

## FRAMEWORK SUPPLY CONTRACT

### Open Call for Tenders for the Supply of Laptops and related Services for the European University Institute

Ref: ***CFT-EUI-ICTS-2019-001***

The European University Institute (hereinafter referred to as “the EUI”), established in San Domenico di Fiesole, via dei Roccettini 9, Firenze, Italy, CF 80020410488, represented by its President, Prof. Renaud Dehousse / for the purposes of the signature of this Framework Contract by the Secretary General, Amb. Vincenzo Grassi,

on the one part,

and

*[Full official name]*

*[Official legal form]*

*[Statutory registration number]*

*[Full official address]*

*[VAT registration number]*

(Hereinafter referred to as “the Contractor”), represented for the purposes of the signature of this Framework Contract by Mr/Ms *[forename, surname and function of legal representative]*

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for Framework Supply Contracts**, as well as to the following Annexes:

**Annex I** Special Tender Specifications CFT-EUI-ICTS-2019-001

**Annex II** Contractor's tender including:

- Technical offer;
- Economic offer;
- Supporting documents:
  - Declaration on Honour concerning legal status;
  - Declaration on Honour that the Tenderer is in compliance with anti-Mafia provisions;
  - Certificate of enrolment in commercial register;
  - Insurances (as per Art. I.11.2),

which form an integral part of this Framework Contract (hereinafter referred to as “the FWC”).

In the event of any conflict herein,

- The provisions set out in the special conditions take precedence over those in the other parts of the FWC;
- The provisions set out in the general conditions take precedence over those in the Purchase Orders (Annex III);
- The provisions set out in the Purchase Orders (Annex III) take precedence over those in the other annexes;
- The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II);
- The provisions set out in the FWC take precedence over those in the Purchase Orders;
- The provisions set out in the Purchase Orders take precedence over those in the requests for supplies;

Any reference to specific contracts applies also to order forms.

For the avoidance of doubt, the Contractor acknowledges and agrees that the terms of the FWC shall apply to the exclusion of the Contractor's standard terms and conditions and or any conditions which might be implied by trade custom, practice or other course of dealing.

Subject to the above, the several instruments forming part of the FWC 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 the EUI, subject to the rights of the Contractor under Article I.7 should it dispute any such instruction.

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 - SUBJECT MATTER**

**I.1.1** The subject matter of the FWC is the supplying of laptops and ancillary services on the premises of the European University Institute.

**I.1.2** The place of delivery of the contractual supplies will be the premises of the EUI where the ICT service is located

**I.1.3** The Contractor shall deliver the supplies and shall provide the services related to them in accordance with the tender specifications annexed to the FWC (Annex I).

**I.1.4** Signature of the FWC imposes no obligation on the EUI to purchase. Only performance of the FWC through Purchase Orders is binding on the EUI.

#### **I.1.5 Multiple framework contract**

The Contractor is selected for a multiple FWC with reopening of competition between five contractors.

### **ARTICLE I.2 - ENTRY INTO FORCE, DURATION AND DELIVERY**

**I.2.1** The FWC shall enter into force on the date on which it is signed by the last party.<sup>1</sup>

**I.2.2** Under no circumstances may performance of the FWC commence before the date on which it enters into force. The execution of tasks may under no circumstances begin before the date on which Purchase Orders enter into force.

**I.2.3** The Purchase Orders shall be signed by both parties before the FWC expires.

The FWC shall continue to apply to such Purchase Orders after its expiry. They shall be executed no later than 6 (six) months after its expiry.

**I.2.4** The duration of the FWC shall not exceed 60 months. Unless otherwise specified, all periods specified in the FWC are calculated in calendar days.

**I.2.5** The supplies shall be delivered at Villa Il Poggiolo, Piazza Edison, 11 – 50133 Firenze (FI).

The Contractor shall notify the EUI of the exact date of delivery at least 1 day in advance. Deliveries may be made on any working day during normal working hours (8:30-13:00 and 14:00-17:30), at the agreed place of delivery.

**I.2.6** The Contractor is subject to a probationary period of 6 months. If during this period, the execution of the supply does not correspond to the requirements of the tender specifications, or to any improvements offered in the tender by the Contractor, the EUI shall be entitled to terminate the FWC by serving a notice of 30 (thirty) days by registered mail.

**I.2.7** Where at the end of the natural term of the contract, the EUI has not yet awarded a contract for the supply covering the immediately following period, the Contractor shall be obliged to

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<sup>1</sup> As a rule the EUI signs last. In this case, the Contractor should be duly informed of the date on which the FWC enters into force (date of signature by the EUI).

continue providing the supplies for a period not exceeding 6 (six) months under the same terms and conditions in force at the expiration date.

