

CIRCULTICS TERMS OF AGREEMENT

The Ellen MacArthur Foundation (“**EMF**”) is a charity whose mission is to accelerate the transition to a circular economy. EMF has developed a tool to assess circularity of organisations, which measures enablers within organisations which assist in achieving circular outcomes, and the resultant circularity (“**Circulytics**”, and the method used by Circulytics being the “**Circulytics Method**”).

For the purpose of these terms, the individual submitting Organisation Data (as defined below) is the “**Contact**” and the organisation on behalf of which the Contact is submitting Organisation Data is the “**Organisation**”.

1. SUBMITTING ORGANISATION DATA

- 1.1. To take part in Circulytics, the Organisation shall submit qualitative and quantitative data (“**Organisation Data**”) in an online questionnaire provided by EMF (“**Questionnaire**”). EMF will use Organisation Data to generate a score which is indicative of the Organisation’s overall circularity (“**Score**”) and scorecard providing information about the Score (“**Scorecard**”). Any information provided by EMF to the Organisation in relation to the Score or Scorecard will be provided by email.
- 1.2. Organisation Data comprises three types of data. The Organisation:
 - 1.2.1. shall provide general organisation information (including industry classification, annual revenue, and material types used) (“**General Information**”);
 - 1.2.2. may provide enabler indicator data (including strategic prioritisation of the circular economy) (“**Enabler Indicator Data**”); and
 - 1.2.3. may provide outcome indicator data (including proportion of material inputs that are recirculated) (“**Outcome Indicator Data**”).
- 1.3. The Organisation represents, warrants and undertakes that:
 - 1.3.1. Organisation Data is accurate and not misleading;
 - 1.3.2. it will inform EMF immediately if it becomes aware of an error in Organisation Data or if any Organisation Data becomes inaccurate or misleading;
 - 1.3.3. it has all necessary rights, consents and permissions required to submit Organisation Data;
 - 1.3.4. it has all necessary rights, consents and permissions required to grant the licence contemplated in clause 4;
 - 1.3.5. it will provide a single response to the Questionnaire;
 - 1.3.6. it will comply with the terms and conditions of the platform which hosts the Questionnaire (“**Platform**”) in force from time to time (which can be accessed [here](#));
 - 1.3.7. it will provide any further information or clarification EMF requires in respect of any General Information, Enabler Indicator Data or Outcome Indicator Data provided to enable EMF to generate the Score or Scorecard, or resolve any uncertainties or apparent errors in Organisation Data; and
 - 1.3.8. it will not use the Questionnaire to access, store, distribute or knowingly transmit any viruses, or any documents, files of any kind, webpages, images, videos, podcasts, audio files or any other types of content that:
 - 1.3.8.1. are unlawful, harmful, threatening, obscene, defamatory, infringing, harassing or offensive;
 - 1.3.8.2. facilitate illegal activity;

- 1.3.8.3. promote unlawful violence;
 - 1.3.8.4. are discriminatory; or
 - 1.3.8.5. are otherwise illegal.
- 1.4. The Organisation acknowledges that if it does not submit Enabler Indicator Data and Outcome Indicator Data, it may receive a score of zero on relevant indicators or outcomes, which may impact the Score.
- 1.5. The deadline for completing the Questionnaire is 31 August 2022 or such other date as may be notified by EMF to the Organisation in writing (the “**Deadline**”). If the Organisation does not submit a completed Questionnaire by the Deadline, EMF will not generate the Score.

2. EMF’S USE OF ORGANISATION DATA

- 2.1. EMF may use, analyse, process, collate, examine, reproduce and prepare derivative works of all or any part of Organisation Data for the following purposes:
- 2.1.1. to generate the Score and Scorecard;
 - 2.1.2. to develop Circulytics and the Circulytics Method; and
 - 2.1.3. provided in each case that Organisation Data is anonymised:
 - 2.1.3.1. to produce statistics based on General Information (including the number of organisations by region, by industry, and by revenue size which have participated in Circulytics); and
 - 2.1.3.2. to produce aggregated benchmarks (including average total score, average category score and average theme score, across similar industries or per industry, provided there is sufficient data to prevent the identification of individual organisations); which may be used in EMF’s communications and marketing materials related to Circulytics.
- 2.2. This clause 2 survives termination of these terms for any reason.

