.13 – TERMINATION BY CEDEFOP**

**II.13.1.** 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 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;
- (c) where Cedefop has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where Cedefop has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (e) where Cedefop has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (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 delivery of the supplies and execution of related tasks has not actually commenced within fifteen days 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.13.2.** In case of force majeure, notified in accordance with Article II.10, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a quantity of supplies corresponding to at least one fifth of the quantity of supplies ordered.

**II.13.3.** Prior to termination under point c), d), 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.13.4. 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 supplies delivered and 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 deliver the supplies and execute the related services. Cedefop shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

#### **ARTICLE II.13A – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR**

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, Cedefop may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

#### **ARTICLE II.14 – INVOICING AND PAYMENTS (NOT APPLICABLE)**

##### **II.14.1 Pre-financing guarantee:**

Where required by Article I.4.1 or if the pre-financing is over €150 000, 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 (“*the guarantor*”) equal to the amount indicated in the same article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee 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 delivery of supplies or execution of related services 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 pre-financing. The guarantee shall be retained until the pre-financing has been cleared against interim payments or payment of the balance to the Contractor. It shall be released the following month or, in the absence of such clearing, four months after the issuance of a corresponding debit note. The cost of providing such guarantee shall be borne by the Contractor.

**II.14.2 Interim payments and payment of the balance:**

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

At the end of each of the periods indicated in Annex II the Contractor shall submit to Cedefop an invoice accompanied by the documents provided for in the Special Conditions.

If providing a progress report is a condition for payment, on receipt Cedefop shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new progress report.

Approval of the progress report shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Where Cedefop requests a new progress report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new progress report shall likewise be subject to the above provisions.

**II.14.3 Payment currency and costs:**

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

- costs of dispatch charged by the bank of Cedefop are borne by Cedefop,
- cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

**ARTICLE II.15 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.15.1** Payments shall be deemed to have been made on the date on which Cedefop's account is debited.

**II.15.2** The payment periods referred to in Article I.4 may be suspended by Cedefop at any time if it informs the Contractor that his invoice is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. Cedefop may proceed with further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the invoice is admissible.

Cedefop shall notify the Contractor accordingly and set out the reasons for the suspension 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.15.3** In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, 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 seven 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.16 – TAXATION**

- II.16.1** 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.16.2** 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 Union.
- II.16.3** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.16.4** 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.17 – RECOVERY**

- II.17.1** If total payments made exceed the amount actually due 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.17.2** In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article II.15.3. 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.17.3** 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 Union or the European Atomic Energy Community that is certain, of a fixed amount and due. Cedefop may also claim against the guarantee, where provided for.

#### **ARTICLE II.18 – CHECKS AND AUDITS**

- II.18.1** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the Union from signature of the Contract up to five years after payment of the balance.
- II.18.2** Cedefop or an outside body of its choice shall have the same rights as the 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.18.3** 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.


**CEDEFOP**

 European Centre for the Development  
of Vocational Training

## ANNEX I (b)

### Undertaking of Confidentiality and Non-Disclosure for Contractor

Following the award by Cedefop to .....(contractor) of the supply contract No ..... (hereinafter called “contract”) and for the implementation of this contract, Cedefop will provide to .....(contractor) access to internal information and personal data which includes but is not limited to:....

Without prejudice to the relevant provisions of the above-mentioned Supply Contract, in particular Article II.4, .....(contractor) reiterates its commitment to treat in the strictest confidence and not make use of or disclose to third parties any information and/or documents which are linked to the performance of the tasks undertaken in the context of the aforementioned contract without the prior written authorisation by Cedefop. The non-disclosure of all matters related to the aforementioned contract includes also information and/or documents obtained prior to the date of signature of this undertaking. ....(contractor) shall continue to be bound by this undertaking after completion of the tasks in subject assigned by Cedefop.

.....(contractor) shall ensure that each member of its staff, board and directors will respect the confidentiality of any information which is linked, directly or indirectly, to the tasks related to the aforementioned contract, they will comply with [Directive 95/46/EC on data protection as integrated in the national legislation and they](#) will not disclose to third parties or use for their own benefit or that of any third party any information and/or document not available publicly, even after completion of the tasks. For this purpose, .....(contractor) will obtain from each member of its staff, board and directors an undertaking of confidentiality in this respect.

Should .....(contractor) and/or its employees assigned to Cedefop breach this undertaking of confidentiality and non-disclosure, .....(contractor) shall be liable for any damages caused to Cedefop according to the provisions foreseen by the relevant legislation in force.

Signed by the legal representative of .....(contractor)

Name : .....  
function: .....

Signature  
stamp

Date of signature

## ANNEX I (b)

### Undertaking of Confidentiality and Non-Disclosure for Contractor's Staff

Following the award by Cedefop to .....(contractor) of the **supply contract No.....** (hereinafter called "contract") and for the implementation of this contract, Cedefop will provide to **Ms/Mr.....** (staff member of ..... ) access to internal information and personal data which includes but is not limited to:

.....

I, the undersigned ....., undertake to treat in the strictest confidence and not make use of or disclose to third parties any information and/or documents which are linked to the performance of the tasks undertaken in the context of the aforementioned contract without the prior written authorisation by Cedefop. The non-disclosure of all matters related to the aforementioned contract includes also information and/or documents obtained prior to the date of signature of this undertaking. I shall continue to be bound by this undertaking after completion of the tasks assigned to me by .....(contractor) through its contract with Cedefop.

Signed by ....., who is among the staff members of .....(contractor), assigned to Cedefop for the implementation of the contract

Name: .....

Signature

Date of signature

## ANNEX II

### **TENDER SPECIFICATIONS (INVITATION TO TENDER)**

The Tender Specifications (Invitation to tender *AO/RES/ASAIN/Recover 2/009/2012* of **XX/XX/2012**) and **the respective Clarifications (X) – Questions and Answers** are not printed and inserted here as paper copies for economy reasons. However they are valid and are exactly as published on the Cedefop website under the following link:

<http://www.cedefop.europa.eu/EN/working-with-us/public-procurements/calls-for-tenders.aspx>

## **ANNEX III**

### **CONTRACTOR'S TENDER**

(ref No XXX of date XX/XX/2012)

**The whole tender of XXXXXXXXXXXX is valid:**

- as sent to Cedefop on XX/XX/2012;
- as registered by Cedefop on XX/XX/2012;
- as opened and initialled by the Opening Committee on XXXX

**For economy reasons only the paper copies of:**

- the full Financial Proposal (X pages);
- the first page and the table of contents (X pages) of the Technical Proposal (total X pages);
- also the received Clarifications (if any) on the tenderer's offer (X pages)

**are hereby included from the Contractor's Tender.**

**Total number of pages under Annex III – (X pages)**