### **I.2.8 FWC renewal**

The FWC shall be renewed automatically up to 4 times under the same conditions, unless written notification to the contrary is sent by one of the parties and received by the other 3 (three) months before expiry of the period indicated in Article I.2.4. Renewal does not imply any modification or deferment of existing obligations.

## **ARTICLE I.3 - PRICES**

**I.3.1** The maximum total amount to be paid by the EUI under the FWC shall be 350.000,00 (three hundred fifty thousand/00)<sup>2</sup> covering the delivery of all the supplies and the provision of related services (including charges). However, this must in no way be construed as a commitment on the part of the EUI to purchase for the maximum amount.

The maximum prices of the supplies shall be as listed in Annex II.

It is agreed that the charges include all other expenditure that may be incurred by the Contractor in performance of this FWC, including travel, subsistence or any other related expenses.

The EUI is exempt from payment of value added tax for services and purchases under the normal course of business for amounts exceeding €300.00 (pursuant to Article 72- paragraph 1-e) and paragraph 2 of Presidential Decree 633 of 26/10/1972 and subsequent amendments).

The economic offer of the Contractor is provided in Annex II.

### **I.3.2 Price revision**

Price revision is not applicable to this FWC.

## **ARTICLE I.4 - PAYMENT ARRANGEMENTS AND PERFORMANCE OF THE FRAMEWORK CONTRACT**

### **I.4.1 MULTIPLE FRAMEWORK CONTRACT WITH REOPENING OF COMPETITION**

Within 5 working days of a request for supplies being sent by the EUI to the contractors, the EUI shall receive the specific tender back, duly signed and dated. In the event of failure to observe these conditions the Contractor shall be considered to waive its participation in the specific competition. The EUI may sign a specific contract with the Contractor who has submitted the best specific tender on the basis of the award criteria set out in the tender specifications.

Within 5 working days of a specific contract being sent by the EUI to the Contractor, the EUI shall receive it back, duly signed and dated. The period allowed for the execution of the tasks shall start to run on the date indicated in the specific contract.

The specific tender shall be rejected if the EUI establishes that the Contractor has conflicting interests which may negatively affect performance of the specific contract.

### **I.4.2 Payment of the balance**

The Contractor shall submit an invoice for payment of the balance.

The EUI shall make the payment within 60 days from receipt of the invoice.

[For intra-community purchases, the provisions of the FWC constitute a request for VAT exemption, Art. 151, para 1 (b) and para 2 of Council Directive 2006/112/EC, as last amended by Council Directive 2009/162/UE, provided the Contractor includes the following statement in its invoice(s): "Please note that, pursuant to Art. 151, para 1 (b) and para 2 of Council Directive 2006/112/EC, as last amended by Council Directive 2009/162/UE, the EUI is exempt from payment of Value Added Tax (VAT) for amounts exceeding €300."]

Where VAT is due in Italy, the provisions of the FWC constitute a request for VAT exemption, provided the Contractor includes the following statement in its invoice(s): "Please note that, pursuant to Article 72- para 1 letter e) and para 2 D.P.R. n. 633 of 26/10/1972 and latest amendments, the EUI is exempt from payment of Value Added Tax (VAT) for amounts exceeding €300".

### **ARTICLE I.5 - BANK ACCOUNT**

Payments shall be made to the Contractor's bank account denominated in Euro (€) [or in the local currency, if the receiving party has its legal seat outside Euro-area] and identified as follows:

Name of bank:	
Branch address in full:	
Exact designation of account holder:	
IBAN code:	
SWIFT code:	

### **ARTICLE I.6 – COMMUNICATION DETAILS AND DATA CONTROLLER**

For the purposes of Article II.6, the data controller shall be the Information and Communication Technology (ICT) Service, represented by its Director, Mr. David Scott.

Any notice or other communication relating to the FWC shall be made in writing, shall bear the FWC number and shall be sent to the appropriate address or email address set out below (or such other address or person as the relevant party may notify to the other):

**EUI:**

<p>European University Institute          ICT Service Via dei Roccettini, 9 - 50014 San Domenico di Fiesole (FI)          E-mail address: <a href="mailto:ICTS.Contract1-19@EUI.eu">ICTS.Contract1-19@EUI.eu</a></p>
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**Contractor:**

Name and surname:	
Function:	
Company name:	
Full official address:	
Email:	

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

**I.7.1** The FWC shall be governed by the EUI's relevant regulatory acts (e.g. the EUI's regulation on Public Procurement & the EUI's Financial Rules), complemented where necessary by the law of Italy.

**I.7.2** Any dispute arising in relation to the present FWC shall be submitted in good faith by either party to mediation under the [International Mediation Rules of the Milan Chamber of Arbitration](#) by filing a written request with the Secretariat of the Milan Chamber of Arbitration.

