Appendix A: Contract Terms and Conditions

1. Payment

MACPAC shall pay the Contractor within 30 days of submission of a proper invoice, the prices stipulated in this contract for work delivered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract. See Section 5.c. of the contract for administrative information on invoices.

2. Notice Regarding Late Delivery

In the event the Contractor encounters difficulty in meeting performance requirements or anticipates difficulty in complying with the contract delivery schedule or date, the Contractor shall immediately notify the Contracting Officer and Contracting Officer's Representative thereof in writing, giving pertinent details, including the date by which he/she expects to complete performance or make delivery; provided, however, that this data shall be informational only in character and that receipt thereof shall not be a waiver by MACPAC of any contract delivery schedule or date, or any rights or remedies provided by law or under this contract.

3. Excusable Delays

The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the U.S. Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers.

The Contractor shall notify the Contracting Officer and Contracting Officer's Representative in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer and Contracting Officer's Representative of the cessation of such occurrence.

If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of MACPAC under the termination clauses (Clauses 12 and 13) of this contract.

4. Inspection and Acceptance

a. The Contractor shall only tender for acceptance deliverables that conform to the requirements of this contract. MACPAC reserves the right to inspect any deliverables that have been tendered for acceptance. MACPAC may require repair or replacement of nonconforming deliverables or reperformance of nonconforming services at no increase in contract price. If correction or reperformance will not correct the defects or correction is not possible, MACPAC may seek an equitable price reduction or adequate consideration for acceptance of nonconforming deliverables.

b. MACPAC, through any authorized representative, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder either at MACPAC or on the premises on which it is being performed, at the election of MACPAC. All records of project-related inspections performed shall be retained and made available to MACPAC upon request throughout the contract performance period and for a period of three (3) years after contract completion or until final settlement of any claims under this contract, if such claims are still ongoing more than three (3) years after contract completion.

c. MACPAC has thirty (30) working days (not counting weekends and Federal holidays) after the date on which the deliverables denoted in Attachment A, Statement of Work, are delivered to accept, conditionally accept, or reject any deliverables. A notice of conditional acceptance shall state any corrective action required by the Contractor. If the deliverable is rejected, the Contractor may be

required, at the option of MACPAC, to correct any or all of the deficiencies at no additional cost to MACPAC. MACPAC may take action on the corrected deliverable within the time frame specified. The Contracting Officer's Representative shall be responsible for receipt of all deliverables.

d. If MACPAC determines that the terms of this contract are satisfied, final payment shall be made to the Contractor in accordance with the terms of this contract. If MACPAC determines that the deliverable does not adequately address the written comment(s) provided by MACPAC on the deliverable, MACPAC shall notify the Contractor of the precise comments that need further consideration, and the Contractor shall have ten (10) working days (not counting weekends and Federal holidays) from the date the Contractor receives that notification to modify and resubmit the final deliverable to MACPAC, at no additional cost to MACPAC.

5. Audits and Records

a. **Records.** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

b. **Cost or pricing data.** "Cost or pricing data" means all facts that, as of the date of agreement on the price of the contract (or the price of a contract modification), unless the parties have agreed to another date, a prudent buyer or seller would reasonably expect to affect price negotiations, consistent with Title 41, United States Code, Section 301(a)(1). If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer and Contracting Officer's Representative, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit the Contractor's records, including computations and projections, specifically related to:

1) The proposal for the contract, subcontract, or modification;

2) The discussions conducted on the proposal(s), including those related to negotiating;

3) Pricing of the contract, subcontract, or modification; or,

4) Performance of the contract, subcontract, or modification

c. **Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer and Contracting Officer's Representative shall have the right to examine and audit the project related supporting records and materials for the purpose of evaluating the data reported.

d. **Availability.** The Contractor shall make available at its office at all reasonable times the project related records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until three years after final payment under this contract or for any shorter period or for any longer period required by statute or by other clauses of this contract. In addition:

1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three years after any resulting final termination settlement; and

2) The Contractor shall make available records relating to appeals under Disputes (Clause 14) or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

e. **Subcontracts.** The Contractor shall insert a clause containing all the terms of this clause in all subcontracts under this contract that exceed the simplified acquisition threshold, and:

1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

2) For which cost or pricing data are required; or

3) That requires the subcontractor to furnish reports as discussed in paragraph (c) of this clause.

This clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the MACPAC prime contract.

6. Procurement of all Materials, Data, and Services

a. MACPAC generally arranges for the Contractor to obtain data files from Centers for Medicare & Medicaid Services (CMS), states, other government entities, and other vendors. Except as otherwise provided herein, procurement of all other materials, data, and services necessary for performance under the terms of this contract shall be the responsibility of the Contractor.

b. If deemed necessary and at its discretion, MACPAC will provide the Contractor with licenses for specialized software necessary to perform specific analytic tasks (e.g., SAS, GIS software, encryption software, etc.). The Contractor shall identify the need for such software as it relates to specific tasks.

c. If appropriate and necessary to complete the projects in the Schedule A, Statement of Work and Deliverables Schedule, MACPAC will provide the Contractor with a license for the appropriate software to allow connectivity to MACPAC's computer network.

d. Interview requests must be sent on MACPAC letterhead and signed by MACPAC's executive director. The Contractor shall obtain MACPAC letterhead from the COR for this purpose.

e. All data, materials, and software provided by MACPAC to contractors are owned by MACPAC and shall be returned and securely removed from contractor systems at the end of the contract period.

f. All data and materials provided by MACPAC shall not be further disclosed by the Contractor without express written permission from MACPAC, except when and until after MACPAC includes such data or materials in a publicly-available report. The Contractor shall take reasonable steps to safeguard all data provided by MACPAC from unauthorized access or release.

7. Availability of Funds

MACPAC's obligation under this contract is contingent upon the availability of funds from which payment for contract purposes can be made. Except for the amount funded by this contract or subsequent modification, no legal liability on the part of MACPAC for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer through a Letter of Intent.

In the event future funds are not available, MACPAC shall notify the Contractor immediately upon MACPAC's receipt of such notification. Should such funds become unavailable, this contract may be terminated pursuant to Clause 13.

8. Confidential Information

a. The term "Confidential Information" refers to information of any kind which is delivered to the receiving party from the disclosing party which, by appropriate marking, is identified as confidential or proprietary at the time of disclosure. In the event that Confidential Information must be provided visually or orally, obligations of confidence shall attach only to that information which is identified as confidential at the time of disclosure and subsequently confirmed by the disclosing party in writing within twenty-one (21) days as being confidential. Confidential Information delivered by MACPAC to the Contractor shall be delivered to the Contractor's Principal Investigator or their designee.

b. For a period of three (3) years after receipt of Confidential Information, the receiving party shall use a standard of care no less than the protection given its own confidential information, and shall use Confidential Information disclosed to it hereunder, solely for the purposes as set forth under this contract. The receiving party agrees to make Confidential Information disclosed to it hereunder available only to those employees, including students and interns, who require access to it in the performance of this contract, and to inform them of the confidential nature of such information.

c. It is also agreed that obligations of confidentiality shall not apply to Confidential Information that:

   1) was known to the receiving party prior to the date of disclosure;

2) is at the time of subsequent disclosure by the receiving party generally known or becomes available to the public through no fault of the receiving party;

3) becomes known to the receiving party from a third party having an apparent bona fide right to disclose the information;

4) is authorized in writing by the disclosing party for further disclosure by the receiving party;

5) is independently developed by the receiving party without reference to Confidential Information received from the disclosing party; or

6) is required to be disclosed by the receiving party pursuant to law, regulation, or valid court order, provided, however, that the receiving party must limit such disclosure to that required by law.

