



End User Data License Agreement

This End User Data License Agreement (this "**Agreement**"), effective as of [DATE] (the "**Effective Date**"), is by and between Franklin and Marshall College, a Pennsylvania non-profit educational corporation located in Lancaster, Pennsylvania ("**Licensor**") and [LICENSEE NAME], a [STATE OF ORGANIZATION] [ENTITY TYPE] with offices located at [ADDRESS] ("**Licensee**"). Licensor and Licensee may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, the College through the F&M Global Barometers project gathers, produces and maintains information databases measuring state- and societal-level protection or persecution of sexual orientation and gender identity (SOGI) minorities worldwide, including at the Global Barometer of Gay Rights (GBGR)[®] and Global Barometer of Transgender Rights (GBTR)[™] and any other information databases described in **Exhibit A**; and

WHEREAS, the College produces reports based on these information databases, which it makes available at its project website, fandmglobalbarometers.org; and

WHEREAS, the College desires to make portions of the information databases upon which the reports are based (the "**Data**") available to others for educational, scholarly research, personal, and to promote societal awareness of human rights issues, specifically pertaining to sexual orientation and gender identity; and

WHEREAS, Licensee desires access to the **Data** from Licensor, for educational, scholarly research, personal, and to promote societal awareness of human rights issues, specifically pertaining to sexual orientation and gender identity subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. License.

(a) License Grant. Subject to the terms and conditions of this Agreement, Licensor hereby grants Licensee a non-exclusive, non-sublicensable, and non-transferable (except in compliance with Section 9(g)) license during the Term to use the Data solely for the permitted use set forth in **Exhibit A** (the "**Permitted Use**").

(b) Use Restrictions. Licensee shall only use the Data for the Permitted Use and shall not disclose, release, distribute, or deliver the Data, or any portion thereof, to any third party without Licensor's prior written consent. Any purpose or use not specifically authorized herein is prohibited unless otherwise agreed to in writing by

Licensor. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Licensee shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Data, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Data; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source of the Data or methods used to compile the Data, in whole or in part; (iv) remove any proprietary notices included within the Data; (v) publish, enhance, or display any compilation or directory based upon information derived from the Data; or (vi) use the Data in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(c) Reservation of Rights. Licensor reserves all rights not expressly granted to Licensee in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Licensee or any third party any intellectual property rights or other right, title, or interest in or to the Data.

(d) Delivery. Licensor shall deliver the Data to Licensee electronically, via access credential to a protected website where the Data may be accessed, within 5 business days following the Effective Date.

2. Fees and Payment.

(a) Fees. Licensee shall pay Licensor the fees ("**Fees**") set forth in **Exhibit A** without offset or deduction. Licensee shall make all payments hereunder in US dollars on or before the due date set forth in **Exhibit A**.

(b) Taxes. All Fees and other amounts payable by Licensee under this Agreement are exclusive of taxes and similar assessments. Licensee is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Licensee hereunder, other than any taxes imposed on Licensor's income.

3. Confidential Information. From time to time during the Term, Licensor may disclose or make available to the Licensee information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Without limiting the foregoing, for purposes of this Agreement, the Data will be deemed Confidential Information of Licensor. Confidential Information does not include information that, at the time of disclosure is: (i) in the public domain; (ii) known to the Licensee at the time of disclosure; (iii) rightfully obtained by the Licensee on a non-confidential basis from a third party; or (iv) independently developed by the Licensee. The Licensee shall not disclose the Licensor's Confidential Information to any person or entity, except to the Licensee's employees who have a need to know the Confidential Information for the Licensee to exercise its rights or perform its obligations

hereunder. Notwithstanding the foregoing, Licensee may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Licensee shall first have given written notice to the Licensor and made a reasonable effort to obtain a protective order; or (y) to establish Licensor's rights under this Agreement, including to make required court filings. On the expiration or termination of this Agreement, the Licensee shall promptly return to the Licensor all copies, whether in written, electronic, or other form or media, of the Licensor's Confidential Information, or destroy all such copies and certify in writing to the Licensor that such Confidential Information has been destroyed. Licensee's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the Licensee; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law

4. Intellectual Property Ownership. Licensee acknowledges that, as between Licensee and Licensor, Licensor owns all right, title, and interest, including all intellectual property rights, in and to the Data. Licensee further acknowledges that: (a) the Data is an original compilation protected by United States copyright laws; (b) Licensor has dedicated substantial resources to collect, manage, and compile the Data; and (c) the Data constitutes trade secrets of Licensor. Licensor may terminate this Agreement without advance notice to Licensee or an opportunity for Licensee to cure and without further obligation or liability.