**I.7.3** If for any reason the dispute remains unsettled 60 (sixty) days after the request for mediation, it shall be subject to arbitration under the [Rules of the Milan Chamber of Arbitration](#). The seat of the arbitration shall be Milan and the language of the arbitration shall be English. The award shall be final and binding.

The arbitral tribunal shall apply the EUI's relevant regulatory acts, including the EUI's regulation on Public Procurement and the EUI's Financial Rules, complemented, where necessary, by the law of Italy.

### **Article I.8 - Exploitation of the results of the contract**

This clause is not applicable to this FWC.

### **ARTICLE I.9 - TERMINATION BY EITHER PARTY**

Either party may, unilaterally and without being required to pay compensation, terminate the FWC or the FWC and Purchase Orders by formally notifying the other party by giving six (6) months' notice. Should the EUI terminate the FWC the Contractor shall only be entitled to payment corresponding to part-performance of the FWC before the termination date (e.g. payment corresponding to the supplies which are the subject of valid Purchase Orders before the date termination is notified to become effective ("Termination Date"). The first paragraph of Article II.14.3 shall apply.

On receipt of such notice from the EUI, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments in relation to the EUI. It shall draw up any documents required by the FWC and its Annexes for the supplies provided up to the Termination Date, within a period not exceeding 60 (sixty) days from the Termination Date.

## **ARTICLE I.10 - MECHANISM OF SANCTIONS AND PENALTIES**

Carrying out of the supply by non-regular or unsatisfactory means in the opinion of the EUI, shall incur the application of penalties pursuant to Article 2.9 of the tender specifications.

The non-regular and unsatisfactory provision of the supplies will be notified in writing to the Contractor who shall respond in any case with its comments in writing within 5 (five) days from the dispute. If said response is not acceptable according to the appreciation of the EUI or if there is no answer or the same is not received within the time specified, the EUI will apply the penalties referred to in Article 2.9 of the tender specifications, from the date of the commencement of the poor performance.

The request and/or payment of penalties shall not discharge the Contractor under any circumstances from performance of the obligations for which they are currently responsible.

## **[ARTICLE I.11 - PROVISIONS RELATING TO SAFETY**

**I.11.1** It is compulsory that the Contractor, in order to ensure safety in the workplace, strictly complies with the regulations concerning the protection of the health and safety of workers as stipulated in the respective applicable national legislation.

All activities related to the supplies covered by the tender specifications shall be conducted with order and with the precautions necessary to prevent any injury to employees at work and not cause any damage to floors, furniture, doors and door frames, masonry and painting, etc. The Contractor is also obliged to put in place all necessary measures to avoid any accident or damage including against third parties. It is the responsibility of the Contractor to provide for the preparation of an operational safety plan for its workers.

It is, moreover, the responsibility of the Contractor to provide Personal Protective Equipment (PPE) necessary to perform the job safely.

The EUI reserves the right to carry out checks and controls on compliance by the Contractor towards the rules on the prevention of accidents, reserving the right, in the case of non-compliance, to immediately terminate the contract.

**I.11.2** The Contractor, in relation to obligations entered into with the acceptance of these tender specifications, expressly exempts the EUI from any and all liability for any injuries or damages suffered by people, things, vehicles and valuables of the Contractor as well as by third parties and assumes responsibility for activities occurring in the execution of the FWC supplies.

To this end, the Contractor undertakes to take out with a leading insurance company specific employer liability and public liability insurance, where it is explicitly stated that the EUI is considered "third" for all intents and purposes.

## **ARTICLE I.12 - CONTRACTUAL FEES**

All consequential contract costs (fixed-fee registration) will be paid by the Contractor without the right of recourse against the EUI.

**ARTICLE I.13 - OTHER SPECIAL CONDITIONS**

In view of the nature of the supply covered by this Contract, the following articles:

- Article II.1.5 – Assembly
- Article II.7 - Subcontracting
- Article II.9 – Assignment
- Article II.16 – Reimbursements
- Article II.15.5 - Pre-financing and performance guarantees

as well as any other parts and/or articles that are not relevant to the supply in question, are not applicable.

Likewise, any parts and/or articles referring to contracts other than the Supply Contract are not applicable.

**SIGNATURES:**

For the Contractor,

*[Contractor's name/name & surname of representative/function]*

Signature/s: \_\_\_\_\_

Signed in *[complete]*, on \_\_\_\_\_

For the EUI,

*[Name and surname of representative /function]*

Signature/s: \_\_\_\_\_

Signed in Florence, on \_\_\_\_\_

In duplicate in English

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

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

#### **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

The EUI 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 its carrier, giving the contract number and particulars of the supplies delivered. One copy of the consignment note shall be countersigned by the EUI and returned to the Contractor or to its carrier.