9. News Releases/Endorsements/Advertising/Publications

Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

a. The Contractor shall not use the name of MACPAC in any advertising, promotional, or any other materials, in such a manner as to state or imply that the products or services provided are endorsed by, preferred by or are considered by MACPAC to be superior to other products or services, without the prior written approval of the party whose name is requested to be used. No news release, press conference, or advertisement pertaining to this contract will be distributed or broadcast without prior written approval by MACPAC.

b. The Contractor agrees that in the release of information concerning or resulting from this contract, such release shall include a statement to the effect that the project is sponsored by MACPAC, and a disclaimer that views expressed do not necessarily represent those of MACPAC.

c. MACPAC requires the Contractor to include the following notice when referring to sponsorship: “The research underlying this [article] was completed with support from the Medicaid and CHIP Payment and Access Commission (MACPAC). The findings, statements, and views expressed are those of the authors and do not necessarily represent those of MACPAC.” The Contractor must:

1) Submit all such publications to MACPAC for review and comment prior to the intended independent dissemination; and

2) The Contractor shall consider in good faith MACPAC’s comments prior to publication.

10. Rights in Data

a. MACPAC shall have unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in Clause 20, Copyright. Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

b. To assure that information, data, statistics, analytical material, or any other material developed with MACPAC support is of high quality, comprehensive, timely, and adequately analyzed, except as otherwise provided in this contract, MACPAC must, prior to dissemination by the Contractor, review all reports, presentations, or other disclosures that contain information, statistics, analytical material, or any other material, which is based on or derived from work performed under this contract. Accordingly, the Contractor will not publish, have published, or otherwise disseminate any material resulting or derived from the work performed for MACPAC-funded research, until one of the following conditions has occurred:

1) MACPAC has published the results of the research; or

2) more than twelve (12) months have passed from the date of submitting the final deliverable defined within the Statement of Work, subject to the following additional conditions:

   a) The publication is approved by the Contracting Officer and the Contractor complies with any conditions or limits on publication in the Contracting Officer's approval. Such approval, denial, and/or any conditions or limits on the proposed publication are at the sole discretion of MACPAC.

   b) The Contracting Officer will provide notification of approval or denial of the publication request within 45 days of receipt of the publication request. In the event the Contracting Officer has not responded within 45 days from the receipt of the publication request, the Contractor may publish, present, or otherwise disclose the material contained in the publication request. However, the Contractor must print prominently on the publication, or any portion of it which may be released, or state verbally prior to any oral disclosure of any data or work performed under this contract, the following disclaimer:

      "THIS REPORT [or other appropriate description of the publication] HAS NOT BEEN APPROVED BY THE MEDICAID AND CHIP PAYMENT AND ACCESS COMMISSION."

   c) The date of receipt of a publication request is the date the Contracting Officer receives the request at MACPAC's offices. The request must include all material proposed for publication in the final form proposed for release by the Contractor.

c. Whenever data or analyses are to be developed by a subcontractor under this contract, the Contractor must include the terms of this section in the subcontract, without substantive alteration, and with a prohibition on the subcontractor engaging in further assignment of its obligations to the Contractor. No clause may be included to diminish MACPAC's restriction on publication and dissemination of work or material derived from work performed under this contract.

d. Where data and other information provided by MACPAC to the Contractor comes from CMS (or any other federal or state entity), the Contractor agrees to abide by, and when requested by MACPAC, execute, applicable data use agreements (or comparable documents).

e. If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

f. Research and analysis funded under this contract may be published by MACPAC, at its discretion, as an official MACPAC report. An official government report is a work of the U.S. Government and not eligible for copyright protection.

11. Governing Law

The law of the United States will apply to resolve any claim of breach of this contract.

