

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE OF PAGES 1   5	
2. AMENDMENT/MODIFICATION NO. <b>P00001</b>		3. EFFECTIVE DATE <b>16-Jun-2021</b>	4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		
6. ISSUED BY ACC-APG ORLANDO - W912CG 12423 RESEARCH PARKWAY ORLANDO FL 32826		CODE <b>W912CG</b>	7. ADMINISTERED BY (If other than item 6) <b>See Item 6</b>		
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) KPMG LLP KPMG LLP FEDERAL SERVICES 8350 BROAD ST STE 900 MCLEAN VA 22102-5150			9A. AMENDMENT OF SOLICITATION NO.		
			9B. DATED (SEE ITEM 11)		
			X	10A. MOD. OF CONTRACT/ORDER NO. <b>W912CG2190001</b>	
			X	10B. DATED (SEE ITEM 13) <b>01-Mar-2021</b>	
CODE <b>7QEG9</b>		FACILITY CODE			
<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>					
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. ACCOUNTING AND APPROPRIATION DATA (If required) <b>See Schedule</b>					
<b>13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACT ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.</b>					
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.					
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).					
X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: <b>10 U.S.C. § 2371b, Definitization of Agreement</b>					
D. OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>  1  </u> copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: <b>(b) (6)</b> The purpose of this action is to definitize the letter agreement between KPMG, LLP and the Government for mAb Therapeutics Infusion Capacity for Covid-19, dated 01 March 2021. P00001 is established by mutual agreement of the parties. Accordingly, the <b>(b) (4)</b> value has decreased by <b>(b) (4)</b> to \$142,703,946.00. Additionally, the Statement of Work (SOW) has been incorporated into Section J. All other terms and conditions remain unchanged.					
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>(b) (6)</b> / CONTRACTING/GRANTS OFFICER TEL: <b>(b) (6)</b> EMAIL: <b>(b) (6)</b>		
15B. CONTRACTOR/OFFEROR  _____ (Signature of person authorized to sign)		15C. DATE SIGNED	16B. BY <b>(b) (6)</b> _____ (Signature of Contracting Officer)	16C. DATE SIGNED  <b>17-Jun-2021</b>	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

**SUMMARY OF CHANGES**

SECTION A - SOLICITATION/CONTRACT FORM

The total cost of this contract was decreased by (b) (4) to \$142,703,946.00.

SECTION B - SUPPLIES OR SERVICES AND PRICES

Global Changes

CLIN 0001 -- SUBCLIN 000101

The contract type has changed from COST to CPFF.

CLIN 0001

The CLIN extended description has changed from:

Development of a novel prototype process to expand the capabilities for the “Monoclonal Antibody (mAb) Therapeutics Infusion Capacity for COVID-19 Nationwide Community COVID-19 Monoclonal Antibody (mAbs) Infusion Centers” in accordance with the Statement of Objectives, incorporated under Attachment 02 of the agreement.

To:

Development of a novel prototype process to expand the capabilities for the “Monoclonal Antibody (mAb) Therapeutics Infusion Capacity for COVID-19 Nationwide Community COVID-19 Monoclonal Antibody (mAbs) Infusion Centers” in accordance with the Statement of Work dated, 4 June 2021, incorporated under Attachment 01 of the agreement.

(b) (4)

The total cost of this line item has decreased by (b) (4) to \$142,703,946.00.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001			Job		\$142,703,946.00

pOTA-mAB Therapeutics Infusion Capacity\_CPFF  
 Development of a novel prototype process to expand the capabilities for the  
 "Monoclonal Antibody (mAb) Therapeutics Infusion Capacity for COVID-19  
 Nationwide Community COVID-19 Monoclonal Antibody (mAbs) Infusion  
 Centers" in accordance with the Statement of Work dated, 4 June 2021,  
 incorporated under Attachment 01 of the agreement.

FOB: Destination  
 PSC CD: B528

	(b) (4)		\$142,703,946.00
	TOTAL EST COST + FEE		\$142,703,946.00

SUBCLIN 000101

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
000101					\$0.00

Funding\_CPFF  
 PURCHASE REQUEST NUMBER: 0011615066

	ESTIMATED COST		\$0.00
	FIXED FEE		\$0.00
	TOTAL EST COST + FEE		\$0.00

ACRN AA  
 CIN: GFEB001161506600001 (b) (4)

SUBCLIN 000102 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
000102					\$0.00

Funding\_CPFF  
 PURCHASE REQUEST NUMBER: 0011615066-0001

	ESTIMATED COST		\$0.00
	FIXED FEE		\$0.00
	TOTAL EST COST + FEE		\$0.00

ACRN AA  
 CIN: GFEB001161506600002 (b) (4)

The following have been modified:

SECTION B

**B.1. TYPE OF OTHER TRANSACTION AGREEMENT (OTA):**

This is a Cost-Plus-Fixed-Fee (CPFF) type of OTA.

SECTION E - INSPECTION AND ACCEPTANCE

The following Acceptance/Inspection Schedule was added for SUBCLIN 000102:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	N/A

SECTION G - CONTRACT ADMINISTRATION DATA

Accounting and Appropriation

Summary for the Payment Office

As a result of this modification, the total funded amount for this document was increased (b) (4)

to \$142,703,946.00.

SUBCLIN 000102:

Funding on SUBCLIN 000102 is initiated as follows:

ACRN: AA

CIN: GFEB001161506600002

Acctng Data: 0212021202220400000665654255 S.0074658.5.48 6100.9000021001

(b) (4)

Cost Code: A5XAH

SECTION J - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

The following have been modified:

ATTACHMENTS & EXHIBITS

**Attachment(s):**

Attachment 01 – Statement of Work dated, 4 June 2021.

Definitized Agreement, dated 16 June 2021.

(End of Summary of Changes)

**OTHER TRANSACTION AUTHORITY FOR PROTOTYPE AGREEMENT**

BETWEEN

**KPMG LLP 8350 Broad  
Street Suite 900  
McLean, VA 22102-5150  
DUNS Number: 0298309  
CAGE Code: 7QEG9**

**And**

**ACC-APG ORLANDO CONTRACTING DIVISION  
12423 Research Parkway  
Orlando, FL. 32826**

Letter Agreement Date: 1 March 2021  
Definitized Agreement Date: 17 June 2021  
Agreement No.: W912CG-21-9-0001  
Total Amount of the Agreement: \$142,703,946.00  
Total Government Funding for the Agreement:  
\$142,703,946.00  
Authority: 10 U.S.C. § 2371b, Section 815 of the 2016  
National Defense Authorization Act, P.L 114-92, as  
amended.

IN WITNESS WHEREOF, each Party has executed this Agreement by signature of its authorized representative.