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

Signature of the consignment note by the EUI, as provided for in point (c) of Article II.1.1 is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the supplies with this FWC.

Conformity of the supplies delivered shall be evidenced by the signature of a certificate to this effect by the EUI no later than 1 (one) month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications (Annex I).

Conformity shall be declared only where the conditions laid down in the FWC are satisfied and the supplies conform to the tender specifications (Annex I).

Where, for reasons attributable to the Contractor, the EUI 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 FWC**

(a) The supplies delivered by the Contractor to the EUI must be in conformity in quantity, quality, price and packaging with this FWC.

(b) The supplies delivered must:

- (i) correspond to the description given in the tender specifications (Annex I)
- (ii) be fit for any specific purpose required of them by the EUI and made known to the Contractor at the time of conclusion of this FWC and accepted by the Contractor;
- (iii) be fit for the purposes for which supplies of the same type are normally used;

- (iv) demonstrate the quality and performance which are normal in supplies of the same type and which the EUI 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 its representative, particularly in advertising or on labelling;
- (v) 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 the EUI 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.12 regarding liquidated damages applicable to the total price of the supplies concerned, the EUI shall be entitled:
  - (i) either to have the supplies brought into conformity, free of charge, by repair or replacement;
  - (ii) 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 the EUI, taking account of the nature of the supplies and the purpose for which they are required by the EUI.
- (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.1.3, the Contractor shall assemble the supplies delivered within a period of 1 (one) month unless otherwise specified in the special conditions or in the tender specifications (Annex I).

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 this FWC and the supplies were installed by the Contractor or under its responsibility. This shall apply equally if the product was to be installed by the EUI and was incorrectly installed owing to a shortcoming in the installation instructions.

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

If required by Article I.1.3 or the tender specifications (Annex I), 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 the tender specifications (Annex I), pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

*Initialed by the Legal Representative for acceptance*

- (i) name of EUI and address for delivery;
- (ii) name of Contractor;
- (iii) description of contents;
- (iv) date of delivery;
- (v) EC code number of article.

(b) Guarantee

The supplies shall be guaranteed against all defects in manufacture or materials for 2 (two) years from the date of delivery, unless provision is made for a longer period in the tender specifications (Annex I).

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

The Contractor shall replace at its 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 its 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 FWC, 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 FWC**

- (a) The Contractor shall perform the FWC to the highest professional standards.
- (b) The Contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the FWC under the laws and regulations in force at the place where the tasks assigned to it are to be executed.
- (c) Without prejudice to Article II.4 any reference made to the Contractor's personnel in the FWC shall relate exclusively to individuals involved in the performance of the FWC.
- (d) The Contractor must ensure that any personnel performing the contract possess the professional qualifications and experience required for execution of the tasks assigned to it.
- (e) The Contractor shall neither represent the EUI nor behave in any way that would give such an impression.

- (f) The Contractor shall be solely responsible for the personnel who execute the tasks assigned to the Contractor.

The Contractor shall stipulate the following employment or service relationships with its personnel:

- (i) personnel executing the tasks assigned to the Contractor may not be given orders directly by the EUI;
  - (ii) the EUI may not under any circumstances be considered to be the employer of the personnel referred to in point (i) and the personnel shall undertake not to invoke against the EUI any right arising from the contractual relationship between the EUI and the Contractor.
- (g) In the event of disruption resulting from the action of one of the Contractor's personnel working on the EUI's premises or in the event that the expertise of a member of the Contractor's personnel fails to correspond to the profile required by the FWC, the Contractor shall replace him or her without delay. The EUI shall have the right to make a reasoned request for the replacement of such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the FWC under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of personnel.
- (h) Should the execution of the FWC be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the Contractor shall immediately and at its own initiative record it and report it to the EUI. 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 its obligations under this FWC. In such an event the Contractor shall give priority to solving the problem rather than determining liability.
- (i) Should the Contractor fail to perform its obligations under the FWC, the EUI may - without prejudice to its right to terminate the FWC - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the EUI may claim compensation or impose liquidated damages in accordance with Article II.12 of the tender specifications.

## **ARTICLE II.2 - MEANS OF COMMUNICATION**

**II.2.1** Any communication relating to the FWC or to its performance shall be made in writing and shall bear the FWC number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this FWC.

**II.2.2** Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

**II.2.3** Mail sent using the postal services is deemed to have been received by the EUI on the date on which it is registered by the responsible service referred to in Article I.6.

Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

### **ARTICLE II. 3 - LIABILITY**

**II.3.1** The Contractor shall be solely responsible for complying with any legal obligations incumbent on it.

**II.3.2** The EUI shall not be held liable for any claim, loss, cost or expense or other damage caused or sustained by the Contractor, including any damage caused by the Contractor to third parties during or as a consequence of performance of the FWC, except in the event of wilful misconduct or gross negligence on the part of the EUI.

