

# CFP-TOMO End User License Agreement

(v. 1.0)

## Sumitomo Chemical

This CFP-TOMO End User License Agreement (“**EULA**”) sets forth the terms under which Sumitomo Chemical Co., Ltd., which is incorporated and registered in Japan with registered office at 2-7-1, Nihonbashi, Chuo-ku, Tokyo 103-6020 Japan (“**Sumitomo**”) grants to You, the end user, a license to access and use the carbon footprint of products calculation system called “CFP-TOMO” (the “**System**”) which was developed by Sumitomo.

**This is a binding legal agreement between You and Sumitomo. Please read this EULA in its entirety carefully before using the System. If You cannot agree to this EULA, You must not use the System and must delete it promptly.**

**BY CLICKING THE ACCEPT BUTTON BELOW, YOU REPRESENT AND WARRANT THAT YOU HAVE READ THIS EULA, UNDERSTAND ITS PROVISIONS, AND AGREE (AND YOU HAVE THE AUTHORITY ON BEHALF OF YOUR EMPLOYER TO AGREE) TO BE BOUND BY IT.**

### BACKGROUND

Sumitomo is the sole legal and beneficial owner and licensor of the System and is willing to license to You the use of the System.

### Agreed Terms

#### Article 1. License

- 1.1 The System means the computer program called “CFP-TOMO” developed by Sumitomo and such programs’ input form files, reference examples of input form files, and manuals.
- 1.2 Sumitomo grants to You a non-exclusive, non-sublicensable, non-transferable, and non-assignable license solely on the terms and conditions set forth in this EULA and on the condition that You accept and comply with them. Your use of the System means that You confirm that You have read and agree to this EULA.

- 1.3 The license permits You to use the System for the sole purpose of calculating the carbon footprint of Your or Your Affiliates' products and not for any other purpose.
- 1.4 The usage fee of the System is stipulated in Article 4.
- 1.5 You shall not:
- (a) let third party use or have access to the System in whole or in part (including but not limited to program listings, object and source program listings, object code and source code) in any way including, without limitation, by a sub-license, assignment, sale, lease or rent;
  - (b) create or allow to be created any charge, lien or other encumbrance on the System or any part thereof;
  - (c) redistribute and publish the System;
  - (d) reverse engineer, decompile, disassemble, reprogram, copy, or merge (with another program or system) the System;
  - (e) modify, vary, translate, decrypt, adapt, or create derivative works based on the System;
  - (f) use or otherwise exploit the System outside the scope of the express license granted under this EULA; and
  - (g) use the System in a manner that may infringe or misuse any third parties' intellectual property rights or that may destroy, cause damage or otherwise adversely effect any computer or device to which the System is downloaded or software or data stored in such computer or device.
- 1.6 You shall use commercially reasonable efforts to safeguard the System from infringement, misappropriation, theft, misuse, or unauthorized access.

## **Article 2. No warranty and no liability**

- 2.1 **THE SYSTEM IS PROVIDED AS IS. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SUMITOMO DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SYSTEM OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DEFECT-FREE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, IN NO EVENT WILL SUMITOMO BE LIABLE FOR ANY DAMAGES OR LOST REVENUE, PROFIT, OR DATA HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF**

## **LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE SYSTEM.**

- 2.2** The grant of a license to use the System does not imply that You are granted any right to practice or use patents, utility models, designs, trademarks, or copyrights (including any rights provided for in Article 27 and Article 28 of the Copyright Act of Japan; the same applies hereinafter), know-how, or any other intellectual property rights, nor does it grant any other rights, with respect to the System other than what are expressly set out in this EULA.
- 2.3** In addition to any other provision of this EULA, You acknowledge that:
- (a) Sumitomo does not and will not provide any warranty with respect to Your use of the System; and
  - (b) Sumitomo shall not be liable for, and You shall not hold Sumitomo liable for, any direct or indirect damages resulting from Your use of the System.

### **Article 3. Affiliate**

- 3.1** Your affiliate companies (“**Affiliates**”) are:
- (a) companies in which You directly or indirectly hold shares or interests representing 50% or more of the voting rights; and
  - (b) companies which directly or indirectly hold shares or interests representing 50% or more of Your voting rights.

### **Article 4. Fees**

- 4.1** The use of the System shall be free of charge if You use it for calculating the carbon footprint of Your or Your Affiliates’ products (“**Free User**”).
- 4.2** Subject to the preceding clause, You shall pay a usage fee for the System if You use the System for any purpose other than as set out in the preceding clause (“**Other purpose**”), except that Sumitomo approves in writing in advance. You shall separately enter into a binding written license agreement (which shall include the usage fee to be agreed between You and Sumitomo) with Sumitomo before using the System for Other purpose.

### **Article 5. Defects**

- 5.1 You shall promptly notify Sumitomo of any defects found in the System. However, Sumitomo is not liable for fixing such defects.

