

FREE-OF-CHARGE NON-COMMERCIAL USER AGREEMENT

This Free-of-Charge Non-Commercial-User Agreement (the “Agreement”) is entered into between the Board of Regents of the University of Washington, an institution of higher education and an agency of the State of Washington with its principal campus located in Seattle, Washington (“UW”), on behalf of the UW’s School of Medicine (“SoM”) and the Institute for Health Metrics and Evaluation (“IHME”), and you (“User”), as of the date on which User confirmed acceptance of the Agreement by checking the field on IHME’s website marked “I have read and agree to the terms of the Free-of-Charge Non-Commercial User Agreement”.

WHEREAS: IHME is a global health research center within UW that provides rigorous and comparable measurement of the world’s most important health problems and evaluates strategies used to address them; IHME has developed unique analytical strategies and techniques related to high-quality information on population health, its determinants and the performance of health systems and has accumulated and created data and data sets not commonly available; UW is willing to provide User with access to certain of the data sets requested by User (“Data Sets”), and to Data contained in or extracted from the Data Sets (“IHME Data”);

THEREFORE, in consideration of the mutual agreements contained herein, UW and User (each, a “Party, and together, the “Parties”) agree as follows:

1 User Declarations. User hereby declares that User is not a for-profit or other commercial entity, nor an employee, contractor, representative or agent of a for-profit or other commercial entity. User further declares that User will not make commercial use of the IHME Data and Data Sets, will not make the IHME Data and Data Sets available to a commercial or for-profit entity, or otherwise make IHME Data or Data Sets available for commercial use. For purposes of this Agreement, “commercial use” means any use that supports a commercial initiative, commercial advantage, financial transaction, or monetary compensation. User understands and acknowledges that UW charges fees for commercial use of IHME Data and the Data Sets, and that the declarations by User contained in this paragraph are the basis on which UW is exempting User from such fees.

2 Access to and Use of the IHME Data and Data Sets. UW hereby grants to User for the term of this Agreement a free-of-charge, non-exclusive, royalty-free license to download the IHME Data and the Data Sets to create analyses using the IHME Data and Data Sets whether alone or in combination with other data (“Results”), for non-commercial purposes only, and to use such Results (i) for internal research purposes and (ii) for publication in articles, posters, dissertations, briefs, reports, websites, or similar types of outlets, presentations at symposia or similar meetings (“Publication”), provided that the Results may contain only such portions of the IHME Data and Data Sets as are necessary, as determined by the User in its reasonable discretion, for User’s purposes of internal research and for Publication.

3 Data Compliance. User represents and warrants that it is in compliance with data laws for data it receives, purchases, and/or holds from third parties.

4 Precautions and Measures to Safeguard the IHME Data and Data Sets. User agrees to take at least the same precautions and measures to safeguard the proprietary nature of the IHME Data and Data Sets as it would with its own similar proprietary or confidential information.

5 Ownership. User agrees that UW owns the IHME Data and Data Sets that User will access under this Agreement. The Parties agree that inventorship and other rights, in any and all subject matter protectable or potentially protectable under copyright, patent, trademark or trade secret law (“Intellectual Property”), created under this Agreement shall be determined in accordance with the laws of the United States. Ownership of Intellectual Property will follow inventorship, authorship or other applicable law. Except as explicitly provided in this Agreement, neither Party shall by reason of this Agreement or its performance obtain any right or license, either express or implied, to the other Party’s Intellectual Property.

6 Restrictions on Use of the IHME Data and Data Sets. Except as expressly provided in this Agreement, or with written consent from UW, User will not (i) copy, reproduce or duplicate the IHME Data or Data Sets; (ii) reveal, publish, transfer, disclose, disseminate, distribute, assign, rent, lease, loan, license, or otherwise make the IHME Data or Data Sets available to any person or organization other than User’s employees who have a “need to know” with respect to work they are currently undertaking in the course and scope of their employment for internal research purposes or Publication purposes; (iii) modify, translate, merge, alter, reverse compile/assemble, decrypt, reverse engineer or create derivative works from the IHME Data or Data Sets; (iv) utilize in any manner the IHME Data or Data Sets to develop data sets similar in function to the Data Sets; or (v) knowingly permit or enable any third party to do the foregoing. When using the IHME Data or Data Sets for purposes of a Publication, User shall not use them or refer to UW and/or IHME in any way that conveys, either directly or implicitly, an impression that UW and/or IHME support, promote or endorse User’s analyses, conclusions, recommendations, services or products.

7 Data Source Acknowledgment. Proper acknowledgment shall be made for the contributions of each Party to any Results being published in accordance with generally accepted scientific standards. In any instance when a Publication includes IHME Data or is derived from IHME Data, User shall include the following source identifier: *Source: Institute for Health Metrics and Evaluation. Used with permission. All rights reserved.*

8 Trademarks, Trade Names, and Service Publicity Marks. Except as set forth in Section 6 above, User shall not use UW or IHME’s name, either alone or in connection with another word or words, nor shall it use UW’s or IHME’s proprietary marks, trademarks, service marks, trade names, symbols, logos or designs, for any promotional or commercial purpose whatsoever (including, but not limited to, any press release, sales or marketing publication or correspondence, advertisement, or similar communication), without the express prior written approval of UW.