**II.3.3** The Contractor shall be held liable for any loss or damage, cost (including legal and other professional fees) or expenses sustained by the EUI but caused by the Contractor in performance of the FWC, including in the event of subcontracting and for any claim by a third party. The Contractor shall remain liable without any limitation as to the amount if the damage or loss is caused by the gross negligence or wilful conduct of the Contractor or by its employees, and for death caused by negligence or wilful conduct of its employees.

**II.3.4** In addition, the Contractor shall, in carrying out the supply, comply with all procedures and precautions that apply to prevent the possibility of damage to property of the EUI and third parties, and especially of injury to persons engaged in the supply and third parties, in compliance with the provisions of applicable law. Any liability, in the event of accidents, for damages caused by the Contractor's staff will fall, therefore, upon the Contractor, thus relieving the EUI.

**II.3.5** The Contractor shall indemnify and hold the EUI harmless for all damages and costs incurred due to any claim. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the EUI by a third party as a result of damage caused by the Contractor during the performance of the FWC. In the event of any action brought by a third party against the EUI in connection with the performance of the FWC, the Contractor shall assist the EUI.

**II.3.6** The Contractor shall take out an insurance policy against risks and damage relating to the performance of the FWC, if required by the relevant applicable legislation. It 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 the EUI should it so request.

### **ARTICLE II.4 - CONFLICT OF INTEREST**

**II.4.1** The Contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the FWC is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.

**II.4.2** Any situation constituting or likely to lead to a conflict of interest during the performance of the FWC shall be notified to the EUI in writing without delay. In the event of any such conflict, the Contractor shall immediately take all the necessary steps to rectify the situation. The EUI

reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.

**II.4.3** The Contractor declares that it 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, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the FWC.

**II.4.4** In compliance with the EUI's Staff Regulations, in particular Art. 11, EUI's staff members shall not, without the permission of the Appointing Authority, accept any gift, directly or indirectly connected with their own work activities. The Contractor confirms acknowledgement of this rule and the consequent termination of the FWC in case of non-conformity.

**II.4.5** The Contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The Contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the FWC including subcontractors.

Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the EUI, any member of the Contractor's staff faced with or brought into such a situation.

## **ARTICLE II. 5 - CONFIDENTIALITY**

**II.5.1** The EUI and the Contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the FWC and identified in writing as confidential.

**II.5.2** The Contractor shall:

- a. not use confidential information and documents for any purpose other than fulfilling its obligations under the FWC without prior written agreement of the EUI;
- b. ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- c. not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the EUI.

**II.5.3** The confidentiality obligation set out in Article II.5.1 shall be binding on the EUI and the Contractor during the performance of the FWC and for 5 (five) years starting from the date of payment of the balance unless:

- a. the disclosing party agrees to release the other party from the confidentiality obligation earlier;
- b. the confidential information becomes public through other means than via breach of the confidentiality obligation through disclosure by the party bound by that obligation;
- c. the disclosure of the confidential information is required by law.

**II.5.4** The Contractor shall obtain from any person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the FWC, an undertaking that they will comply with the confidentiality obligations set out in Article II.5.1.

## **ARTICLE II. 6 - PROCESSING OF PERSONAL DATA**

**II.6.1** Any personal data included in the FWC shall be processed by the EUI in accordance with the EUI's Data Protection Policy pursuant to the EUI President's Decision No. 40/2013 regarding Data Protection at the EUI. Such data shall be processed by the data controller solely for the purposes of the performance, management and monitoring of the FWC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of relevant EU and national law.

**II.6.2** The Contractor shall have the right of access to its personal data and the right to rectify any such data. The Contractor should address any queries related to the processing of its personal data to the Data Controller indicated in art. I.6.

**II.6.3** The Contractor shall have the right of recourse at any time to the Director of the ICT Service by simultaneous notification to the Data Protection Officer ([dpo@eui.eu](mailto:dpo@eui.eu)).

**II.6.4** Where the FWC requires the processing of personal data by the Contractor or any of its subcontractors, 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 its rights. In that respect, the Contractor shall be bound by the relevant provisions of the EUI's President's Decision No. 40/2013 as well as by the General Data Protection Regulation (GDPR) (EU) 2016/679 and all applicable national laws and regulations of the country where it is established regarding the processing of personal data and privacy.

**II.6.5** The Contractor shall grant its personnel access to the data only to the extent strictly necessary for the performance, management and monitoring of the FWC.

**II.6.6** 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 gaining access to computer systems processing personal data, and especially:
  - i. unauthorised reading, copying, alteration or removal of storage media;
  - ii. unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - iii. 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 has 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 EUI;

- 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. 7 - SUBCONTRACTING**

**II.7.1** The Contractor shall not subcontract without prior written authorisation from the EUI nor cause the FWC to be *de facto* performed by third parties.