5. Disclaimer of Warranties. THE DATA IS PROVIDED "AS IS" AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE DATA, OR ANY PRODUCTS OR RESULTS OF ITS USE, WILL MEET LICENSEE'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

6. Indemnification.

(a) Licensee Indemnification. Licensee shall indemnify, hold harmless, and, at Licensor's option, defend Licensor from and against any Losses resulting from any Third-Party Claim based on Licensee's: (i) negligence or willful misconduct; or (ii) use of the Data in a manner not authorized by this Agreement, provided that Licensee may not settle any Third-Party Claim against Licensor unless such settlement completely and forever releases Licensor from all liability with respect to such Third-Party Claim or unless Licensor consents to such settlement, and further provided that Licensor shall have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(b) Sole Remedy. THIS 6 SETS FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE DATA INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

7. Limitations of Liability. IN NO EVENT WILL LICENSOR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, (b) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS, (c) LOSS OF GOODWILL OR REPUTATION, (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA OR BREACH OF DATA OR SYSTEM SECURITY, OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL LICENSOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED ONE TIMES THE TOTAL AMOUNTS PAID TO LICENSOR UNDER THIS AGREEMENT IN THE PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

8. Term and Termination.

(a) Term. The term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to any of this Agreement's express provisions, will continue in effect until one year from such date (the "**Term**").

(b) Termination. In addition to any other express termination right set forth elsewhere in this Agreement, Licensor may terminate this Agreement, effective on written notice to Licensee, if Licensee breaches any of its obligations under **Section 1(b)**, Section 2(a), or 3.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, the license granted hereunder will also terminate, and, without limiting Licensee's obligations under 3, Licensee shall cease using and delete, destroy, or return all copies of the Data and certify in writing to the Licensor that the Data has been deleted or destroyed. No expiration or termination will affect Licensee's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Licensee to any refund.

(d) Survival. Any rights, obligations, or required performance of the parties in this Agreement which, by their express terms or nature and context are intended to survive termination or expiration of this Agreement, will survive any such termination or

expiration, including the rights and obligations set forth in this Section 8(d) and 2, 3, 4, 6, 7, and 9.

9. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by each Party from time to time in accordance with this Section). The Parties shall deliver Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile[, or email] (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party, and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. In no event shall Licensor be liable to Licensee, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Licensor's control, including, without limitation, the following force majeure events: (i) acts of God; (ii) flood, fire, earthquake, explosion, epidemics, pandemics, quarantines, or outbreak of communicable disease; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; (viii) shortage of adequate power or transportation facilities; and (ix) other events beyond the reasonable control of the Licensor.

(d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any

right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania. Any legal suit, action, or proceeding arising out of this Agreement or the licenses granted hereunder will be instituted in the Court of Common Pleas of Lancaster County, Pennsylvania, and each Party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding.

(g) Assignment. Licensee may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without the prior written consent of Licensor. Any purported assignment, transfer, or delegation in violation of this Section is null and void. No assignment, transfer, or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(h) Export Regulation. The Data may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. Licensee shall not, directly or indirectly, export, re-export, or release the Data to, or make the Data accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Licensee shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Data available outside the US.

(i) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under 3 or, in the case of Licensee, Section 1(b) would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such

remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(j) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Franklin & Marshall College

[LICENSEE NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

Not-For Profit Stakeholders

This Exhibit applies to summary data underlying the Global Barometer of Gay Rights (GBGR)[®], Global Barometer of Transgender Rights (GBTR)[™], and LGBTQI Human Rights Perception Index (HRPI). Capitalized terms used but not defined in this Exhibit A have the meaning given to those terms in the Agreement.

A. DESCRIPTION OF DATA: Data tables summarizing the results of research conducted to measure state- and societal-level protection or persecution of sexual orientation and gender identity minorities worldwide. Fundamental principles of human rights are evaluated using a proprietary methodology to create operationalized barometers presented as binary variables in five key categories relating to sexual orientation and gender identity. The DATA may then be used to support additional research or commentary on sexual orientation and gender identity tolerance worldwide. DATA in the context of this definition does NOT include input research information, the research methodology, any ancillary materials and know-how, both technical and non-technical, present or employed in the production of the DATA, and the interface through which the DATA is presented.

B. PERMITTED USE(S): Use of the Data is permitted for educational, scholarly research, personal, and not-for-profit purposes that does not involve any use of the DATA, a) to market, promote, or sell the research for a fee; b) to manufacture products based on the research for sale to third parties; c) for any event that incorporates a financial transaction; d) to enhance the reputational or commercial aspects of an organization. Use of the Data is not permitted to demean or disparage individuals or groups of individuals on the basis of sexual orientation or gender identity.

C. FEES: License for use Use of the Data shall not be subject to a license fee provided use of the Data is within the Permitted Use specified in this agreement.

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B. PERMITTED USE(S): Use of the Data is permitted for educational activities intended to promote societal awareness of human rights issues, specifically pertaining to sexual orientation and gender identity. Use of the Data is not permitted to, a) demean or disparage individuals or groups of individuals on the basis of sexual orientation or gender identity; b) to market, promote, or sell the research for a fee; c) to manufacture products based on the research for sale to third parties; or d) to enhance the reputational or commercial aspects of an organization.

C. FEES: The Use of the Data shall be subject to a license fee for the term of the agreement as specified in Paragraph 8. Delivery of access credentials enabling Licensee access to the Data shall be dependent upon payment in full of the license fee. The fee is TBD.