CIRCULYTICS TERMS OF AGREEMENT

A. Overview

To accelerate the transition towards a circular economy, the Ellen MacArthur Foundation (‘EMF’, ‘we’, ‘us’) has identified the need to develop a method to measure enablers (such as strategic importance of a circular economy) within organisations to achieve circular material flows, and to measure the circularity of those material flows. As such, EMF has developed a tool, known as “Circulytics” (and the method used by “Circulytics” being the ‘Circulytics Method’).

Any reference to ‘you’, ‘your’ or ‘your organisation’ is a reference to the legal entity completing the Questionnaire.

EMF hereby gives your organisation a non-transferable, non-exclusive, royalty free licence to use the Questionnaire in accordance with these terms, in order to generate a Circulytics score. In consideration for using the Questionnaire, your organisation agrees to be bound by these terms.

B. Circulytics and the Circulytics Method

Circulytics and the Circulytics Method have been created by EMF to help assess the circularity of an organisation, and to generate a score for organisation-level circularity.

It involves the use of a predetermined list of qualitative and quantitative data provided by a participating organisation to calculate the score.

Data is collected through an online questionnaire survey (‘Questionnaire’).

A participating organisation must:

I. complete the Questionnaire within the stated timeframe (see section 1 below);
II. answer all fields that are stated as being mandatory; and
III. follow any instructions provided by EMF,

in order to be able to complete the Questionnaire and for a score to be generated.

EMF relies on your organisation reporting information accurately and it recommends that the information which is reported is verified by a suitably skilled, qualified and reputable professional third-party verification provider (such as an accountancy firm).

EMF may ask for supplementary supporting information to the answers given in your Questionnaire. If you do not provide this information as requested, you understand that may result in you scoring zero in the relevant areas and, if so, will impact your overall score.
C. Types of data

The Questionnaire asks a participating organisation to provide information pertaining to 3 categories:

I. General organisation information (e.g. number of employees, annual revenue) [required, marked in the Questionnaire with an asterisk];
II. Enabler indicators (e.g. strategic prioritisation of the circular economy) [optional]; and
III. Outcome indicators (e.g. proportion of material inputs that are cycled) [optional].

Although enabler indicators and outcome indicators are optional, not providing this information will result in your organisation being scored zero for these fields, and will impact your overall score.

A complete list of questions can be accessed here

D. Reporting Guidelines

1) Timelines
The timeline (if any) for completion will be communicated prior to the Questionnaire’s distribution and will feature on the cover page of the Questionnaire. However, the deadline for completing the Questionnaire for the current version of Circulytics is 31 August 2020. EMF will not be able to analyse or generate a Circulytics score for any and all Questionnaires completed and submitted after this date. Any organisations which are still in the process of completing the Questionnaire by 1 September 2020 will be informed that the current version of Circulytics is out of date, and that a new link / login details will be sent to them when the new version of Circulytics is released (anticipated to be 1 October 2020). A reminder will be sent on or around 1 August 2020 to all organisations who are still in the process of completing the Questionnaire stating that they have until 31 August 2020 to complete the Questionnaire, and that EMF will not be able to analyse any Questionnaire which is still incomplete after this date.

2) Using the reporting platform
All data submitted by a participating organisation must come via the Questionnaire, which is supported by a third-party online survey platform provider, currently Qualtrics.

All participating organisations will be provided with a direct link to the Questionnaire via email (sent to the person who requested access via the EMF website) along with unique log-in credentials. You will receive a unique username and password to enable access to the platform for your organisation. It is the responsibility of responding organisations to coordinate internally to ensure a single appropriate response is provided for your organisation.
The platform will automatically save progress as you move through the Questionnaire, which means you can stop the process and review what you have submitted to date at any point. You should ensure you review all responses prior to submission to ensure they are accurate, by re-navigating through each section via the contents page. The platform will alert you if you have not provided responses to required fields as you move through the Questionnaire.

In using the Questionnaire and the platform through which the Questionnaire is available, you must comply with all our instructions and the terms and conditions which apply to the use of that platform from time to time which can be accessed here and you must not:

I. upload inaccurate or misleading information;
II. 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 type of content that:
   a. are unlawful, harmful, threatening, obscene, defamatory, infringing, harassing or racially or ethnically offensive;
   b. facilitate illegal activity;
   c. promote unlawful violence;
   d. are discriminatory based on race, gender, colour, religious belief, sexual orientation, or disability; or
   e. are otherwise illegal.

3) Use of reported data
When you upload or post content of any kind to the Questionnaire you acknowledge that EMF may use, analyse, process, collate, examine, reproduce, audit and prepare derivative works of all or any part of that content in connection with Circulytics and EMF's charitable objectives. However, data may be anonymised by EMF to be used:

I. to produce statistics based on generic organisation information provided by participants (which may include the number of organisations by region, by industry, and by revenue size);
II. to produce aggregated benchmarks (which will be organised by average total score, average category score and average theme score, across similar industries or per industry provided there are sufficient numbers of participants to prevent identification); and
III. in EMF's marketing and workshops communications, in order to discuss Circulytics and its progress to date.