SIGNATURES:

Awardee

Signature

(b) (6)

Printed Name

(b) (6)

Government

Signature

(b) (6)

Printed Name

(b) (6)

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### Attachments:

A – Statement of Work – dated 4 June 2021

ARTICLE I: SCOPE OF THE AGREEMENT

*On 1 March 2021 an Undefined Prototype Other Transaction Agreement (UP OTA) was issued to KPMG LLP. The purpose of this action is to definitize the UP OTA in accordance with the definitization schedule and terms set-forth in the UP OTA. This document finalizes terms and conditions via articles established in support of the mAb Therapeutics Infusion Centers effort.*

A. Background

This Prototype Other Transaction Agreement (pOTA) is awarded KPMG LLP, hereinafter referred to as “KPMG”. The objective of this prototype project is to develop a novel prototype process to create a standard and consistent operational model for establishing Monoclonal antibodies (mAbs) infusion center capabilities to COVID-19 positive patients in high-risk communities within the United States. (b) (4)

[REDACTED]

[REDACTED]

B. Definitions

“Agreement” or “pOTA” or “Project Agreement” refers to the Prototype Other Transaction Agreement, as authorized under 10 U.S.C. 2371b, between the Government and KPMG, Agreement No. W912CG- 21-9-0001.

“Agreements Officer (AO)” is the United States Army Contracting Command – APG – Orlando Division warranted Contracting Officer authorized to sign the final agreement for the Government.

“Agreements Officer’s Representative (AOR)” is the individual designated by the Government on a per project basis to monitor all technical aspects; the AOR shall only assist in agreement administration of the specific project to the extent expressly delegated such administration authority in writing in the Project Agreement by the responsible Agreements Officer.

“Contracting Activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements or another agency designated by the director of a defense agency, which has been delegated contracting authority through its agency charter.

“Date of Completion” is the date on which all work is completed or the date on which the period of performance ends.

“Development” means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of an existing or potential new technology, product or service (or of an improvement in an existing technology, product or service) for the purpose of meeting specific



performance requirements or objectives. Development includes the research functions of design engineering, prototyping, and engineering testing.

“Effective Date” means the date when this Agreement is signed and executed by the Agreements Officer for the Government.

“Government” means the U.S. Government.

“Government Fiscal Year” means the period commencing on October 1 and ending September 30 of the following calendar year.

“Other Transactions Agreement (OTA)” is the term commonly used to refer to the 10 USC 2371b authority to enter into transactions other than contracts, grants or cooperative agreements. The Department of Defense (DoD) currently has authority to make awards that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces. OTAs are acquisition instruments that generally are not subject to the federal laws and regulations governing procurement (FAR based) contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements (i.e. DFARS) or laws that are limited in applicability to procurement contracts.

“Parties” means Government and KPMG by its authorized agent where collectively identified and “Party” where each entity is individually identified.

“Project” means the overall effort to be funded by the Agreement, which is described in the Statement of Work appended to this Agreement as Attachments A.

“Signatory Authority” refers to the individual that has the authority to legally bind a party to an agreement.

(b) (4)  
[Redacted text block]

### C. Scope

1. This definitized Prototype Other Transaction Agreement (the “Agreement”) is entered into between the Government and the Awardee on the Effective Date set forth above. For the avoidance of doubt, this Agreement is entered into pursuant to and in compliance with 10 U.S.C. § 2371b and is not a procurement contract governed by the Federal Acquisition Regulation (“FAR”), a grant, or cooperative

agreement. The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) apply only as specifically referenced herein. This Agreement is not intended to be, nor will it be construed as, forming, by implication or otherwise, a partnership, a corporation, or other business organization. This Agreement is not subject to the Bayh-Dole Act, 35 U.S.C. §§ 200-212.

The Parties agree that the ultimate purpose of this Agreement is for the development of a novel process to create a standard and consistent operational model for establishing Monoclonal antibodies (mAbs) infusion center capabilities to COVID-19 positive patients in high-risk communities within the United States, herein referred to as the "Prototype". (b) (4) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], directed towards the Prototype, as described in the Statement of Work, which is incorporated herein and attached hereto as Attachment A.

## ARTICLE II: TERM AND TERMINATION

### A. The Term of this Agreement

The period of performance for this OTA shall be for twelve (12) months from the date of signature for the UP OTA issued on 1 March 2021. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified in Article II herein, shall be given effect, notwithstanding this Article.

### B. Early Termination of Agreement Provision

1. Subject to a reasonable determination that the Project, or an activity funded under the Project, will not produce beneficial results commensurate with the expenditure of resources, the Government may terminate performance of work under this OTA, in whole or in part, if the AO determines that a termination is in the Government's interest and after at least thirty (30) calendar days' prior written notice to the Awardee. The AO shall terminate by delivering to KPMG a Notice of Termination specifying the extent of termination and the effective date. Should the Government exercise this right, KPMG has thirty (30) days from the termination effective date to submit a settlement proposal to which the parties will negotiate a good faith agreement upon. The parties shall use best efforts to reach an agreed upon settlement within ninety (90) days of proposal submission.

After receipt of a Notice of Termination, and except as directed by the AO, KPMG shall without undue delay proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

- a. Stop work and direct its subcontractors/vendors/suppliers/partners to stop work as specified in the notice.
- b. Place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the OTA.
- c. Terminate all orders to the extent they relate to the work terminated, and such termination is possible.
  - i. With approval or ratification to the extent required by the AO, settle all outstanding liabilities and termination settlement proposals arising from the termination of orders; the approval or ratification will be final for purposes of this clause.
  - ii. As directed by the AO, deliver to the Government the completed or partially completed plans and other information that, if the project had been completed, would have been required to be delivered to the Government.

- iii. Complete performance of any work not terminated, if applicable.

In the event of a termination of this Agreement, the Government shall have patent rights as described in Article XII, Intellectual Property Rights, and rights in Data as described in Article XI, Data Rights. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to Article IX, Disputes.

Nothing in this section shall be construed as a limitation of the rights of either party in the event of a breach of contract or default by the other party.

### C. Stop Work Clause

As directed by the AO, KPMG shall stop all, or any part, of the work called for under this Agreement for a period of 90 days after the written order is delivered, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this Article. Upon receipt of the order, KPMG shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered, or within any extension of that period to which the parties shall have agreed, the AO shall either:

1. Cancel the stop-work order; or
2. Terminate the work covered this Agreement.

If a stop work order issued under this clause is canceled, KPMG shall resume work. The Government shall make an equitable adjustment in the delivery schedule or negotiated price, or both, and the Government's share of this Agreement shall be modified, in writing, accordingly, if—

- i. The stop-work order results in an increase in the time required for, or in the cost properly allocable to, the performance of any part of this Agreement; and
- ii. KPMG asserts its right to the adjustment within 30 days after the end of the period of work stoppage; however, if the Government decides the facts justify the action, the Government may receive and act upon a proposal submitted at any time before final payment under this Agreement.

## ARTICLE III. PROJECT MANAGEMENT

### A. Project Governance

The Awardee is responsible for the overall management of the project development and related project decisions. The Government will have continuous involvement with the Awardee. The Awardee shall provide access to project progress and results in accordance with the Statement of Work.