**II.7.2** The request for subcontracting must be accompanied by a clear indication of the activities that will be subcontracted, and must necessarily satisfy the requirements of the current FWC and any applicable Italian regulations. In the case of subcontracting occurring during the period of validity of the FWC resulting from this procedure, the Contractor must submit all required documentation to the EUI and await its prior authorisation before making it indispensable, effective and operational.

**II.7.3** Even where the EUI authorises the Contractor to subcontract to third parties, the Contractor shall remain bound by its obligations to the EUI under this FWC and shall guarantee the provision of the supplies and be solely liable for the proper performance of the FWC as if it was performing the supplies itself.

**II.7.4** The Contractor shall ensure that the subcontract does not affect rights and guarantees which the EUI has by virtue of this FWC and agrees to indemnify the EUI against any claim, loss, cost or expenses awarded against, suffered, incurred, or agreed to be paid by the EUI as a consequence thereof.

### **ARTICLE II. 8 - AMENDMENTS**

**II.8.1** Any amendment to the FWC shall be made in writing before fulfilment of any new contractual obligations and in any case before the date of payment of the balance.

**II.8.2** The amendment may not have the purpose or the effect of making changes to the FWC which might call into question the decision awarding the FWC or result in unequal treatment of tenderers.

### **ARTICLE II.9 - ASSIGNMENT**

**II.9.1** The Contractor shall not assign the rights, including claims for payments, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the EUI.

**II.9.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor shall not be enforceable against the EUI and shall have no effect on it.

## **ARTICLE II.10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

### **II.10.1 Ownership of the rights in the results**

The Institute acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights under the Contract. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and to all technological solutions and information created or produced by the contractor or by any of its subcontractors in *performance of the Contract*. The Institute may exploit and use the acquired rights as stipulated in this Contract. The Institute acquires all the rights from the moment it approves the *results* delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the Institute.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the Institute including for all forms of exploitation and of use of the *results*.

### **II.10.2 Licensing rights on pre-existing materials**

Unless provided otherwise in the special conditions, the Institute does not acquire ownership of *pre-existing rights* under this Contract.

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Institute, which may use the *pre-existing materials* for all the modes of exploitation set out in this Contract or in specific contracts. All *pre-existing rights* are licensed to the Institute from the moment the results are delivered and approved by the Institute.

The licensing of *pre-existing rights* to the Institute under this Contract covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in the Contract or in the specific contracts is deemed to also include any fees payable to the contractor in relation to the licensing of *pre-existing rights* to the Institute, including for all forms of exploitation and of use of the *results*.

Where *performance of the Contract* requires that the contractor uses *pre-existing materials* belonging to the Institute, the Institute may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this Contract and ends with the termination of the Contract.

## **ARTICLE II.11 - FORCE MAJEURE**

**II.11.1** 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the FWC, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

**II.11.2** A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

**II.11.3** The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the Contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

**II.11.4** The parties shall take all the necessary measures to limit any damage due to force majeure.

### **ARTICLE II.12 – LIQUIDATED DAMAGES**

The EUI may impose liquidated damages should the Contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the Contractor fail to perform its contractual obligations within the time-limits set by the FWC, then, without prejudice to the Contractor's actual or potential liability or to the EUI's right to terminate the FWC, the EUI may impose liquidated damages for each and every calendar day of delay.

The Contractor may submit arguments against this decision within 30 (thirty) days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the EUI within 30 (thirty) days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties 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 incurred due to failure to fulfil obligations which may be reasonably anticipated.

### **ARTICLE II.13 – SUSPENSION OF THE PERFORMANCE OF THE FWC**

#### **II.13.1 Suspension by the Contractor**

The Contractor may suspend the performance of the FWC or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The Contractor shall inform the EUI about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the FWC.

Once the circumstances allow resuming performance, the Contractor shall inform the EUI immediately, unless the EUI has already terminated the FWC, Purchase Orders.

#### **II.13.2 Suspension by the EUI**

The EUI may suspend the performance of the FWC or any part thereof:

- (a) if the FWC award procedure or the performance of the FWC prove to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the Contractor receives formal notification, or at a later date provided in the notification. The EUI shall give notice as soon as possible to the Contractor

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

## **ARTICLE II.14 - TERMINATION OF THE FWC**

### **II.14.1 Grounds for termination**

The present FWC shall be terminated automatically as soon as prohibitory sanctions or *informativa antimafia interdittiva* (antimafia prohibitory notice) are issued by the competent Prefecture towards the Contractor, in accordance with D. Lgs. N. 159 of 9<sup>th</sup> September 2011 in its version applicable at the time the sanction is issued. The Contractor may only be entitled to payment corresponding to part-performance of the FWC before the termination date, without any further obligations for the EUI.