3. CONFIDENTIALITY, DISCLOSURE AND INTELLECTUAL PROPERTY RIGHTS

- 3.1. Confidentiality
- 3.1.1. Subject to the terms of this clause, the Questionnaire, including the completed Questionnaire containing Organisation Data, the Score, the Scorecard and any other materials made available to the Organisation by EMF related to Circulytics (together, “**Circulytics Materials**”), and the fact that the Organisation has participated in Circulytics, are confidential.
 - 3.1.2. The Organisation shall not disclose the Circulytics Materials or the fact that the Organisation has participated in Circulytics to any third party except in the following circumstances:
 - 3.1.2.1. such disclosure is made in accordance with sub-clause 3.2; or
 - 3.1.2.2. the Circulytics Materials, or part thereof, enter the public domain otherwise than through the Organisation’s breach of these terms (in which case, the Organisation shall only be permitted to disclose that part of the Circulytics Materials in the public domain).
- 3.2. Organisation Disclosure
- 3.2.1. Any disclosure made or intended to be made by the Organisation in accordance with this sub-clause 3.2 is an “**Organisation Disclosure**”.

- 3.2.2. From the date that the Organisation receives the Scorecard, the Organisation may disclose the fact that it has participated in Circulytics, provided that:
- 3.2.2.1. the Organisation does not do so for any commercial purpose, such as marketing or selling any business services or products; and
 - 3.2.2.2. the Organisation complies with EMF's branding guidelines and communications toolkit as provided to the Organisation from time to time.
- 3.2.3. From the date that the Organisation receives the Scorecard, if the Organisation chooses (in section Og of the Questionnaire) to report on a whole company scope, the Organisation may disclose the Score and the Scorecard, provided that:
- 3.2.3.1. the Organisation gives EMF ten (10) working days' notice of the Organisation Disclosure by providing a copy of the Organisation Disclosure to the Circulytics team by emailing circulytics@emf.org;
 - 3.2.3.2. the Organisation states that the Score has been generated using Circulytics;
 - 3.2.3.3. the Organisation states that EMF does not endorse the Organisation and that EMF has not verified Organisation Data;
 - 3.2.3.4. the Organisation Disclosure is not inaccurate or misleading;
 - 3.2.3.5. the Organisation Disclosure is not made for any commercial purpose, such as marketing or selling any business services or products; and
 - 3.2.3.6. the Organisation complies with EMF's branding guidelines and communications toolkit as provided to the Organisation from time to time.
- 3.2.4. From the date that the Organisation receives the Scorecard, if the Organisation chooses (in section Og of the Questionnaire) to report on a customised scope, the Organisation shall not disclose the Score and the Scorecard unless EMF gives its prior written consent. If EMF gives such consent, the Organisation shall:
- 3.2.4.1. comply with the conditions set out in clauses 3.2.3.1 to 3.2.3.6 in relation to the disclosure of the Score and Scorecard; and
 - 3.2.4.2. state that the Score relates to only a part of the Organisation's operations and specify those parts to which the Score relates.
- 3.2.5. If, within the ten working day period specified above, EMF instructs the Organisation not to make the Organisation Disclosure, the Organisation shall not make the Organisation Disclosure.
- 3.2.6. In any event, if EMF determines, in its absolute discretion, that any Organisation Disclosure is inaccurate, misleading or otherwise inconsistent with these terms, the Organisation shall promptly, on notice from EMF, withdraw or amend any such Organisation Disclosure in accordance with EMF's instructions.

3.3. EMF Disclosure

- 3.3.1. EMF shall not disclose Organisation Data, the Score, Scorecard, or the fact that the Organisation has participated in Circulytics except in the following circumstances:
- 3.3.1.1. such disclosure is authorised by the Organisation (including via the tick box at the end of the Questionnaire) (an "**Authorised Disclosure**");
 - 3.3.1.2. any Organisation Data, the Score, the Scorecard, or the fact that the Organisation has participated in Circulytics enter the public domain otherwise than through EMF's breach of these terms (in which case EMF may disclose such information it deems necessary to ensure that any information in the public domain is complete, accurate and not misleading);

3.3.1.3. it discloses Organisation Data to its partner financial institutions if such disclosure is authorised by the Organisation (including via the tick box at the end of the Questionnaire);

(each being an “EMF Disclosure”),

3.3.1.4. such disclosure is required by law or regulatory authority;

3.3.1.5. it discloses anonymised Organisation Data in accordance with clause 2; and/or

3.3.1.6. any such disclosure is made to members of EMF’s charitable group, or its professional advisers, representatives and subcontractors for the purposes of providing and developing Circulytics.

3.4. This clause 3 survives termination of these terms for any reason.

4. INTELLECTUAL PROPERTY RIGHTS

4.1. The Organisation acknowledges and agrees that the trademarks ‘Ellen MacArthur Foundation’ and ‘Circulytics’, the Circulytics Materials and the Circulytics logo, and all intellectual property rights in them, belong to EMF.