### B. Key Personnel

Any key personnel specified in this contract are considered to be essential to work performance. At least thirty (30) calendar days prior to the Contractor voluntarily diverting any of the specified individuals to other programs or contracts the Contractor shall notify the Contracting Officer and shall submit a justification for the diversion or replacement and a request to replace the individual. The request must identify the proposed replacement and provide an explanation of how the replacement's skills, experience, and credentials meet or exceed the requirements of the contract (including, when applicable, Human Subjects Testing requirements). If the employee of the Contractor is

terminated for cause or separates from the Contractor voluntarily with less than thirty (30) calendar-day notice, the Contractor shall provide the maximum notice practicable under the circumstances. The Contractor shall not divert, replace, or announce any such change to key personnel without the written consent of the Contracting Officer. The contract will be modified to add or delete key personnel as necessary to reflect the agreement of the parties. The following individuals are determined to be key personnel and are designated as (b) (4) [REDACTED] responsible for facilitating the communications, reporting, and meetings between the Parties:

(b) (4) [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

The key personnel of Awardee, are considered to be critical to the successful performance of this Agreement. Prior to replacing these key personnel, the Awardee shall provide written notification to the AO. The Awardee shall demonstrate that the qualifications of the proposed substitute personnel are generally equivalent to or better than the qualifications of the personnel being replaced.

**Substitution of Key Personnel**

The Contractor agrees to assign to the contract those persons whose resumes/CVs were submitted with the proposal who are necessary to fill the requirements of the contract. No substitutions shall be made except in accordance with this clause. All requests for substitution must provide a detailed explanation of the circumstance necessitating the proposed substitution, a complete resume for the proposed substitute and any other information requested by the contracting officer to approve or disapprove the proposed substitution. All proposed substitutes must have qualifications that are equal to or higher than the qualifications of the person to be replaced. The contracting officer or authorized representative will evaluate such requests and promptly notify the contractor of his approval or disapproval thereof. The contractor further agrees to include the substance of this clause in any subcontract, which may be awarded under this contract.

**ARTICLE IV: AGREEMENT ADMINISTRATION**

In no event shall any understanding or agreement, modification, change order, or other matter in deviation from the terms of this Agreement between the Awardee and a person other than the AO be effective or binding upon the Government. All such actions must be formalized by a proper contractual document executed by the AO.

**Government Oversight Team Representatives:**

AO: (b) (6) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

AS: (b) (6) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

AOR: (b) (6) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b) (6) [Redacted]

Awardee Representatives:

(b) (6) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Project Sponsor:

(b) (6) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

## ARTICLE V: PERFORMANCE OBJECTIVES AND CHANGES

- A. The Statement of Work (SOW), Attachment A, describes the objectives which emphasize the activities that will be undertaken by the Awardee to achieve the project goals.
- B. After the definitized pOTA effective date, recommendations for modifications, including justifications to support any changes to the SOW, will be documented in a letter and submitted by Awardee to the AO. This letter will detail the technical, chronological and financial impact, if any, of the proposed modification to the project. Any resultant modification is subject to the mutual agreement of the Parties. The Government is not obligated to pay for additional or revised costs unless and until this Agreement is formally revised by the AO and made part of this Agreement. Any modification to this Agreement to account for recommended changes in the SOW will be considered a supplemental agreement.
- C. Review of Recommendations: The AO will be responsible for the review and verification of any recommendations to revise or otherwise modify the Agreement, the SOW, payment terms, or other proposed changes to the terms and conditions of this Agreement.
- D. Minor Modifications: The Government may make minor or administrative Agreement modifications unilaterally (e.g., changes in the paying office or appropriation data, changes to Awardee personnel proposed by Awardee, etc.).
- E. Amending the Agreement: The Government will be responsible for effecting all modifications to this Agreement, with the concurrence of the Awardee for modifications that are not minor or administrative. Administrative and material matters under this Agreement will be referred to AO.
- F. Modification Communications: No other communications, whether oral or in writing, that purport to change this Agreement are valid.
- G. Government Property: Not Applicable

## ARTICLE VI: MEETINGS AND TECHNICAL DATA REQUIREMENTS

### A. Meetings

Monthly Status Meetings: The Awardee's Project Lead, and Project Sub-Lead shall convene monthly with the Government Oversight Team to discuss the status of the project and review the submitted monthly report. This meeting shall coincide with the submission of the monthly reports, and should occur mid-month accordingly.

The Government Oversight Team and Awardee Project Lead and Sub-Lead may agree to ad hoc meetings to address specific issues or to convey time-sensitive updates related to the project.

### B. Technical Data

1. Monthly Progress & Expenditure Report: No later than the 10th (tenth) day of each month during the Period of Performance, a monthly report shall be furnished electronically to the Government Oversight Team which encompasses the previous month's notable progress, issues encountered, project risks identified and mitigation taken to reduce them, monthly expenditures & total project expenditures to date.
2. Lessons Learned (Per Site): Per Attachment A, Statement of Work, the Contractor shall document lessons learned as the hyper-local site deployment plan is implemented. (b) (4) [REDACTED]
3. (b) (4) [REDACTED]
4. Deliverables as outlined in the SOW, to be electronically furnished to the Government Oversight Team.

ARTICLE VII: INSPECTION/ACCEPTANCE

- A. Inspection: The Government has the right to inspect all work called for by this Agreement, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the premises of the Awardee engaged in Agreement performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- B. The Government shall accept or reject the work as promptly as practicable after completion/delivery, unless otherwise specified in the Agreement. Government failure to inspect and accept or reject the work shall not relieve the Awardee from responsibility, nor impose liability on the Government, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with Agreement requirements. The Government has the right to reject nonconforming work. The Government's inspection and acceptance of Project work performed by KPMG will not exceed 90 days after completion of required identified deliverables.

ARTICLE VIII: FINANCIAL MATTERS

Obligation: Except as specified in Article IX: Disputes, the Government's liability to make payments to the KPMG is limited only to those funds obligated under this Agreement as identified in the CLIN structure or by modification to the Agreement and/or CLIN structure. ACC-APG-Orlando may incrementally fund this



Agreement. If modification becomes necessary in performance of this Agreement, pursuant to Article V of this Agreement, the AO and KPMG shall establish and execute mutually agreed to revised payment terms.

A. Payments. The total amount of this Agreement shall be obligated at the time of award. This Agreement is an expenditure type OTA. The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied. The amounts of interim payments or the total amount ultimately paid to KPMG is based on the amounts KPMG expends on direct and indirect Project costs plus any agreed upon fixed fee. If KPMG completes the Project specified at the time of award before it expends all of the agreed-upon Federal funding, the Federal Government may recover the unexpended balance of funds.

Payments shall be made on a monthly basis for the reimbursement of allowable costs within the scope of the Project, incurred during the period of performance up to the agreed upon project budget. Proper documentation shall be submitted to justify all costs submitted for expenditure reimbursement. Proper documentation includes: supporting quotes, travel receipts and invoices paid. Payments shall be made within 30 days of the submission of a proper invoice as set forth in Section VIII.F.

B. Accounting System Requirements: Prior to the submission of invoices, KPMG shall have and maintain a DCMA approved accounting system in accordance with DFARS 252.242-7006 Accounting System Administration. Consistent with this stipulation, an acceptable accounting system will be one in which all cash receipts and disbursements are controlled and documented properly.

C. Use of Funds. Federal funds are to be used only for costs that a reasonable and prudent person would incur in carrying out the Project.