Notwithstanding any other term of this FWC, the EUI may terminate the FWC, a Purchase Order in the following circumstances:

- a. if a change to the Contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the FWC substantially or calls into question the decision to award the FWC;
- b. if the execution of the tasks of the FWC or a Purchase Orders have not actually commenced within 3 (three) months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the EUI;
- c. if the Contractor does not perform the FWC or Purchase Orders as established in the tender specifications, the request for supplies, or fails to fulfil any other substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of 3 (three) or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- d. in the event of force majeure notified in accordance with Article II.11 or if the performance of the FWC has been suspended by the Contractor as a result of force majeure, notified in accordance with Article II.11, where either resuming performance is impossible or the modifications to the FWC might call into question the decision awarding the FWC or result in unequal treatment of tenderers;
- e. if the Contractor is declared bankrupt, is being wound up, is having its 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;
- f. if the Contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- g. if the Contractor is not in compliance with its 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 it is established or with those of the country of the applicable law of this FWC or those of the country where the FWC is to be performed;

- h. if the EUI has evidence that the Contractor or natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption or any other illegal activity detrimental to the financial interests of the EUI, or has evidence or seriously suspects that they are involved in a criminal organisation or money laundering;
- i. if the EUI has evidence that the Contractor or natural persons with power to represent or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the FWC, including the case of submission of false information;
- j. if the Contractor is unable, through its own fault, to obtain any permit or license required for the performance of the FWC, Purchase Orders;
- k. if the needs of the EUI change and it no longer requires new supplies under the FWC;
- l. when due to the termination of the FWC with one or more of the Contractors there is no minimum required competition within the multiple Framework Contract with reopening of competition;
- m. in the presence of serious misconduct by employees, duly reported in writing by the EUI and which are not promptly handled by replacement of personnel in question.

#### **II.14.2 Procedure for termination**

Where the EUI intends to terminate the FWC or Purchase Orders, it shall formally notify the Contractor of its intention, specifying the grounds thereof. The EUI shall invite the Contractor to make any observations and, in the case of point II.14.1, point c), to inform the EUI about the measures taken to continue the fulfilment of its contractual obligations, within 30 (thirty) days from receipt of the notification.

If the EUI does not confirm acceptance of these observations by giving written approval within 30 (thirty) days of receipt, the termination procedure shall proceed. In any case of termination, the EUI shall formally notify the Contractor about its decision to terminate the FWC.

In the cases referred to in points in letters a), b), c), e), g), j), k), and l of Article II.14.1, the formal notification shall specify the date on which the termination takes effect.

In the cases referred to in points d), f), h) and i) and m) of Article II.14.1 the termination shall take effect on the day following the date on which notification of termination is received by the Contractor.

#### **II.14.3 Effects of termination**

In the event of termination, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the Contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The Contractor shall have 60 (sixty) days from the date of termination to draw up the documents required by the special conditions for the tasks already executed on the date of termination and produce an invoice if necessary. The EUI may recover any amounts paid under the FWC.

The EUI may claim compensation for any damage suffered in the event of termination.

On termination the EUI may engage any other Contractor to execute or complete the supplies. The EUI shall be entitled to claim from the Contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the FWC.

## **ARTICLE II.15 - REPORTING AND PAYMENTS**

### **II.15.1 Date of payment**

Payments shall be deemed to be effected on the date when they are debited to the EUI's account.

### **II.15.2 Currency**

The FWC shall be in euros.

Payments shall be executed in euros (€).

### **II.15.3 Invoices and VAT**

The EUI is a teaching and research centre which uses a decentralised administrative structure and which manages, in addition to the different internal projects, several activities which are externally financed by both public and private sponsors. The Contractor undertakes to follow the analytical invoicing procedures requested by the EUI, issuing on demand specific invoices for each cost centre/activity identified.

Invoices shall show the identification details of the Contractor, the amount, currency and date, as well as the reference to the FWC, Purchase Orders.

The EUI is, as a rule, exempt from payment of Value Added Tax (VAT) on goods imported and services provided for the EUI's official activities for amounts exceeding Euro 300.00 (three hundred/00), pursuant to Art. 151, para 1 (b) and para 2 of Council Directive 2006/112/EC, as last amended by Council Directive 2009/162/UE.

Where VAT is due in Italy, the above exemption applies to goods imported and services provided for the EUI's official activities for amounts exceeding Euro 300.00 (three hundred/00), provided that the invoice includes the statement: "Esenzione IVA - Articolo 72-comma 1 lettera e) e comma 2 del D.P.R. n. 633 del 26/10/1972 e successive modifiche".