9 Termination of Agreement and Termination of Access. The Agreement will terminate on the earlier of (i) five years from the date on which it was entered into, or (ii) upon UW terminating it, for any reason and at its sole discretion, by sending written notice to the User by email at the email address provided by User upon entering into the Agreement. Termination of this Agreement shall not affect the rights and obligations of the Parties accrued prior to the effective date of the termination. Unless expressly provided otherwise herein, each provision of this Agreement reasonably interpreted as intending to survive after the termination of this Agreement shall survive any such termination or expiration. Whether or not the Agreement is terminated, UW can terminate User’s access to some or all the IHME Data and Data Sets at any time for any reason and at its sole discretion.

10 Legal Compliance. The Parties agree that they intend this Agreement to comply with all applicable laws, regulations and requirements, and that this Agreement shall be applied and interpreted in a manner consistent with full compliance with all applicable laws, rules and regulations.

11 Confidentiality and Public Records. User understands that UW is a state agency and subject to the Washington State Public Records Act (“Act”) and other regulatory requirements that may necessitate disclosure of this Agreement or records related to it, and User agrees that no action taken by UW in compliance with UW’s obligations under the Act, as interpreted by UW in its sole discretion, will be deemed inconsistent with any provision of this Agreement.

12 Disclaimer of Warranties and Limitation of Liability. UW offers access to the IHME Data and Data Sets as-is and as-available, and makes no representations or warranties of any kind concerning them, whether express, implied, statutory, or other. This includes, without limitation, warranties of title, merchantability, fitness for a particular purpose, non-infringement, absence of latent or other defects, accuracy, or the presence or absence of errors, whether or not known or discoverable. Where disclaimers of warranties are not allowed in full or in part, this disclaimer may not apply to User. To the extent possible, in no event will the UW be liable to User on any legal theory (including, without limitation, negligence) or otherwise for any direct, special, indirect, incidental, consequential, punitive, exemplary, or other losses, costs, expenses, or damages arising out of the IHME Data or Data Sets or use of the same, even if UW has been advised of the possibility of such losses, costs, expenses, or damages. Where a limitation of liability is not allowed in full or in part, this limitation may not apply to User. The disclaimer of warranties and limitation of liability provided above shall be interpreted in a manner that, to the extent possible, most closely approximates an absolute disclaimer and waiver of all liability.

13 Indemnification. To the extent allowed by law, User shall indemnify and hold harmless UW, and its officers, employees, students, and agents, against any and all claims, suits, losses, damages, costs, fees, and expenses resulting from User’s use of the IHME Data or Data Sets, including but not limited to any damages, losses, or liabilities whatsoever with respect to death or injury to any person and damage to any property. This indemnification clause shall survive the termination of this Agreement.

14 Notice of Dispute, Negotiation and Mediation. Prior to commencing any legal action, the Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. If the dispute is not resolved informally, then representatives of each Party with full settlement authority shall meet at a mutually agreeable time and place in order to exchange relevant information and perspectives, and to attempt in good faith to resolve the dispute. If the dispute is not resolved by these negotiations, the matter will be submitted to a mutually agreeable and recognized mediation service prior to initiating legal action, and the costs of the mediation service shall be shared equally by the Parties.

15 Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and enforced according to the laws of the State of Washington, without giving effect to its or any other jurisdiction’s choice of law provisions, and the Superior Court of Washington for King County shall have exclusive jurisdiction and venue of all disputes arising under this Agreement, except that in any case where the courts of the United States shall have exclusive jurisdiction over the subject matter of the dispute, the United States District Court for the Western District of Washington, Seattle division, shall have exclusive jurisdiction and venue.

16 Attorney Fees. The prevailing Party in any action sought to enforce or interpret this Agreement or any provision of this Agreement shall be entitled to its reasonable attorney’s fees and costs, including any appeals thereon, as determined by a court in conjunction with any such legal proceeding.

17 Injunction. Notwithstanding the provisions of Section 14 (Notice of Dispute, Negotiation and Mediation) and Section 15 (Governing Law, Jurisdiction and Venue), nothing in this Agreement will

prevent UW from seeking injunctive relief with respect to a violation of intellectual property rights or enforcement or recognition of any award or order in any appropriate jurisdiction to restrain any such breach or violation.

18 Miscellaneous. This Agreement constitutes the entire agreement between the Parties and supersedes all prior communication, including any oral or written agreements, commitments or understandings concerning the matters provided for herein. Neither Party has relied upon any such prior communication. If any provision of this Agreement is held to be invalid, unenforceable or illegal, the other provisions will continue in full force and effect. This Agreement may only be modified by a subsequent written Agreement executed by the duly-authorized representatives of the Parties. Nonperformance by a Party shall not operate as a default under or breach of the terms of this Agreement to the extent and for so long any such nonperformance is due to: strikes or other labor disputes; prevention or prohibition by law; the loss or injury to products in transit; an earthquake or other Act of Nature or Act of God; or war or other cause beyond the control of such Party. No omission or delay of either Party hereto in requiring due and punctual fulfillment of the obligations of any other Party hereto shall be deemed to constitute a waiver by such Party of its rights to require such due and punctual fulfillment, or of any other of its remedies hereunder. No Party may assign, subcontract, or delegate any rights under this Agreement, in whole or in part, without the express prior written consent of the other Party, providing, however, this Agreement shall inure to the benefit of and be binding upon each Party's successors and assignees. Nothing in this Agreement will be construed or deemed to create a relationship of employer and employee, partner, joint venturer, or principal and agent between User and UW, its faculty, employees, agents or officers.