D. Allowable Costs. The allowability of costs will be determined by the Agreements Officer in good faith- consultation with KPMG, with reference to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV in effect on the date of the agreement.

E. Invoicing: KPMG shall submit invoices for processing, according to the payment terms above, to the AOR for payment approval via The Invoice, Receipt, Acceptance, and Property Transfer (iRAPT) application of the Wide Area Work Flow (WAWF) system, according to the guidelines set forth in DFARS Subpart 232.70 and DFARS 252.232-7003 Electronic Submission of Payment Requests and Receiving Reports. Payments will be made by the Defense Finance and Accounting Service (DFAS) Indianapolis – GFEBS, HQ0490, 8899 E 56<sup>th</sup> Street, Indianapolis, IN 46249-3800.

WAWF Provision:

1. Definitions. As used in this clause--

Department of Defense Activity Address Code (DoDAAC) is a six-position code that uniquely identifies a unit, activity, or organization.

Document type means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

Local processing office (LPO) is the office responsible for payment certification when payment certification is done external to the entitlement system.

2. Electronic invoicing. The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports.
3. WAWF access. To access WAWF, the Recipient shall (i) have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and (ii) be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this website.
4. WAWF training. The Recipient should follow the training instructions of the WAWF Web- Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the "Web Based Training" link on the WAWF home page at <https://wawf.eb.mil/>.
5. WAWF methods of document submission. Document submissions may be via Web entry, Electronic Data Interchange, or File Transfer Protocol.
6. WAWF payment instructions. The Recipient must use the following information when submitting payment requests and receiving reports in WAWF for this contract/order:
  - a. Document type. The Recipient shall use the following document type: Invoice and Receiving Report (Combo)
  - b. Inspection/acceptance location. The Recipient shall select the following inspection/acceptance location(s) in WAWF, as specified by the contracting officer.
  - c. Document routing. The Recipient shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table\*

Field Name in WAWF	Data to be entered in WAWF
Pay Official DoDAAC	HQ0490
Issue By DoDAAC	W912CG
Admin DoDAAC	W912CG
Inspect and Accept By DoDAAC	W56XNH
Ship To Code	W56XNH

Payee Information: As identified at the System for Award Management.

i. Payment request and supporting documentation. The Recipient shall ensure a payment request includes appropriate contract line item and subline item descriptions of the work performed or supplies delivered, unit price/cost per unit, fee (if applicable), and all relevant back-up documentation in support of each payment request.

ii. WAWF email notifications. The Recipient shall enter the email address identified below in the "Send Additional Email Notifications" field of WAWF once a document is submitted in the system.

7. WAWF point of contact.

1. The Recipient may obtain clarification regarding invoicing in WAWF from the following contracting activity's WAWF point of contact.

AOR: LTC Owen Roberts, [owen.roberts@hhs.gov](mailto:owen.roberts@hhs.gov)

2. For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

F. Electronic Fund Transfer: KPMG must be enrolled in EFT by contacting the paying office designated in the Agreement and requesting form SF 3881, Automated Clearing House (ACH) Vendor/Miscellaneous Payment Enrollment Plan. This form must be completed by KPMG and KPMG's financial institution, and returned to the paying office. The paying office will complete the process and notify KPMG that EFT enrollment is complete. All payments under this agreement will be held until KPMG provides the required EFT enrollment information. Registration in the System Award for Management (SAM) is mandatory.

G. Financial Records and Reports: Should cost sharing procedures be implemented for funding a particular Project, KPMG shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for KPMG's Project Agreement funding provided under this Agreement.

Comptroller General Access to Records: As of the definitized pOTA effective date, the Comptroller General of the United States will have access to and the right to examine records by 10 U.S. Code § 2371b of any entity that performance activities under this agreement. This right will survive for a period of three years after final payment under this letter agreement or its expiration or termination. This requirement shall not apply with respect to any Party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such Party or entity, that has not entered into any other agreement (contract, grant, cooperative agreement, or "other transaction") that provides for audit access by a government entity in the year prior to the date of this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a mandatory and applicable provision of law. The terms of this paragraph shall be included in all sub-agreements to the Agreement other than sub-agreements with a component of the U.S. Government. The Comptroller General may not examine records pursuant to a clause included in an agreement more than three years after the final payment is made by the United States under the agreement. Additionally, the Agreement Recipient shall maintain and the Agreements Officer, or an authorized representative of the Agreements Officer, shall have the right to examine and audit all timekeeping and expense records, as well as any other records determined necessary by the Agreements Officer to ensure costs reimbursed are reasonable, allocable, and allowable. This right of examination shall include inspection at all reasonable times of Agreement Recipient's facilities, or parts of them, engaged in performing the agreement.

## ARTICLE IX: DISPUTES

### A. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

### B. Dispute Resolution Procedures

Any disagreement, claim or dispute between ACC-APG-Orlando Division and KPMG concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

For any disagreement, claim, or dispute arising under this agreement or the services provided thereunder, the parties shall communicate with one another in good faith and in a timely and cooperative manner. Whenever disputes, disagreements, or misunderstandings arise, the parties shall attempt to resolve the issue by discussion and mutual agreement as soon as practicable. Failing resolution by mutual agreement, the aggrieved party shall request a resolution in writing from the AO. The AO will review the matter and render a decision in writing within thirty (30) calendar days. (If the AO fails to render a decision in writing within thirty (30) days of request, the request shall be deemed to have been denied.) In the event the AO's decision does not resolve the disagreement, claim, or dispute, either Party may request to submit the matter to non-binding mediation. Mediation may take place at a location to be designated by the parties using the Mediation Procedures of the International Institute for Conflict Prevention and Resolution, with the exception of paragraph 2 (Selecting the Mediator). If, after good faith efforts, the parties are unable to resolve their dispute through mediation within ninety (90) days after the issuance by one of the parties of a request for mediation, then either party may pursue a dispute at a court of competent jurisdiction at any time. The parties intend for the U.S. Court of Federal Claims to have jurisdiction over disputes under this letter agreement pursuant to 28 U.S.C. § 1491(a)(1). In the event that the U.S. Court of Federal Claims does not have jurisdiction to resolve the dispute, the parties intend to resolve the dispute in the United States District Court for the District of Columbia. As contemplated by 28 U.S.C. § 2516(a), this letter agreement provides for the payment of prejudgment interest from the date on which a claim accrues.

Government Vendors and Conflicts. The Government is aware that KPMG may be providing assurance, tax and/or advisory services to mAb providers, infusion facility operators, etc. ("Other Parties"). The Government agrees that the Other Parties' mere status as a KPMG client does not necessarily impact KPMG's engagement to perform this agreement. KPMG will perform an internal search for relationships with the Other Parties. KPMG will disclose, subject to confidentiality restrictions, to the Government any conflicts of interest identified and obtain the Government's consent to proceed with the services hereunder. In the event a potential conflict is identified, in order to mitigate such a conflict, KPMG will cease work until Government consent is received or an alternative course of action is mutually agreed upon. KPMG may be in possession of confidential information concerning the Other Parties that may be relevant to this engagement and that such information will not be disclosed to the Government unless the Other Parties provide such information directly to the Government or to the KPMG engagement team providing services to the Government for purposes of the services described in this Agreement. However, KPMG is a large firm that is engaged by new clients on a daily basis and as a result it cannot guarantee that, following its conflict search, an engagement for any other related party will not be accepted somewhere else in KPMG. Should any new information come to KPMG's attention, KPMG will promptly inform the Government.