12. Termination for Default

a. The Contracting Officer may, by written notice of default to the Contractor, and after reasonable discussion with the Contractor, terminate this contract in whole or in part when it is in the best interest of MACPAC and if the Contractor fails to:

   1) Use best efforts to perform the services in accordance with the agreed upon Statement of Work at Attachment A; or

   2) Reasonably perform any of the other provisions of this contract.

b. MACPAC's right to terminate this contract for default may be exercised if the Contractor does not cure such default within ten (10) days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the default. The Contractor shall stop

performing services on the date specified in such notice. In the event of such termination, MACPAC shall pay the Contractor for completed supplies and services delivered and accepted up to the time at which such notice directed the Contractor to stop work. However, the Contractor may continue the work not terminated.

c. If this contract is terminated for default, MACPAC may require the Contractor to transfer title and deliver to MACPAC, as directed by the Contracting Officer, any deliverables developed in accordance with the agreed upon Statement of Work for the terminated portion of this contract. Contractor shall return to MACPAC any data or other research material provided to Contractor for the performance of the agreed upon Statement of Work within 10 business days.

d. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of MACPAC. The rights and remedies of MACPAC in this clause are in addition to any other rights and remedies provided by law or under this contract.

13. Termination for Convenience

a. MACPAC may terminate performance of work under this contract in whole or, from time to time, in part, for any reason. The Contracting Officer shall promptly deliver to Contractor a Notice of Termination specifying the extent of termination and the effective date.

b. Upon receipt of a Notice of Termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

1) Stop work as specified in the notice;

2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract; and

3) Terminate all subcontracts to the extent they relate to the work terminated.

4) As directed by the Contracting Officer, transfer title and deliver to MACPAC any deliverables developed in accordance with the agreed upon Statement of Work.

5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;

6) As directed by the Contracting Officer, transfer title and deliver to MACPAC: (1) The work in process, completed work, supplies, and other material produced or acquired for the work terminated; and (2) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to MACPAC;

7) Complete performance of the work not terminated; and

8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which MACPAC has or may acquire an interest.

c. Upon termination, the Contractor shall submit a final invoice to the Contracting Officer. The Contractor shall submit the final invoice promptly, but no later than sixty (60) days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within the sixty-day period. If the Contractor fails to submit the final invoice within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined. MACPAC shall pay such invoice within thirty (30) days of receipt.

d. The amount to be paid to Contractor may not exceed the total contract price as reduced by the:

1) amount of payments previously made; and

2) contract price of work not terminated.

e. The Contractor shall have the right of appeal, under “Disputes” (Clause 14), from any determination made by the Contracting Officer, except if the Contractor failed to submit the final invoice or request for equitable adjustment pursuant to this clause, and failed to request a time extension.

f. In arriving at the amount due the Contractor under this clause, there shall be deducted the agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to MACPAC.

g. If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer during that ninety (90) day period.

h. MACPAC may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to MACPAC upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor’s termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

i. Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor’s costs and expenses under this contract. The Contractor shall make these records and documents available to MACPAC, at the Contractor’s office at all reasonable times, without any direct charge.

14. Disputes

a. All claims by the Contractor against MACPAC relating to this contract shall be in writing and shall be submitted to MACPAC’s Contracting Officer for a decision. The Contracting Officer shall issue a decision in writing within thirty (30) days from receipt of the claim, and shall mail or otherwise furnish a copy of the decision to the Contractor. The decision shall state a description of the claim or dispute and a statement of the Contracting Officer’s decision, with supporting rationale, and shall inform the Contractor of his or her rights as provided in the contract.

b. If the Contractor is not satisfied with the decision of the Contracting Officer, the Contractor may appeal any aspect of the decision to MACPAC’s Executive Director, in writing, within thirty (30) days of the date of the decision of the Contracting Officer. The Executive Director shall issue a decision regarding the dispute in writing within a reasonable time, taking into account the size and complexity of the claim.

c. Notwithstanding the above, both parties retain all available legal rights and remedies, including the Contractor’s right to appeal to the Government Accountability Office’s Contract Appeals Board.

d. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

15. Option to Extend Services

The parties may agree to extend the period of performance of the contract. The Contracting Officer may exercise such option by sending written notice to the Contractor at least thirty (30) days prior to the

contract completion date. If the parties agree, the extended contract shall be considered to include this option clause. The total duration of this contract, including the exercise of any option under this clause, shall not exceed one (1) year.

