



*Italian Agency for Development Cooperation*

*NAIROBI*

## **FRAMEWORK AGREEMENT**

**(a single economic operator for supplies, services and works article 33 Directive 2014/24/UE)**

### **Between**

The Italian Agency for Development Cooperation, hereinafter referred to as the "Contracting Authority"

**and**

*ILARA HEALTH LTD*, hereinafter referred to as the "Economic Operator"

### **Given that:**

the Economic Operator declares that this framework agreement and all the documents annexed to it adequately and completely define the services to be performed and the commitments undertaken with the signing of this document;

**that said, the following is agreed and stipulated**

### **Art. 1 – General provisions**

1.1 This framework agreement governs the conditions and procedures for the assignment of individual implementing contracts by the Contracting Authority, who, from time to time, will specifically establish the services to be acquired, the quantities, amounts and duration of the same. The individual implementing contracts will take the form of engagement letters that specifies the service required.

1.2 The signing of the framework agreement is not a source of immediate obligation of the Contracting Authority towards the Economic Operator and does not bind the Contracting Authority to award the Economic Operator with implementing contracts for any quantity. The stipulation of the framework agreement does not bind the Contracting Authority in any way with regard to the awards in question and only obliges the Economic Operator to accept the conditions set; the Economic Operator will have nothing to expect from this framework agreement, until the Contracting Authority gives rise to the implementing contracts for the execution and acquisitions.

1.3 The Economic Operator undertakes to regularly assume and execute the individual implementing contracts that the Contracting Authority, in implementing of this framework agreement, will decide to entrust it within the time frame indicated in Article 3.

## **Art. 2 - Object**

2.1 The services covered by this framework agreement, to be entrusted to the Economic Operator through the stipulation of implementing contracts, are determined by Annex 2.

## **Art. 3 – Duration**

3.1 This Framework Agreement has a duration until October 2022 or until any previous date on which the implementing contracts reach the maximum amount established in Article 4.

3.2 The Economic Operator is required to perform, based on the Implementing Contracts, all the services that the Contracting Authority will order by the deadline, even if the order arrives on the last day of validity of the framework agreement.

3.3 The Contracting Authority may commission the Economic Operator, through Implementing Contracts, during the term of this framework agreement, for the services covered by the same until the maximum estimated amount is reached.

3.4 The Contracting Authority may extend the duration of this framework agreement, under the same terms and conditions or more favorable for the Contracting Authority, if it was not possible to proceed with the procedure for the new contract within the natural expiry date.

This extension will last strictly for the conclusion of the procedures necessary for the identification of a new Economic Operator. Written communication of the aforementioned extension to the Economic Operator will take place within the natural expiry of the framework agreement.

## **Art. 4 - Maximum estimated value of the Framework Agreement**

4.1 The total estimated maximum amount of the services in question that can be awarded is EUR 20,000, net of indirect taxes, of which EUR 10,000 for PCR tests and EUR 10,000 for antigen tests.

4.2 The maximum numbers of services that will be performed by the Economic Operator under this Framework Agreement may not exceed the total estimated amount.

4.3 The Economic Operator may not claim any compensation in the event that the Contracting Authority does not use the full amount established in paragraph 4.1 during the validity period of the Framework Agreement.

## **Art. 5 – Terms and conditions of payments**

5.1 The Economic Operator indicates a bank account to which the Contracting Authority will make payments. The Contracting Authority will not make payments in ways other than bank transfer to the aforementioned current account indicated in Annex 6 (self declaration L136/2010).

5.2 The following code must be indicated on the invoices: “CIG ZC932DA4FE”.

5.3 Payment will be made within 10 days from the date of receipt of the invoice, once the regular execution has been verified.

## **Art. 6 – Documents related to the contract**

6.1 The following are fully part of this Framework Agreement:

- the documents in the Annex 2, Section 1, that includes the contractual and technical specifications, on the basis of which the individual implementing Contracts will be executed and calculated;
- the financial offer (Annex 2, Section 2) which indicates the unit cost and total cost in EUR offered by the economic operator during the tender procedure for the award of the Framework Agreement. The

aforementioned prices will remain fixed and invariable for the entire duration of the Framework Agreement.

**Art. 7 - Methods of assignment of the individual implementing contracts**

7.1 The assignment of the individual implementing Contracts to the Economic Operator will take place directly, without a new competitive confrontation, as this Framework Agreement is concluded with a single economic operator.

7.2 Each Implementing Contract will be stipulated within four days of the Contracting Authority's written request, unless there are justified reasons of urgency.

**Art. 8 – Execution of the individual Implementing Contracts**

8.1 The execution of the services envisaged by the individual Implementing Contracts must take place in full compliance with the current legislation on the matter.

8.2 The Economic Operator undertakes to apply the current labor regulations to its employees as well as to meet the legal obligations regarding social security, social assistance, workers' insurance and occupational hygiene and safety. Any form of liability of the Contracting Authority for failure to comply with the aforementioned obligations by the Economic Operator is excluded.

8.3 The payment of the balance for each Implementing Contract is subject to the verification of regular execution carried out by the Contracting Authority whose formal approval will allow the settlement of the final installment for that single Implementing Contract.

**Art. 11 – Penalties for non-fulfillment/default**

11.1 Failure to stipulate the Implementing Contract relating to the single contract within the term of 5 (five) days starting from the invitation formally communicated by the Contracting Authority, for reasons attributable to the Economic Operator, will result in the application of a daily penalty equal to 0.5 per hundred of the maximum estimated value of the Framework Agreement, without prejudice to the right of the Contracting Authority to avail itself of the termination of the Framework Agreement pursuant to Article 12.

11.2 The total amount of the penalty may not exceed ten percent of the maximum estimated value of the Framework Agreement.