**Organizational Conflicts of Interest**

Performance under this contract may create an actual or potential organizational conflict of interest such as are contemplated by FAR Part 9.505-General Rules. The Contractor shall not engage in any other contractual or other activities which could create an organizational conflict of interest (OCI). This provision shall apply to the prime Contractor and all sub-Contractors. This provision shall have effect throughout the period of performance of this contract, any extensions thereto by change order or supplemental agreement, and for two (2) years thereafter. The Government may pursue such remedies as may be permitted by law or this contract, upon determination that an OCI has occurred.

The work performed under this contract may create a significant potential for certain conflicts of interest, as set forth in FAR Parts 9.505-1, 9.505-2, 9.505-3, and 9.505-4. It is the intention of the parties hereto to prevent both the potential for bias in connection with the Contractor’s performance of this contract, as well as the creation of any unfair competitive advantage as a result of knowledge gained through access to any non-public data or third party proprietary information.

The Contractor shall notify the Contracting Officer immediately whenever it becomes aware that such access or participation may result in any actual or potential OCI. Furthermore, the Contractor shall promptly submit a plan to the Contracting Officer to either avoid or mitigate any such OCI. The Contracting Officer will have sole discretion in accepting the Contractor’s mitigation plan. In the event the Contracting Officer unilaterally determines that any such OCI cannot be satisfactorily avoided or mitigated, other remedies may be taken to prohibit the Contractor from participating in contract requirements related to OCI.

Whenever performance of this contract provides access to another Contractor’s proprietary information, the Contractor shall enter into a written agreement with the other entities involved, as appropriate, in order to protect such proprietary information from unauthorized use or disclosure for as long as it remains proprietary; and refrain from using such proprietary information other than as agreed to, for example to provide assistance during technical evaluation of other Contractors’ offers or products under this contract. An executed copy of all proprietary information agreements by individual personnel or on a corporate basis shall be furnished to the CO within fifteen (15) calendar days of execution.

(b) (4)

[Redacted text block]

ARTICLE X: CONFIDENTIAL INFORMATION

A. Definitions

“Disclosing Party” means KPMG, or their subcontractors, participants, vendors, or suppliers, or the Government who discloses Confidential Information as contemplated by the subsequent Paragraphs.

“Receiving Party” means KPMG, or their subcontractors or suppliers, or the Government who receives Confidential Information disclosed by a Disclosing Party.

“Confidential Information” means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. “Confidential Information” includes any information and materials considered a Trade Secret by KPMG on its own behalf or on behalf of their subcontractors or suppliers.

“Trade Secret” means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

1. The owner thereof has taken reasonable measures to keep such information secret; and
  2. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.
- B. Exchange of Information: The Government may from time to time disclose Government Confidential Information to KPMG and its subcontractors or suppliers, in connection with similar processes or particular projects, and KPMG their subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with the OTA, an OTA project proposal, Payment terms or Instruction, Project Agreement, or performance thereunder. Neither the Government nor KPMG or their subcontractors or suppliers shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or KPMG or their subcontractors or suppliers, absent an express written agreement between the Parties providing the terms and conditions for such disclosure.
- C. Confidentiality and Authorized Disclosure: The Receiving Party agrees, to the extent permitted by law, that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in Article X, Patent Rights, and Article XI, Data Rights, provided that the duty to protect such “Confidential Information” and “Trade Secrets” shall not extend to materials or information that:
- Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
  - Are not identified with a suitable notice or legend per Article entitled "Confidential Information" herein,

- Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
- Are or later become part of the public domain through no fault of the Receiving Party,
- Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records,
- Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

Return of Proprietary Information: Upon the request of KPMG, the Government shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets disclosed.

Upon request by the Government, KPMG shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media. Notwithstanding any other provision herein, KPMG may retain a copy of information received, developed, or otherwise relating to this contract in order to comply with its contractual obligations and applicable professional standards. Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the return of records as contemplated by this paragraph.

Confidentiality of Contractor Records. During the performance of this Agreement, KPMG may submit confidential commercial and financial information to the Government. The Government acknowledges and agrees that it will treat any information that KPMG identifies as confidential commercial and/or financial information and withhold said information to the fullest extent permitted by federal law. Before releasing any KPMG-furnished record in response to a Freedom of Information Act request, the Government will notify KPMG in writing so that KPMG can identify any confidential commercial or financial information that is contained in the record prior to release.

D. Term: Except to the extent covered by and subject to other provisions of this Agreement the obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of this Agreement.

As of the definitized pOTA effective date, the Government and KPMG shall flow down the requirements of this Article VI to their respective personnel, agents, partners, and team members receiving such Confidential Information or Trade Secrets under this pOTA.

## ARTICLE XI: DATA RIGHTS

### A. Definitions

1. “Commercial Computer Software” as used in the Article is defined in DFARS 252-227-7014(a) (1) (Jun 1995).
2. “Commercial Computer Software License” means the license terms under which Commercial Computer Software is sold or offered for sale, lease or license to the general public.
3. “Computer Data Base” as used in this Agreement, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
4. “Computer program” as used in this Agreement means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.
5. “Computer software” as used in this Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation.
6. “Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
7. “Data” as used in this Article of this Agreement, means computer software, computer software documentation, form, fit and function data, and technical data as defined in this Article.
8. “Form, fit and function data” means technical data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and interchangeable items.
9. “Government purpose rights” means the rights to use, modify, duplicate or disclose the “Data” licensed with such rights under this Agreement within the Government for United States Government purposes only; and to release or disclose data outside the Government to any authorized persons pursuant to an executed non-disclosure agreement for such persons’ use, modification, or reproduction for United States Government purposes only. United States Government purposes include Foreign Military Sales purposes and competitive re-procurement.
10. “Limited rights” as used in this Article is as defined in DFARS 252.227-7013(a) (14).
11. “Restricted rights” as used in this Article is as defined in DFARS 252.227-7014(a) (15).
12. “Specially Negotiated License Rights” are those rights to Data that have been specifically negotiated between the Government and KPMG.
13. “Technical data” means recorded information, regardless of the form or method of the



recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

14. "Unlimited rights" means the rights to use, modify, duplicate, release, or disclose Data, in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

B. Technical Data:

1. Any technical data, as defined in 48 C.F.R. § 252.227-7013(a)(15), generated in connection with the performance of work under this letter agreement, including clinical trials, shall be owned by KPMG. For any deliverables generated using U.S. Government funding in connection with the performance of work under this letter agreement, the U.S. Government shall have government purpose rights for use and activities in connection with SARS-CoV-2 with an obligation to limit disclosure of such information outside the U.S. Government to contractors that have entered into an agreement with the U.S. Government that includes 48 C.F.R. § 52.227-7025 or to a recipient that has entered into the use and non-disclosure agreement set forth in 48 C.F.R. § 227.7103-7; provided that rights for specific deliverables may be modified in the subsequent Statement of Work.
2. Any Data developed outside of this Agreement with Government funding in whole or in part under a Government agreement, contract or subcontract shall have the rights negotiated under such prior agreement, contract or subcontract; the Government shall get no additional rights in such Data under this Agreement.