4.2. With effect from the date that the Organisation receives the Scorecard:

4.2.1. EMF grants to the Organisation a non-transferable, non-exclusive, non-sublicensable, royalty free licence to use the trademarks ‘Ellen MacArthur Foundation’ and ‘Circulytics’, the Circulytics Materials, and the Circulytics logo for the purpose of making any Organisation Disclosure, provided it complies with the conditions in clause 3.2. This licence is revocable on thirty (30) days’ written notice by EMF; and

4.2.2. the Organisation grants to EMF a non-transferable, non-exclusive, royalty free, licence to use:

4.2.2.1. the Organisation’s name for any EMF Disclosure; and

4.2.2.2. the Organisation’s name and logo for any Authorised Disclosure.

5. DATA PROTECTION

5.1. To the extent that EMF receives any personal data from the Organisation (including the personal data of the Contact), EMF will only use such personal data for the purposes of providing Circulytics, communicating with the Contact about the Score and providing updates and further information to the Organisation about Circulytics. EMF holds and processes personal data provided to it in relation to Circulytics in accordance with its Circulytics [privacy policy](#).

6. LIABILITY

6.1. The Organisation acknowledges and agrees that the Circulytics Materials are provided “as is” and that the Score is only indicative of circularity. To the maximum extent permitted by law, EMF disclaims all warranties (express or implied) including but not limited to, any warranties of accuracy, completeness, quality, fitness for a particular purpose, compliance with applicable laws and non-infringement relating to the use of the Circulytics Materials and the Platform. Notwithstanding any other provision in these terms, including clause 1.1, EMF shall not be obliged to generate and/or provide the Score or the Scorecard.

- 6.2. EMF does not warrant or represent that the use of the Circulytics Materials or the Platform will be uninterrupted or error-free. EMF does not warrant or represent that the Circulytics Materials will be functional on a particular device or machine or in any particular environment or location.
- 6.3. Notwithstanding any other provision in these terms, EMF shall not be liable in any circumstances to the Organisation for any loss, cost, expense, claim or liability, whether in contract, tort (including negligence), breach of statutory duty, or otherwise (including for loss of profits, loss of sales, loss of business or revenue, business interruption, loss of anticipated savings, loss or corruption of data, loss of goodwill or reputation, or any indirect or consequential loss or damage) which arise in connection with Circulytics or its use, the Organisation's use of or results obtained from the Circulytics Materials or the Platform, or any disclosure related to Circulytics.
- 6.4. The Platform is provided by a third-party provider, which is currently Qualtrics. The Organisation acknowledges and agrees that EMF is not responsible or liable for the Platform or its performance. The Organisation agrees to comply with Qualtrics' statements on security, privacy, compliance information, policy and certification are as follows:
- Terms of service - <https://www.qualtrics.com/terms-of-service/>
- Security Statement - <https://www.qualtrics.com/security-statement/>
- Privacy Statement - <https://www.qualtrics.com/privacy-statement/>
- GDPR - <https://www.qualtrics.com/uk/platform/gdpr/>

7. TERMINATION

- 7.1. Either party may terminate these terms by giving thirty (30) days' written notice to the other party (which may be by email).
- 7.2. Upon termination:
- 7.2.1. the Organisation's licence to use the trademarks 'Ellen MacArthur Foundation' and 'Circulytics', the Circulytics Materials and the Circulytics logo shall terminate;
- 7.2.2. the Organisation shall cease holding itself out as having any association or connection with EMF regarding Circulytics; and
- 7.2.3. EMF shall cease further use of the Organisation's name and logo regarding Circulytics.

8. GENERAL

- 8.1. The Organisation may not assign or transfer any rights or obligations under these terms, and any such attempted assignment or transfer shall be void and without effect. EMF may assign or transfer all rights and obligations under these terms, in whole or in part.
- 8.2. In the event of a change of control of the Organisation, EMF shall be entitled to terminate these terms on thirty (30) days' written notice to the Organisation. A change of control occurs where (a) there is a change in the direct or indirect ownership of more than 50% of the issued shares in the Organisation, or (b) there is a change in the identity of the entity(ies) or person(s) with the power to directly or indirectly control the management of the Organisation.
- 8.3. These terms constitute the entire agreement between the parties and supersede and extinguish all previous agreements and understandings between them, whether written or oral, relating to their subject matter. Each party acknowledges that in entering into these terms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms.

8.4. No variation to these terms shall be effective unless agreed in writing by both parties.

8.5. These terms and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these terms or their subject matter or formation.

AGREEMENT TO THESE TERMS

The Organisation acknowledges that by ticking the below box it is entering a contract with EMF on these terms. The Organisation warrants that the Contact has authority to execute these terms on behalf of the Organisation. (required)

The Organisation agrees that EMF may share Organisation Data with partner financial institutions.¹

¹ Banks and investment companies which are part of the EMF network and which are contractually obliged to keep confidential any relevant information they receive from EMF.