Individual organisation data will be used by EMF, its charitable group and its professional advisers and subcontractors for EMF's charitable purposes to further refine and develop either Circulytics or the Circulytics Method. Except where required as a matter of law or by a regulator, only EMF (and its professional advisers and subcontractors) will have access to the non-public information you provide as part of the Questionnaire.

On completion of the Questionnaire, EMF will use the data you provide to generate a Circulytics score, with a breakdown of all results in a scorecard. Individual organisation results will only be communicated to you.
Your organisation name will not be published in connection with participation in Circulytics unless you give us your prior written consent (which includes by email).

You may (but not otherwise) use your Circulytics score, the Questionnaire and all related materials and information you have access to under these terms (including any content you upload) (together referred to as 'Proprietary Information'), in the ordinary course of business but otherwise as you see fit, in order to facilitate your organisation's understanding of the circular economy and to help in the creation of effective solutions for the circular economy for your organisation's own internal use and not for any commercial purpose ('Permitted Internal Use').

In addition, you may (but not otherwise) publicise your Circulytics score and any information provided to you by EMF in connection with it, provided that:

I. you state that your Circulytics score has been generated using EMF's Circulytics tool and Circulytics Method;

II. you state that EMF does not endorse your organisation and that EMF has not verified the information provided to it in generating the Circulytics score;

III. you use the Circulytics logo ('Circulytics Logo') as in accordance with EMF's branding guidelines, both of which will be provided to you when you receive your scorecard; and

IV. if your Circulytics score is generated for a parent company or subsidiary of your organisation, when referring to your Circulytics score, you explicitly say that it relates only to that parent company or subsidiary ('Permitted Publication'). However, you may only so publicise during the term of the licence to use your Circulytics score, any information provided to you by EMF in connection with it and the Circulytics Logo, for any Permitted Publication, referred to in section 5.

We would ask that you give us five working days notice in advance of the first Permitted Publication you intend to make, together with details of that proposed Permitted Publication, by contacting the Circulytics team (circulytics@emf.org).

The method and manner in which your organisation's Circulytics score is calculated may change over time as Circulytics is refined and enhanced and it is anticipated that a new version of Circulytics will be released in October of each year. You recognise that the score is indicative of your organisation's circularity only. In the event of an error in the information your organisation has provided to EMF, please contact the Circulytics team (circulytics@emf.org) as soon as possible so that your records can be updated.

4) Security
Data is protected by current industry standard encryption across all the platforms EMF uses. EMF limits access and employs strict access controls such as strong passwords and secondary authentication mechanisms in relation to data that it holds.

The platform used for the Questionnaire is currently owned by Qualtrics, a third-party organisation. EMF is not responsible or liable for the platform or its performance. Qualtrics statements on security, privacy, compliance information, policy and certification are as follows:
Qualtrics - https://www.qualtrics.com/uk/
Terms of service - https://www.qualtrics.com/terms-of-service/
GDPR - https://www.qualtrics.com/uk/platform/gdpr/

5) Confidentiality and intellectual property rights
Where your organisation provides EMF with confidential information as part of the Questionnaire, EMF will only use and share that confidential information within the EMF charitable group, with its professional advisers and subcontractors, to the extent needed to improve and refine Circulytics and the Questionnaire, and in order to produce anonymised data (see section 3 above). EMF will not otherwise use, disclose or duplicate your organisation’s confidential information unless such use, disclosure, or duplication is:
I. authorised in writing (including by email) by your organisation;
II. required by law or regulatory authority; or
III. made to professional advisers or representatives who owe general duties of confidentiality.

You agree that the Proprietary Information and the Circulytics Logo (each as defined in section 3) and all rights in them belong to EMF and must be used in accordance with these terms; and you will not use Proprietary Information or the Circulytics Logo for any illegal purpose. When you use the Proprietary Information or the Circulytics Logo, you must comply with all applicable UK laws and with any applicable international laws, including the local laws in your country of residence. You will not use the Proprietary Information or the Circulytics Logo in a way that will or may infringe the intellectual property rights or other rights of any third party.

EMF grants to you a non-transferable, non-exclusive, royalty free licence to use Proprietary Information:
I. while you are using the Questionnaire to provide information in accordance with any documentation or instructions supplied by EMF; and
II. except to the extent otherwise expressly permitted, for any Permitted Internal Use (as defined in section 3 above).

EMF grants to you a non-transferable, non-exclusive, royalty free licence to use your Circulytics score, any information provided to you by EMF in connection with it and the Circulytics Logo, for any Permitted Publication (as defined in section 3). However, this licence is for an initial period starting on the date on your scorecard (“Scoring Date”) and ending on:
I. the date falling 12 months from the Scoring Date (if you complete the Questionnaire for the then current version of Circulytics and have a Circulytics score generated accordingly) ("Initial Period"); or

II. the deadline for completing the Questionnaire for the then current version of Circulytics (in all other circumstances), where after it shall terminate. However, if by the end of the Initial Period (if relevant), your organisation has started to complete the Questionnaire for the then latest version of Circulytics, this licence will automatically extend for a further three months, where after it shall terminate. However, if by the end of this further period (if relevant) your organisation has completed and submitted the Questionnaire for the then latest version of Circulytics, this licence will automatically extend for a further three months, where after it shall terminate. Your licence to use your Circulytics score, any information provided to you by EMF in connection with it and the Circulytics Logo, for any Permitted Publication, will never last more than eighteen months from the Scoring Date listed on your organisation's scorecard.