16. Key Personnel

a. The Contractor agrees to assign to this contract those individuals listed in its proposal as key personnel since these individuals would be considered essential to the successful performance of the work. No substitutions for key personnel shall be made except in accordance with this clause.

b. The Contractor agrees that, during the first thirty (30) days of the contract performance period, no personnel substitutions will be permitted unless such substitutions are necessitated by an individual's sudden illness, death, or termination of employment. After the first thirty (30) days, all proposed substitutions must be submitted to the Contracting Officer in writing, at least fifteen (15) days in advance of the proposed substitutions.

c. Each request for approval of substitutions under this contract must be in writing and provide a detailed explanation of the circumstances necessitating the proposed substitutions. The request must contain a complete resume for the proposed substitute, and any other information requested by the Contracting Officer in order to approve or disapprove the proposed substitutions. All substitutions proposed during the duration of this contract must have at least substantially equal ability and qualifications of the person being replaced. The Contracting Officer or the Contracting Officer's authorized representative will evaluate such requests and notify the Contractor within five (5) business days of approval or disapproval thereof in writing. No charges for substituted key personnel will be authorized until the approval is granted.

d. If the Contracting Officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated or have otherwise become unavailable for the contract work is not reasonably forthcoming or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract, the contract may be terminated by the Contracting Officer for default or for the convenience of the U.S. government, as appropriate. In addition, if the Contractor is found at fault for the condition, the Contracting Officer may elect to equitably decrease the contract price or fixed fee to compensate the U.S. government for any resultant delay, loss or damage.

17. Subcontracts

a. Should the Contractor enter into any subcontract post-award to accomplish work required under this contract, the Contractor shall notify the Contracting Officer at least fifteen (15) days in advance.

b. Authorized subcontracts shall be made in the name of the Contractor and shall not bind nor purport to bind MACPAC. The making of subcontracts hereunder shall not relieve the Contractor of any requirement under this contract, including, but not limited to, the requirements of Section 16, Key Personnel.

18. Government Contractor Relationships

a. The Contractor and MACPAC understand and agree that the support services to be delivered under this contract by the Contractor are non-personal services, and the parties recognize and agree that no employer-employee relationships exist or will exist under the contract between MACPAC and the Contractor and between the Contractor's employees. It is therefore in the best interest of MACPAC to afford the parties a full and complete understanding of their respective obligations.

b. Contractor personnel under this contract shall not:

1) Be placed in a position where they are appointed or employed by a federal employee or are under the supervision, direction, or evaluation of a federal employee;

2) Be placed in a staff or policy-making position at MACPAC; or

3) Be placed in a position of supervision, direction, or evaluation over MACPAC personnel, or personnel of other Contractors, or become a part of a U.S. Government organization.

c. **Employee Relationship.** Rules, regulations, directions, and requirements, which are issued by MACPAC management under their responsibility for good order, administration and security are applicable to all personnel who enter a U.S. Government installation. This is not to be construed or interpreted to establish any degree of Government control, which is inconsistent with a non-personal services contract.

19. Compliance with Laws

The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this contract. The Contractor further agrees to hold MACPAC harmless from any and all liabilities, claims, fines, penalties, including reasonable costs, and settlements, which may arise out of the delivery by the Contractor of goods or supplies or the furnishing of services that do not meet the requirements of any applicable laws or regulations.

20. Copyright

a. **Data first produced in the performance of this contract.**

1) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When claim to copyright is made, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of MACPAC's sponsorship (including contract number) to such data when delivered to MACPAC, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to MACPAC, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of MACPAC.

2) If MACPAC desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (a)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to MACPAC or its designated assignee.

b. **Data not first produced in the performance of this contract.** The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to MACPAC, or acquires on its behalf, a license of the same scope as set forth in paragraph (a)(1) of this clause.