The EUI is exempt from customs duties and direct taxes within the terms of Articles 4 and 5 of the "[Protocol on the Privileges and Immunities of the European University Institute](#)" (Legge 181 del 21 Novembre 2014).

The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that supplies and services required for the performance of the FWC are exempt from taxes and duties, including VAT exemption.

### **II.15.4 Suspension of the time allowed for payment**

The EUI may suspend the payment periods at any time by notifying the Contractor that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, or because the appropriate documents have not been produced.

The EUI shall inform the Contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the EUI. The remaining payment period shall start to run again from the date on which the requested information or

revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds 2 (two) months, the Contractor may request the EUI to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document and the new document produced is also rejected, the EUI reserves the right to terminate the Purchase Orders in accordance with Article II.14.1 (c).

### **II.15.5 Pre-financing and performance guarantees**

[Pre-financing guarantees shall remain in force until the pre-financing is cleared against interim payments or payment of the balance and, in case the latter takes the form of a debit note, three months after the debit note is notified to the Contractor. The EUI shall release the guarantee within the following month.]

Performance guarantees shall cover performance of the in accordance with the terms set out in the tender specifications until its final acceptance by the EUI. The amount of a performance guarantee shall not exceed the total price of the FWC. The guarantee shall provide that it remains in force until final acceptance. The EUI shall release the guarantee within 1 (one) month following the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:

- a. the financial guarantee is provided by a bank or an approved financial institution or, at the request of the Contractor and agreement by the EUI, by a third party;
- b. the guarantor stands as first-call guarantor and does not require the EUI to have recourse against the principal debtor (the Contractor).

The cost of providing such guarantee shall be borne by the Contractor.

## **ARTICLE II.16 - REIMBURSEMENTS**

**II.16.1** Where provided by the special conditions or by the tender specifications, the EUI shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.

**II.16.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

**II.16.3** Travel expenses shall be reimbursed as follows:

- a. travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- b. travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- c. travel by car must be authorized by the EUI and shall be reimbursed on the basis of a Kilometre allowance, currently fixed at Euro 0,22 per kilometre. Other expenses (motorway tolls, ferry crossings, etc.) can also be reimbursed on presentation of the corresponding supporting documents.

**II.16.4** Subsistence expenses shall be reimbursed up to Euro 175 per day as follows:

- a. for journeys of less than 80 km for a return trip, no subsistence allowance shall be payable;
- b. daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- c. daily subsistence allowance is paid as a flat-rate and is considered to cover the hotel or other related cost (if applicable) breakfast and the two main meals, local travel, the cost of telecommunications, including fax and internet, and all other sundries;
- d. taxi expenses are reimbursed up to a maximum of € 70 per visit.

Parking expenses (airports only) are reimbursed up to a maximum of 4 (four) days per visit.

All supporting documents (duly completed) must always be attached to the statement of expenses.

**II.16.6** Conversion between the euro and another currency shall be made monthly applying the market rates for the penultimate day of the previous month quoted by the European Central Bank or, depending on availability, provided by the delegations or other appropriate sources close to that date.

#### **ARTICLE II.17 – RECOVERY**

**II.17.1** If an amount is to be recovered under the terms of the FWC, the Contractor shall repay the EUI the amount in question according to the terms and by the date specified in the debit note.

**II.17.2** If the obligation to pay the amount due is not honoured by the date set by the EUI in the debit note, the amount due shall bear interest at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus 3,5%. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the Official Journal of the European Union.

Interest on late payments shall cover the period from the day following the due date for payment, up to and including the date when the EUI receives full payment of the amount owed.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

**II.17.3** If payment has not been made by the due date, the EUI may, after informing the Contractor in writing, recover the amounts due by offsetting them against any amounts owed to the Contractor by the EUI.

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

**II.18.1** The EUI may check or have an audit on the performance of the FWC. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the FWC and during a period of 5 (five) years which starts running from the date of the payment of the balance.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the EUI. Audits shall be carried out on a confidential basis.

**II.18.2** The Contractor, during the lifetime of the FWC shall, or shall procure that its subcontractors shall gather, compile, correlate, collect and otherwise maintain all relevant

accounts, records, books and other information in documentary form or on easily accessible electronic media ("Records"), arising in connection with the performance of the FWC.

The Contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of 5 (five) years which starts running from the date of payment of the balance.

**II.18.3** The Contractor shall allow the EUI's staff and outside personnel authorised by the EUI the appropriate right of access to sites and premises where the FWC is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

**II.18.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the Contractor, which shall have 30 (thirty) days following the date of receipt to submit observations. The final report shall be sent to the Contractor within 60 (sixty) days following the expiry of that deadline.

On the basis of the final audit findings, the EUI may recover all or part of the payments made and may take any other measure which it considers necessary.