C. Prior Technology

1. In the event it is necessary for KPMG to furnish the Government with Data which existed prior to, or was produced outside of this Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees. KPMG shall not be obligated to provide Data that existed prior to, or was developed outside of this Agreement to the Government. Upon completion of activities under this Agreement, such Data will be disposed of as requested by KPMG.
2. Oral and Visual Information: If information which KPMG considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within thirty (30) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. If the Government reasonably determines that the memorialization of the exchange is insufficiently detailed to enable it to identify the privileged or confidential information, KPMG shall provide addition detail at the Government's request, subject to restrictions on use and disclosure.
3. Disclaimer of Liability:

KPMG shall indemnify the U.S. Government and its officers and employees against liability, including costs, that the deliverables actually or allegedly, directly or contributorily infringe, any United States or foreign patent, trademark or copyright, directly arising out of this pOTA, provided that the Government promptly notifies KPMG in writing of such claims and proceedings. In the unlikely event that an invention is conceived or first actually reduced to practice in the performance of this agreement (“Agreement Invention”), ownership of any Agreement Invention, regardless of whether it is not patentable, or is patentable under U.S. patent law that is conceived or first reduced to practice under this agreement will follow inventorship in accordance with U.S. patent law. Neither the Government nor Awardee anticipate the conception or reduction to practice of any Agreement Invention.

Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:

- a. Data not identified with a suitable notice or legend as set forth in this Article; nor
- b. Information contained in any Data for which disclosure and use is restricted, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which KPMG has furnished, or is required to furnish to the Government without restriction on disclosure and use.

Notwithstanding F.3.(a) of this Article above, if KPMG cures the omission of the suitable notice or legend, the restrictions, and related liability for disclosure and use of such information shall apply after cure unless it is then unrestricted under F.3(b) of this Article above.

#### D. Copyright

KPMG reserves the right to protect by copyright works developed under this Agreement. All such copyrights will be in the name of KPMG or the author, as determined by KPMG’s policies. KPMG hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed (excluding Data) under this Agreement to which it owns the copyright, and to authorize others to do so.

#### E. Lower Tier Agreements

As of the definitized pOTA effective date, KPMG shall include this Article, suitably modified to identify the parties, in all, subcontracts or lower tier agreements, regardless of tier, or experimental, developmental, or research work.

#### F. Survival Rights

Provisions of this Article shall survive termination of this Agreement.

### ARTICLE XII: INTELLECTUAL PROPERTY RIGHTS

RESERVED.

ARTICLE XIII: TITLE AND DISPOSITION OF PROPERTY

A. Definitions

In this Article, "property" means any tangible personal property other than property actually consumed during the execution of work under this Agreement.

B. Title to Property

No significant items of property are expected to be acquired under this Agreement by KPMG. (b) (4) [REDACTED]

ARTICLE XIV: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of KPMG and the ACC-APG-Orlando Agreements Officer designated in this Agreement. By executing this agreement, KPMG affirms that it is a non- traditional defense contractor, small business, traditional defense contractor with significant non- traditional defense contractor participation or a traditional defense contractor providing a 1/3 cost share and, as a result, is eligible to be awarded this Agreement.

ARTICLE XV: MISCELLANEOUS

A. Security. The Recipient shall not develop and/or handle classified information in the performance of this Agreement. No form DD254 is currently required for this Agreement.

B. Entire Agreement. This Agreement, inclusive of the proposal, proposal revisions, proposal attachments, constitutes the entire Agreement between the Parties concerning the subject matter hereof and supersedes any prior understandings or written or oral

Agreement relative to said matter.

C. Waiver of Rights. Any waiver of any requirement contained in this Agreement shall be by mutual agreement of the Parties hereto. Any waiver shall be reduced to a signed writing and a copy of the waiver shall be provided to each Party. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party hereto.

D. Liability. No Party to this Agreement shall be liable to the other Party for any property consumed, damaged, or destroyed in the performance of this Agreement, unless it is due to the negligence or willful misconduct of the Party or an employee or agent of the Party.

E. Non-Assignment. This Agreement may not be assigned by any Party except by operation of law resulting from the merger of a Party into or with another corporate entity.

F. Severability. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision, or section shall not affect any of the remaining clauses, provisions, or sections herein, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision, or section had not been contained herein.

G. Force Majeure. Neither Party shall be in breach of this Agreement for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that Party. If such a force majeure event occurs, the Party unable to perform shall promptly notify the other Party and shall in good faith maintain such partial performance as is reasonably possible and shall resume full performance as soon as is reasonably possible.

H. Foreign Access to Data. The Parties will comply with any applicable U.S. export control statutes or regulations in performing this Agreement.

(b) (4)  
[Redacted text block]

J. Choice of Law. This Agreement and the resolution of disputes hereunder will be governed, construed, and interpreted by the statutes, regulations, and/or legal precedent applicable to the Government of the United States of America. Unless explicitly stated, the Parties do not intend that this Agreement be subject to the Federal Acquisition Regulation, or any other US Government grant or procurement regulation, either directly or indirectly or by operation of law. When a specific FAR or other procurement regulation requirement is incorporated by reference in this Agreement, the text of the clause alone will apply without application or incorporation of other provisions of these regulations.

**ATTACHMENT 01 - pOTA**

**OTHER TRANSACTION AUTHORITY FOR PROTOTYPE AGREEMENT**

**BETWEEN**

**KPMG LLP (Awardee)  
8350 Broad Street Suite 900  
McLean, VA 22102-5150  
DUNS Number: 080298309  
CAGE Code: 7QEG9**

**And**

**ACC-APG ORLANDO CONTRACTING DIVISION (Government)  
12423 Research Parkway  
Orlando, FL. 32826**

**Effective Date: 1 March 2021**

**Agreement Number: W912CG-21-9-0001**

**Total Amount of the Agreement: \$150,000,000.00**

**Total Government Funding for the Agreement: \$75,000,000.00**

**Authority: 10 U.S.C . § 2371b, Section 815 of the 2016 National Defense Authorization Act, P.L 114-92, as amended.**

1 March 2021

KPMG LLP  
8350 Broad Street Suite 900  
McLean, VA 22102-5150

Re: Letter Agreement for Monoclonal Antibody (mAb) Therapeutics Infusion  
Capacity for COVID-19 (Nationwide Community COVID-19 mAb Infusion  
Centers

Dear Sir/Ma'am:

Pursuant to 10 U.S.C. § 2371b, the U.S. Government is issuing this letter agreement to KPMG through the Army Contracting Command on behalf of the Joint Program Executive Office for Chemical, Biological, Radiological and Nuclear Defense and the Biomedical Advanced Research and Development Authority. This letter agreement is effective upon execution by both parties and will remain in effect until delivery of the product required under this letter agreement, replacement by a definitive agreement, or earlier termination by either party as described below.

