

Franklin & Marshall College
Global Barometer of Gay Rights®
Global Barometer of Transgender Rights™
END USER DATA USAGE AGREEMENT

1. The Franklin & Marshall Global Barometer of Gay Rights (GBGR)® and Global Barometer of Transgender Rights (GBTR)™ are owned and operated by Franklin and Marshall College (henceforth “College”) in Lancaster, Pennsylvania, USA. The College produces and maintains this research project, including research data, the research methodology, the coding handbook, any ancillary materials and know-how, technical and non-technical, present or employed in the production of this research, and the interface through which this research is presented. This End User Data Usage Agreement (henceforth “Agreement”) sets out the terms and conditions pursuant to which Registered Users of the project website, fandmglobalbarometers.org, may access the research data.

2. **DATA USE PERMISSION.** The College hereby grants Registered User non-transferable, non-exclusive, and revocable permission to access and use the GBGR® and/or GBTR™ data, as it is presented on this website, for the purposes of scholarly research, as that term is commonly understood, and analysis. Registered User agrees to solely use this data for Non-Commercial Purposes and Applications.
 - a. “Non-Commercial Purposes and Applications” shall mean the use of GBGR and/or GBTR for educational, scholarly, personal, and non-for-profit purposes that does not involve any use of the GBGR and/or GBTR:
 - i. to market, promote, or sell this research for a fee;
 - ii. to manufacture products based on this research for sale to third parties;
 - iii. for any event that incorporates a financial transaction;
 - iv. to enhance the reputational or commercial aspects of an organization;
 - v. by a Public Sector Body or an International Organization.
 - b. “Public Sector Body” shall mean any Body, corporate or otherwise, with its own legal personality governed by public law, established for the specific purposes of meeting needs in the general public interest rather than private gain, and not having an industrial or commercial character.
 - c. “International Organization” shall mean an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality.

3. **RESTRICTIONS.** Registered User agrees **NOT** to:
 - a. Publicly release, furnish, disclose, publish, or otherwise disseminate any part of the

- GBGR and/or GBTR in any form or format (disks, tapes, transcripts etc.) without prior and explicit written permission of a representative appointed by the Provost of the College, other than referencing or quoting the GBGR and/or GBTR in Registered User's reports, papers, and analyses;
- b. Disclose data to a third party, unless the disclosure is to a third party who has a strict need for access to the GBGR and/or GBTR in order to ensure the production of Registered User's reports, papers, and analyses, in which event the third party shall hold similar obligations of data use permissions and restrictions in pursuance to this Agreement;
 - c. License, sell, or sublicense any part of the GBGR and/or GBTR for any purposes that may incorporate a financial transaction, or any other considerations;
 - d. Interfere or participate in any processes to disrupt the GBGR and/or GBTR, its website, any related public platforms, including but not limited to social media, or any networks, servers, or other processes essential to the internal functioning of the GBGR and/or GBTR;
 - e. Interfere or participate in any processes to disrupt the College's operations, its website, any related public platforms, including but not limited to social media, or any networks, servers, or other processes essential to the internal functioning of the College;
 - f. Use robots, spiders, crawlers, automated devices and similar technologies to screen-scrape the site or to engage in data aggregation or indexing of the GBGR and/or GBTR other than to produce search results on a publicly available search engine.

4. USAGE FEE.

- a. Registered User shall pay no usage fee pursuant to this agreement, except for in 4b or 4c below.
- b. If the Registered User is discovered or found to have used the GBGR and/or GBTR for any purpose other than the Non-Commercial Purposes outlined in this Agreement, the College reserves the right to enforce and claim the College's current fee for commercial purposes, as well as pursue any other remedies at law. If the Registered User is found to violate the non-transferability restrictions under this Agreement, then the College reserves the right to enforce and claim the College's current fee for commercial purposes, as well as to pursue any other remedies at law arising from the GBGR and/or GBTR, or any part thereof, being made available either publicly or to a third party.
- c. If, in the event that Registered User violates this Agreement, commercial usage fees are not paid, then the Registered User's permission to use the GBGR and/or GBTR is immediately revoked.

5. REGISTERED USER RESPONSIBILITY.

- a. In the event that Registered User makes substantial use, analysis, or modification of the GBGR and/or GBTR data in producing published materials, including but not limited to scholarly articles, analysis, or reports, Registered User agrees to credit co-authorship

of any such published material to the creators of the GBGR and/or GBTR.