21. Disclaimer of Warranties

Any information, materials, services, resources, intellectual property or other property or rights granted, granted access to, or provided by the Contractor pursuant to this contract (hereinafter the "deliverables") are on an "as is" basis, in compliance with the agreed upon Statement of Work. Neither the Contractor nor MACPAC makes any warranties of any kind, either expressed or implied, as to any matter including but not limited to, warranty of fitness for a particular purpose, merchantability, exclusivity or results obtained from deliverables, including but not limited to, any use of any intellectual property developed under the sponsored research agreement, nor shall either party hereto be liable to the other for indirect, special, or consequential damages such as loss of profits or inability to use said intellectual property or any applications and derivations thereof. Neither the Contractor nor MACPAC makes any warranty of any kind with respect to infringement, and does not assume any liability hereunder for any infringement of any patent, trademark, or copyright arising from the use of the deliverables or rights granted or provided by it hereunder. MACPAC agrees that it will not make any warranty on behalf of the Contractor expressed or implied, to any person concerning the application or the results to be obtained with the deliverables under this contract.

22. Conflict of Interest

To the best of its knowledge, Contractor represents and certifies that performance of the work under this contract does not create any conflict of interest with Contractor's other business undertakings. The Contractor agrees to avoid actual or potential conflicts of interest or organizational conflicts of interest in fulfilling this contract and to promptly and fully disclose to the Contracting Officer any actual or potential conflict of interest or organizational conflict of interest upon acquiring knowledge of such actual or potential conflict of interest. The Contractor agrees that to avoid actual or potential conflicts of interest, any employee or subcontractor of the Contractor who is currently a MACPAC Commissioner shall not be bid in this contract nor participate in any of the tasks under this contract.

23. Artificial Intelligence

a. The Contractor may use Artificial Intelligence (AI) systems, as defined at 41 USC 9401(3), in conjunction with this Contract as outlined in the Statement of Work. The Contractor must notify the Contract Officer of any AI systems used and what portions of the deliverable, including any data or analysis, have been generated by AI or based upon AI inputs.

b. Unless otherwise stated in the Statement of Work, the Contractor may use AI only for administrative tasks. The Contractor acknowledges MACPAC is hiring the Contractor to conduct and provide in-depth analysis based on the Contractor's qualifications. Except as stated in the Statement of Work, the Contractor will not use AI to conduct such analysis.

c. To the extent the Contractor uses AI, the Contractor must ensure the AI captures and maintains data consistent with the confidentiality requirements and non-disclosure requirements contained in this contract. The Contractor is responsible for guaranteeing any AI system it uses safeguards information and will provide information on such safeguards if requested by MACPAC.

d. The Contractor is responsible for the integrity, quality, reliability, and accuracy of any data, information, or analysis generated by any AI systems utilized. The Contractor shall not rely on AI-generated data or analysis for which it cannot validate the integrity, quality, reliability, and accuracy.

e. Section 10, Rights in Data, above, includes data and analysis supplied by the Contractor, even if generated by AI systems. The Contractor should not use AI systems, the data or analysis from which are not compliant with Section 10. Further, the Contractor certifies that any data, information, analysis or other material from AI systems it uses comply with Section 20, Copyright, above.

24. System for Award Management (SAM)

The Contractor shall affirm that it is registered in the federal System for Award Management (SAM) and that its information in the SAM is current and valid. The contractor must maintain current and valid registration in SAM throughout the life of the contract.

25. Liability

a. The Contractor shall be liable for, and shall indemnify and hold harmless MACPAC against, all actions or claims for loss of or damage to property or the injury or death of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

b. The Contractor shall provide and maintain insurance covering its liabilities under this clause, in amounts of at least $200,000 per person and $500,000 per occurrence for death or bodily injury and $20,000 per occurrence for property damage or loss.