In response to the worldwide COVID-19 pandemic and Public Health Emergency caused by the novel coronavirus SARS-CoV-2, the U.S. Government has committed to developing safe and effective treatments against the virus – and securing the availability of these therapeutics for patients. A priority effort for the US Government remains to advance therapeutics that “attack the virus” for non-hospitalized patients. By treating patients in the early stages of the disease, these therapeutics can prevent hospitalization by decreasing the demand and burden on the nation’s hospitals. (b) (4)

[Redacted text block]

(b) (4)

[Redacted text block]

(b) (4)

[Redacted text block]

(b) (4) [Redacted]

The parties understand there are inherent uncertainties and, therefore, KPMG shall use commercially reasonable efforts to successfully perform the Prototype Project pursuant to the Statement of Objectives included as Attachment A. KPMG is a traditional defense contractor, it proposes the use of one or more nontraditional defense contractors as defined in 10 U.S.C. § 2302(9) to participate in the Prototype Project to a significant extent.

The parties agree that issuing this letter agreement is necessary to initiate resource planning in order to meet the project goals defined above. The maximum amount for which the Government shall be liable if this letter agreement is terminated is the amount obligated by this agreement or by an amendment to the agreement. The initial amount obligated for this agreement is \$75,000,000.00. The parties agree to begin promptly negotiating the terms of a definitive prototype Other Transaction Agreement pursuant to 10 U.S.C. 2371b that will include all conditions required by law on the date of execution of the definitive agreement and any other mutually agreeable clauses, terms, and conditions. The definitive agreement resulting from this undefinitized action will include a negotiated Cost Reimbursable price. In addition, within 30 days of issuance of this letter agreement, the parties intend to establish mutually agreeable detailed requirements for reporting, such as biweekly meetings, monthly technical reporting, Integrated Master Schedule (“IMS”) submissions, (b) (4)

[Redacted]

in (b) (4)

Pending definitization, any such requirements will be enforceable only pursuant to a mutually agreed to written amendment to this letter agreement.

(b) (4) [Redacted]

The agreement shall be governed by all clauses required by law as of the date of the Agreement Officer’s determination; and to the extent agreed to by KPMG, specific terms and conditions proposed by Office of the Secretary of Defense, BARDA, and OWS (including OPSEC and other security clauses); and any other clauses, terms, and conditions mutually agreed upon.

(b) (4) [Redacted]

Until this agreement is fully funded, KPMG may cease performance under this agreement if the cost of KPMG’s performance exceeds the funds obligated to the agreement. KPMG shall notify the Agreements Officer in writing at least 60

days in advance of KPMG's intent to cease performance under the prior sentence in order to provide the Agreements Officer with sufficient opportunity to obligate additional funding to this agreement if appropriate. KPMG must give notice to the government when its cost of performance have reached 75% of the amount obligated.

The Government may terminate this agreement for any or no reason by providing at least thirty (30) calendar days' prior written notice to the Awardee. Upon termination, the Awardee will stop work and make all reasonable efforts necessary to minimize additional costs incurred under the contract. The Government and Awardee will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination by the Government for convenience, consistent with the terms of this agreement. Settlement of costs that have not been accepted under this agreement shall be determined on the basis of the FAR 52.249-6(h).

With the exception of the Government's obligation to pay KPMG for costs incurred and work performed in accordance with the terms of this agreement, neither party will have further obligations under this letter agreement (b) (4)

Within fifteen (15) days of any termination under this paragraph, KPMG shall provide any outstanding deliverables contemplated under this letter agreement in KPMG's possession on the date of termination; and shall also, to the extent it has legal rights to do so, on the date of termination.

Any technical data, as defined in 48 C.F.R. § 252.227-7013(a)(15), generated in connection with the performance of work under this letter agreement, (b) (4), shall be owned by KPMG. For any data generated using U.S. Government funding in connection with the performance of work under this letter agreement, the U.S. Government shall have government purpose rights for use and activities in connection with SARS-CoV-2 with an obligation to limit disclosure of such information outside the U.S. Government to contractors that have entered into an agreement with the U.S. Government that includes 48 C.F.R. § 52.227-7025 or to a recipient that has entered into the use and non-disclosure agreement set forth in 48 C.F.R. § 227.7103-7; provided that rights for specific deliverables may be modified in the subsequent Statement of Work.

KPMG shall indemnify the U.S. Government and its officers and employees against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, directly arising out of this letter agreement, provided that the Government promptly notifies KPMG in writing of such claims and proceedings. In the unlikely event that an invention is conceived or first actually reduced to practice in the performance of this agreement ("Agreement Invention"), ownership of any Agreement Invention, regardless of whether it is not patentable, or is patentable under U.S. patent law that is conceived or first reduced to practice under this agreement will follow inventorship in accordance with U.S. patent law. (b) (4)

The Comptroller General of the United States will have access to and the right to examine records, as required by 10 U.S. Code § 2371b, of any entity that performs activities under this



letter agreement to the extent that such records directly pertain to, and involve transactions relating to, this letter agreement. (b) (4)

Notwithstanding the foregoing, this right will not apply with respect to any entity that performs activities under this letter agreement to the extent that an entity has not entered into an agreement providing such a right in the year prior to performing such activities. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. Additionally, the Agreement Recipient shall maintain and the Agreements Officer, or an authorized representative of the Agreements Officer, shall have the right to examine and audit all timekeeping and expense records as determined necessary by the Agreements Officer in the course of administering the agreement. Additionally, the Agreement Recipient shall maintain and the Agreements Officer, or an authorized representative of the Agreements Officer, shall have the right to examine and audit all timekeeping and expense records, as well as any other records determined necessary by the Agreements Officer to ensure costs reimbursed are reasonable, allocable, and allowable. This right of examination shall include inspection at all reasonable times of Agreement Recipient's facilities, or parts of them, engaged in performing the agreement.

For any disagreement, claim, or dispute arising under this agreement, the parties shall communicate with one another in good faith and in a timely and cooperative manner. Whenever disputes, disagreements, or misunderstandings arise, the parties shall attempt to resolve the issue by discussion and mutual agreement as soon as practicable. Failing resolution by mutual agreement, the aggrieved party shall request a resolution in writing from the AO. The AO will review the matter and render a decision in writing within thirty (30) calendar days. (If the AO fails to render a decision in writing within thirty (30) days of request, the request shall be deemed to have been denied.) Thereafter, either party may pursue a dispute at a court of competent jurisdiction at any time. The parties intend for the U.S. Court of Federal Claims to have jurisdiction over disputes under this letter agreement pursuant to 28 U.S.C. § 1491(a)(1). As contemplated by 28 U.S.C. § 2516(a), this letter agreement provides for the payment of prejudgment interest from the date on which a claim accrues.

Confidentiality of Contractor Records. During the performance of this Agreement, KPMG may submit confidential commercial and financial information to the Government. The Government acknowledges and agrees that it will treat any information that KPMG identifies as confidential commercial and/or financial information and withhold said information to the fullest extent permitted by federal law. Before releasing any KPMG-furnished record in response to a Freedom of Information Act request, the Government will notify KPMG in writing so that KPMG can identify any confidential commercial or financial information that is contained in the record prior to release.