- b. In the event that any part of the GBGR and/or GBTR is used by Registered User, all information relating to the GBGR and/or GBTR should be cited as follows: “Dicklitch-Nelson, Susan, Berwood Yost, Scottie Thompson Buckland (2018) F&M GBGR® and GBTR™ [dataset], Lancaster, PA.”
- c. Registered User agrees to acknowledge all copyrightable materials by citing the College as the source of the information as follows: “F&M GBGR® and GBTR™, Franklin & Marshall College, fandmglobalbarometers.org”
- d. Any modifications that the Registered User makes to the GBGR and/or GBTR data, graphs or other visual representations, or other related products for published analysis must be clearly explicated and must not misrepresent the GBGR and/or GBTR, the research data, the research methodology, the coding handbook, any ancillary materials and know-how, technical and non-technical, present or employed in the production of this research, as well as any analysis produced by the GBGR and/or GBTR.
- e. Registered User shall destroy all copies of any information related to the GBGR and/or GBTR (including but not limited to any format not returnable to the College, such as copies stored in computer hardware, email communications containing the information, etc.) after the conclusion of use for non-commercial purposes. Registered User shall not make or retain any copies of any information related to the GBGR and/or GBTR without the express permission of a duly authorized representative of the College except for a single copy which the Contractor may keep for archival purposes only.
- f. In the event that Registered User is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any information related to the GBGR and/or GBTR data, Registered User shall provide the College with prompt written notice of any such request or requirement. The College may, at its own expense, seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy, Registered User is nonetheless legally compelled to disclose any information related to the GBGR and/or GBTR data to any tribunal, regulatory authority, or agency, Registered User may, without liability hereunder, disclose to such tribunal, regulatory authority, or agency only that portion of the Confidential Information which is legally required to be disclosed, provided that Registered User exercises reasonable efforts to preserve the confidentiality of the GBGR and/or GBTR data.
- g. In the event the Registered user shall have knowledge of any breach of this Agreement or the misappropriation of any part of the GBGR and/or GBTR, Registered User shall promptly provide notice thereof to the College. The College is entitled to injunctive relief and to payment of court costs or attorney’s fees that it incurs in protecting its intellectual property rights, and/or the confidentiality of any information.

6. **INTELLECTUAL PROPERTY.** Pursuant to intellectual property laws passed by the United States Congress and administered by the U.S. Patent and Trademark Office and the U.S. Copyright Office, the Registered User acknowledges that Franklin & Marshall College retains ownership of all rights, title, and interest associated with the GBGR and/or GBTR, the research methodology, the coding handbook, any ancillary materials and know-how, technical and non-technical, present or employed in the production of this research. Registered User does not have claim to any rights, title, and interest in the GBGR and/or GBTR other than those granted expressly under this Agreement.

7. **LIABILITY AND DISCLAIMER.**

- a. The College makes available the GBGR and/or GBTR on an “As Is” basis. The College disclaims any and all guarantees or representation of warranty—whether express or implied, oral or written, in fact or arising by operation of law—with respect to the GBGR and/or GBTR, including but not limited to; warranties of merchantability, satisfactory quality, fitness for a particular purpose, and non-infringement of the intellectual property or proprietary rights of any third party. The College makes no representation or warranty that the GBGR and/or GBTR will operate error free or in an uninterrupted fashion.
- b. Under no circumstances shall the College be liable for any incidental, special, punitive, exemplary or consequential damages of any kind, including lost profits or business interruption, even if advised of the possibility of such claims or demands, whether in contract, tort, or otherwise, arising in connection with Registered User’s access to and use of the GBGR and/or GBTR or in other dealings. This limitation upon damages and claims is intended to apply without regard to whether other provisions of this Agreement have been breached or proven ineffective.
- c. Every reasonable effort has been made to check sources and verify scores in the GBGR and/or GBTR; however, the College disclaims any guarantee that accounts reported in the open literature are complete and accurate. The College shall not be held liable for any loss or damage caused by errors or omissions or resulting from any use, misuse, or alteration of the GBGR and/or GBTR data by the Registered User.
- d. The College undertakes no obligation to update or provide any other version of the GBGR and/or GBTR, including research data, the research methodology, the coding handbook, any ancillary materials and know-how, technical and non-technical, present or employed in the production of this research, and the interface through which this research is presented, except for the most current version as of the Effective Date. The College may periodically update the GBGR and/or GBTR, as and when necessary and appropriate, if new documentation becomes available.
- e. Limitation of liability. Notwithstanding any other clause, the College shall not be liable to Registered User for any losses or costs that may be incurred in excess of \$1,000,000. The College considers this limitation of liability to be fair and reasonable and Registered User confirms agreement both to this view and the limitation itself by using

the GBGR and/or GBTR.

8. MISCELLANEOUS.

- a. This Agreement shall commence as of the Effective Date. Registered user's right to access the GBGR and/or GBTR and use the data, the codebook, and any auxiliary materials will take effect upon Registered user's receipt of the online agreement to this End User Data Usage Agreement.
- b. This Agreement and the exhibits attached hereto express the entire agreement between the College and the Registered User, and supersedes all prior agreements, understanding, and negotiations involving the parties, whether written or oral, consistent or inconsistent, or otherwise. This Agreement may not be amended, modified, waived, terminated or clarified except by written agreement signed by both parties.
- c. If any provision of this Agreement is determined by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable, such determination shall not affect the remaining provisions of this Agreement.
- d. This Agreement does not create a joint venture, partnership, employment, or agency relationship between the Parties.
- e. There are no third party beneficiaries to this Agreement. Registered User may not assign this agreement without the College's prior written approval.
- f. This Agreement shall be governed by and be interpreted in accordance with the laws of the Commonwealth of Pennsylvania, by whose courts all disputes arising out of or relating to this Agreement shall be determined exclusively.
- g. ***Franklin & Marshall College retains the right, at its sole discretion, to review and approve any and all informational, promotional and advertising materials that use the name, trademarks, service marks, logos, and/or representative image(s) of the College, or that describe College projects and/or define the relationship with the College; therefore, if requested, Registered User agrees to present such materials to the College prior to their distribution or publication, in accordance with the "Franklin & Marshall College photography/publishing rights and permissions policy" (posted online at www.fandm.edu).***
- h. This Agreement represents the entire agreement between the College and Registered User as outlined in the terms of paragraphs 1-8. There are no other understandings, written, oral, or otherwise, that are not included in this Agreement.