11.3 Any delay by the Economic Operator in the execution of the service beyond the times established in the implementing contracts entails, except for reasons of force majeure not attributable to the Economic Operator, the application of a penalty equal to 0.5 per hundred of the net contractual amount for each day of delay.

11.4 If the Economic Operator does not comply, in the execution of the Implementing Contracts, with the terms and provisions contained in this Framework Agreement, the Contracting Authority will contest the non-fulfillment in writing, giving, if possible, the information necessary for compliance with the disregarded provisions, assigning adequate time to present any counter arguments. In the absence of suitable explanations, the Economic Operator will have to provide the indications given and, if he does not comply with them within the indicated terms, the penalty provided for in paragraph 11.3 will be applied.

11.5 The request or payment of the penalty in no case exempts the Economic Operator from fulfilling the contractually provided service.

11.4 If the amount of the penalties determined on the basis of this article reaches ten percent of the net contractual amount or in any other case in which, during the execution, breaches of the Economic

Operator emerge such as to cause appreciable damage to the Contracting Authority, the Contracting Authority may terminate the contract due to serious breach by the Economic Operator and reserves the right to take action for compensation for damage. The Economic Operator also reimburses the Contracting Authority for any additional expense incurred by the Contracting Authority to have others perform the service.

#### **Art. 12 – Termination and withdrawal**

12.1 The Contracting Authority may terminate the framework agreement during its validity period for the following:

- a) the framework agreement undergoes a substantial modification that would have required a new procurement procedure pursuant to Article 72 of 2014/24/EU directive;
- b) if the Economic Operator is in one of the reasons for exclusion indicated in Article 57 of 2014/24 / EU directive;
- c) the contract should not have been awarded to the Economic Operator in consideration of a serious violation of the obligations deriving from the European Treaties and Directive 2014/24 / EU;
- d) one of the cases of termination due to serious breach of contract by the Contractor expressly provided for in this framework agreement occurs, including the serious breach by the Economic Operator of an Implementing Contract stipulated in implementation of this Framework Agreement and the refusal or unjustified delay by the Economic Operator in the stipulation of the Implementing Contract, or other hypothesis of serious breach by the Economic Operator provided for by the law applicable to this contract.

12.2 The Contracting Authority may withdraw from the contract even if the execution of the service has begun, by giving written notice to the Economic Operator at least 30 days in advance. In this case, the Contracting Authority reimburses the Economic Operator the consideration for the services correctly performed and acquired by the Contracting Authority, as well as the expenses reasonably already incurred in view of the performance of the services not yet performed.

#### **Art. 13 – Prohibitions on assignment and subcontracting**

13.1 The Economic Operator is prohibited from assigning, in any form, this Framework Agreement or the Implementing Contracts, under penalty of termination pursuant to Article 12.

13.2 The Framework Agreement is not a source of any pecuniary credit in favor of the Economic Operator and, therefore, any transfer of alleged credits based on the same Framework Agreement is prohibited.

13.3 The assignment of credits coming from the individual Implementing Contracts stipulated in implementation of the Framework Agreement is permitted with the prior authorization of the Contracting Authority.

13.4 In case of subcontracting:

- a) the main Economic Operator is fully responsible towards the Contracting Authority for the entire contract;
- b) the Economic Operator may only subcontract to the subcontractors proposed therein any parts of the contract indicated in the offer;
- c) the Subcontractor, Checkups Laboratories – P051732024V, must be in possession of the requirements foreseen by the announcement in relation to the service which is the subject of the subcontract;

d) the Economic Operator accepts that the Contracting Authority may transfer the payments due directly to the subcontractor for the services provided by him under the contract;

e) the Economic Operator expressly agrees to replace subcontractors for which reasons for exclusion emerge.

#### **Art. 14 – Responsibilities**

14.1 The Economic Operator assumes all responsibility for cases of accidents and damage caused to the Contracting Authority due to shortcomings or negligence committed during the execution of the service. The Economic Operator undertakes to guarantee the confidentiality of any information acquired as a result of this contract.

14.2 The Economic Operator and the Contracting Authority are responsible for the violations attributable to them of the obligations imposed by the Italian legislation regarding the protection of individuals regarding the processing of personal data.

14.3 The obligations assumed by the Economic Operator with this contract do not in any way constitute an employment or employment relationship in any capacity between the Contracting Authority and the staff employed by the Economic Operator, nor do they give rise to any claim against the Contracting Authority beyond what is herein expressly agreed. Such personnel may only carry out the activities provided for in this contract, as they cannot in any way be deemed authorized to any other activity. The Economic Operator undertakes to inform the staff employed in any capacity whatsoever of this clause.

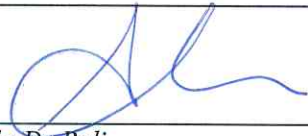
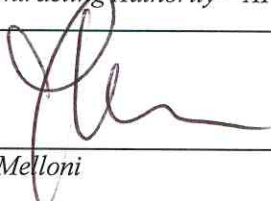
#### **Art. 15– Final provisions**

15.1 No clause of this Framework Agreement can be interpreted as an explicit or implicit waiver of the immunities granted to the Contracting Authority by international law.

15.2 This Agreement is governed by Kenyan law. The court of Nairobi is competent for disputes.

15.3 This document contains the full manifestation of the obligations of the Contracting Authority and the Economic Operator and may only be modified with another contract having the same form, without prejudice to any other modality of contractual changes.

Nairobi, 27.09.2021

<i>The Economic Operator: ILARA HEALTH LTD</i>	<i>The Contracting Authority – AICS NAIROBI</i>
	
<i>Angela De Poli</i>	<i>Fabio Melloni</i>