You will not licence, sell, rent, lease, sub-let, transfer, assign, distribute, display or otherwise commercially exploit, or make the Proprietary Information or the Circulytics Logo available to any third party. You agree that you will not use or disclose (except as expressly authorised by these terms) Proprietary Information or the Circulytics Logo, unless, in the case of Proprietary Information, it becomes part of the public domain, or except in each case as may be expressly authorised in advance in writing by EMF.

If and to the extent the Proprietary Information includes the logo, trademark or any similar or equivalent branding styles of EMF or any third party, you are not permitted to reproduce or use that without the express prior written consent of EMF or the third party, as appropriate.

6) Data Protection
To the extent EMF receives any personal data from your organisation, it will only use it to the extent needed to enable the exercise of its rights and the performance of its obligations in relation to the operation and development of Circulytics, including the Questionnaire and the allocation of a Circulytics score to your organisation, and to the extent required by law or regulators. EMF has information standards in place to protect the confidentiality, integrity, and security of any personal data supplied to it. For further information, please see EMF’s privacy policy.

7) Liability
You acknowledge that Circulytics, the Circulytics score your organisation is allocated and the Proprietary Information, is provided "as is". 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 use of the Questionnaire, the Circulytics score allocated to your organisation or the Proprietary Information. In addition, EMF does not warrant or represent to you that the use of the Questionnaire will be uninterrupted or error-free or that the platform through which
the Questionnaire is available is virus free. The Questionnaire may not be functional on a particular device or machine or in any particular environment or location.

EMF shall not be liable in any circumstances to your organisation, 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 Circulytics score allocated to your organisation, your use of, or any results obtained from, the platform, the Questionnaire or the Proprietary Information.

If and to the extent that you upload content to the Questionnaire, you confirm that you are entitled to do so and you agree to indemnify EMF against all liabilities, costs, expenses, damages and losses suffered or incurred or arising out of or in connection with any claim made against EMF (including for actual or alleged infringement of a third party's intellectual property) in connection with your uploading of such content, or EMF’s use of the same in accordance with these terms.

8) Termination
EMF recognises that in certain circumstances, it will not be appropriate for your organisation to continue to use Circulytics and it reserves the right to immediately terminate your organisation's participation without prior notice in one or more of the following circumstances:

I. in the event of a breach of these terms or where there is a repeated failure to comply with any reasonable instruction given to your organisation by EMF relating to Circulytics, the Questionnaire or the Circulytics score allocated to your organisation; or

II. your organisation does anything which, in EMF’s reasonable opinion, is detrimental to the reputation and/or interests of EMF and/or Circulytics; or

III. on request by law enforcement or other governmental agencies.

EMF may terminate this agreement if your organisation undertakes activities in industries which are detrimental or in opposition to EMF’s charitable objectives, including but not limited to the tobacco and weapons industries.

In addition, either party may terminate the organisation's participation in Circulytics immediately by giving written notice to the other party (including by email).

Upon termination, your organisation's licence to use the Proprietary Information (including the Questionnaire and your Circulytics score), the Circulytics Logo and any information provided to you by EMF under these terms shall terminate and your organisation must stop all use of Circulytics (including its name and the Circulytics Logo) and (except to the extent otherwise agreed to in a contract), must not hold itself out as having any association or (where you have previously received written permission to do so) connection with EMF regarding Circulytics, or its Circulytics Method itself. EMF will also stop all further use of your organisation’s name and logo in association with Circulytics, including in relation to any score allocated.
9) Miscellaneous
You 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 freely assign or transfer all rights and obligations under these terms, in whole or in part.

EMF reserves the right to update these terms (including the terms and conditions which apply to the use of the platform through which the Questionnaire is available) from time to time and it is anticipated that any updates to these terms will be released when any new version of Circulytics is released (see section 3 above). If it does so, the updated version will be effective immediately and made available through a link on the Questionnaire page. You are responsible for regularly reviewing these terms so that you are aware of any changes to them and you will be bound by the updated version upon your continued use of the Questionnaire. No other variation to these terms shall be effective unless in writing and accepted on behalf of EMF.

These terms are governed by and construed in accordance with English law, and the English courts shall have exclusive jurisdiction.

10) Further support with the Questionnaire
Please send any questions about the completion of the Questionnaire, data which has been submitted about your organisation, or regarding changes to the person(s) listed as contacts for your organisation, to the EMF Circulytics team (circulytics@emf.org), copying in your main EMF point of contact (if applicable).