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Sincerely,

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Agreements Officer

\* \* \*

By signing below, the representatives of each party to this letter agreement confirm that they have authority to bind the party that they represent. The government further confirms that it has the legal authority under 10 U.S.C . § 2371b to enter into this agreement on an OTA basis, and that it has obtained written approval from all necessary parties within the government to enter into this agreement on an OTA basis. This letter agreement may be executed in one or more counterparts, each of which will be deemed an original and together will constitute one agreement. This letter agreement may be executed and transmitted electronically in PDF format.

KPMG	(b) (4)	U.S. G	(b) (6)
Signed:		Signe	(b) (6)
Date:		Date:	

**STATEMENT OF OBJECTIVES**  
**for**  
**Monoclonal Antibody (mAb) Therapeutics Infusion Capacity for COVID-19**

**PREAMBLE**

Independently, and not as an agent of the Government, the Awardee shall furnish all necessary services; qualified professional, technical and administrative personnel; and material, equipment and facilities not otherwise provided by the Government under the terms of this agreement, as needed to perform the tasks set forth below.

**BACKGROUND/DESCRIPTION**

**Project Objective:** Assistant Secretary for Preparedness and Response (ASPR) has an urgent requirement for the development of a novel prototype process to create a standard and consistent operational model for Monoclonal antibodies (mAbs) infusion center capabilities to COVID-19 positive patients in high-risk communities within the United States. (b) (4)

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**Background:** In December 2019, a novel coronavirus now known as SARS-CoV-2 was first detected in Wuhan, Hubei Province, People’s Republic of China, causing outbreaks of the coronavirus disease COVID-19, which has since spread globally. The Secretary of Health and Human Services declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. On March 13, 2020, the President of the United States, pursuant to sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.) and consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5), declared the COVID-19 outbreak in the United States a national emergency beginning March 1, 2020. (b) (4)

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**Objective to Increase Administration of mAbs:** The objective of this prototype project is to develop a novel prototype process to create a standard and consistent operational model for establishing Monoclonal antibodies (mAbs) infusion center capabilities to COVID-19 positive patients in high-risk communities within the United States. (b) (4)

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**Project Management:**

- The Awardee is responsible for the overall management of the project development and related project decisions. The Government will have continuous involvement with the Awardee through oversight and coordination, as specified below.
  - Monthly Status Meetings: The Awardee’s Project Manager (PM), and Assistant Project Manager (APM) shall convene monthly with the Government Oversight Team to discuss the status of the project & review the submitted monthly report. This meeting shall coincide with the submission of the monthly reports, & should occur mid-month accordingly.
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- The Awardee shall designate a Project Manager responsible for facilitating the



communications, reporting, and meetings between the Parties. The Awardee shall also designate an alternate to the Project Manager, in case the primary Project Manager is unavailable.

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**POTA ATTACHMENT A: STATEMENT OF WORK**

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# 1 SCOPE

## 1.1 Background

In December 2019, a novel coronavirus now known as SARS-CoV-2 was first detected in Wuhan, Hubei Province, People’s Republic of China, causing outbreaks of the coronavirus disease COVID-19, which has since spread globally. The Secretary of Health and Human Services declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. On March 13, 2020, the President of the United States, pursuant to sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.) and consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5), declared the COVID-19 outbreak in the United States a national emergency beginning March 1, 2020.

The Public Readiness and Emergency Preparedness Act (PREP Act), 42 U.S.C. § 247d-6d, and the 2020 Declaration issued by the Secretary of the U.S. Department of Health and Human Services in relation to COVID-19, as published at 85 Fed. Reg. 15198 (Mar. 17, 2020), and as subsequently amended, provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the design, manufacture, distribution, administration, or use of “Covered Countermeasures.”

Throughout the COVID-19 response, the US Federal Government (USG) has committed to developing safe and effective treatments against the virus—and securing the availability of these therapeutics for patients. A priority effort for the US Government remains to advance therapeutics that “attack the virus” for non-hospitalized patients. The Government has concluded that by treating patients in the early stages of the disease, these therapeutics can prevent hospitalization by decreasing the demand and burden on the nation’s hospitals.

Monoclonal Antibodies (mAbs) are antibodies developed in laboratory settings to aid in the body’s immune response to fight the infection. The Government notes that early evidence shows their potential efficacy in indirectly neutralizing the COVID-19 virus in outpatient settings and in preventing the progression of the disease. In November 2020, the U.S. Food and Drug Administration issued an emergency use authorization (EUA) for Bamlanivimab (Eli Lilly) and Casirivimab / Imdevimab (Regeneron). Although these products received EUA, they are still investigational and ongoing studies are being performed to see if they are safe and effective. Administering these therapeutics together may be effective in treating patients with mild or moderate COVID. The current guidelines on administration and ability to execute mAb administration across a wide variety of models have been limited.

## 1.2 Project Objectives

The goal of the U.S. Government (USG) is to develop a novel prototype process to create a standard and consistent operational model for establishing mAbs infusion center capabilities to high risk Coronavirus Disease (COVID)-19 positive patients in underserved and disadvantaged communities across the United States (US).

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**2 REQUIREMENTS**

**2.1 Program Management**

The contractor shall establish and maintain management operations that shall include the following areas.

**2.1.1 Program Planning and Control**

Contractor is responsible for the overall management of the project. Contractor shall maintain a project plan and an approach to track progress against plan. The Government will have continuous involvement with the Contractor through oversight, coordination and decision making. The Contractor will submit a Monthly Progress Report by the 10<sup>th</sup> of the month that includes the previous month's notable progress, issues encountered, project risks and mitigations taken to reduce risks. The Contractor shall submit a Monthly Expenditure Report by the 10<sup>th</sup> of the month that includes incurred and projected costs through the end of the period of performance. Contractor shall designate a Project Manager (PM) responsible for facilitating planning, communications, reporting and meetings. Contractor shall designate an Alternate Project Manager (APM) in case the primary Project Manager is unavailable. The PM and APM shall convene monthly with the Government Oversight Team to discuss the status of the project and review the submitted Monthly Progress Report and Expenditure Report. This meeting shall coincide with the submission of the monthly reports and should occur mid-month accordingly.

**2.1.2 Risk Management**

The Contractor shall develop a Risk Management Plan that is updated, as appropriate, throughout the period of performance. Contractor shall utilize internal risk management capabilities to manage project risks, and report changes to identified risks as they occur/arise. The Contractor shall identify all anticipated project risks categorized as moderate or high and report them to the Government in a Monthly Risk Register.

**2.1.3 Subcontractor Management**

Contractor shall develop a standardized process for the selection and managing subcontractors needed to support the prototyping efforts locally and nationally. Contractor shall specify the approach to surveilling and maintaining subcontractor quality throughout the period of performance.

**2.1.4 Quality Assurance Surveillance Plan (QASP)**

The Contractor shall develop a QASP that sets forth procedures and guidelines that the Government will use in evaluating the technical performance of the Contractor. The QASP further clarifies the standards which will be employed by the Government in the inspection and acceptance of the services to be provided by the Contractor.

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