## **Article 6. Confidentiality**

- 6.1 “**Confidential Information**” means any and all information in written, oral, e-mail and any other form that is disclosed and received between You and Sumitomo, which is:
- (a) marked as “confidential” or “proprietary” (in case of information by tangible form);
  - (b) confirmed by the disclosure within 30 (thirty) days from its disclosure and identified as confidential (in case of information disclosed by intangible form (e.g. orally or by visual inspection)); or
  - (c) the contents of the System.
- 6.2 You shall keep the Confidential Information in strict confidence, and shall not disclose or divulge it to any third party without the prior approval of Sumitomo in writing or by electromagnetic means agreed upon by both You and Sumitomo.
- 6.3 You may disclose Confidential Information:
- (a) to Your employees or officers who are necessary for the use of the System; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided that You shall notify Sumitomo in writing of any such required disclosure.

## **Article 7. Intellectual property**

- 7.1 You acknowledge that any intellectual property rights of or in the System, including the copyright thereof, is solely owned by Sumitomo.
- 7.2 You shall promptly notify Sumitomo in writing if you become aware of any actual or threatened infringement of the intellectual property rights of or in the System and fully cooperate with Sumitomo in any legal action taken by Sumitomo to enforce its or their intellectual property rights of or in the System.

## **Article 8. Improvement**

- 8.1 You shall promptly notify in writing Sumitomo if any discovery or invention relating to the System, whether or not patentable, is made by You during the use of the System (“**Improvement**”) and shall not apply for any rights in the Improvement without the

prior approval of Sumitomo in writing or by electromagnetic means agreed upon by both You and Sumitomo. If You apply for any rights in the Improvement without Sumitomo's prior approval, the rights shall be the sole property of Sumitomo.

- 8.2** You and Sumitomo shall discuss in good faith the ownership of and rights to the Improvement and intellectual property rights thereon by separate mutual negotiation.

## **Article 9. Damage**

- 9.1** In the event that You cause damage to Yourself or a third party in the course of using the System or upon deletion of the System as provided in Article 13.2, You shall handle and resolve such problems at Your own expense and responsibility and shall not cause any inconvenience to Sumitomo.

## **Article 10. Export compliance**

- 10.1** You shall adhere to export control applicable laws, regulations, administrative regulations, administrative orders and requirements of the United Nations and all countries or regions, including but not limited to the Japanese Foreign Exchange and Foreign Trade Act. Any and all information exchanged by You and Sumitomo under this EULA, including but not limited to any documentation, codes, equipment, components, modules, shall strictly comply with the foregoing.

## **Article 11. Compliance with laws and regulations**

- 11.1** You shall comply with all applicable laws and regulations, including by way of example but not limitation, Japanese and foreign competition, export control, sanction laws, and laws on prohibiting economic espionage, as well as notices, instructions and directions of regulatory authorities.
- 11.2** You acknowledge that:
- (a) with regard to the calculation of the carbon footprint of products, the GHG Protocol is recognized as a reputable international method for conducting product life cycle assessment or LCA;
  - (b) the System is designed by mainly referring to the GHG Protocol;
  - (c) Sumitomo shares with You the spreadsheet of the System for Your technical convenience only and Sumitomo has no intention or objective to promote or

- facilitate any specific calculation method including without limitation the GHG Protocol or any of the calculation method adopted in the System;
- (d) it is left to Your sole judgement and discretion to choose the appropriate calculation method You think is appropriate; and
  - (e) if, for instance, You consider that the carbon footprint of Your or Your Affiliates' products should include "non-attributable processes" that are not required by the GHG Protocol, You are free to change the excel spread sheet of the System as You consider necessary or utilize the System "Outside of BOM" file function to add their value to Your carbon footprint calculation.

## **Article 12. Sanctions**

- 12.1** You represent and warranty that You are not a designated target of economic trade sanctions promulgated by the U.S, the E.U., the U.K., or any other countries or the U.N. (the "**Sanction Laws**"). You undertake that You will fully comply with all applicable Sanction Laws in the performance of this EULA.

## **Article 13. Termination**

- 13.1** Without prejudice to any other right or remedy hereunder, Sumitomo may terminate this EULA with immediate effect by giving notice in writing or by electromagnetic means to You if:
- (a) You commit a breach of this EULA; or
  - (b) You commit an act that is detrimental to the interests of Sumitomo.
- 13.2** In the event that this EULA is terminated, or upon Sumitomo's request, You shall promptly stop using and completely delete the System from all Your equipment and devices on Your own responsibility and cost.
- 13.3** You confirm and agree that if this EULA is terminated, Sumitomo will not be responsible for any damage caused by the termination and incurred by You.

## **Article 14. Waiver**

- 14.1** A waiver of any right or remedy is only effective if given in writing or by electromagnetic means agreed upon by You and Sumitomo.

**14.2** A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**Article 15. Injunctive relief**

**15.1** You acknowledge that Confidential Information is an especially important Sumitomo's knowhow. Therefore, You acknowledge and agree that in the event of your breach or threatened breach of any term or condition of this EULA, Sumitomo shall have no adequate remedy at law and shall, therefore, in addition to any other rights or remedies that Sumitomo may have at law or in equity, be entitled to injunctive relief to restrain such breach or threatened breach.

**Article 16. Severability**

**16.1** If any portion or provision of this EULA shall for any reason be held to be void, invalid, illegal or unenforceable in any respect, such voidance, invalidity, illegality or unenforceability shall not affect any other portion or provision of this EULA, but this EULA shall be construed as if such void, invalid, illegal or unenforceable portion or provision had never been contained herein.

**Article 17. Entire agreement**

**17.1** This EULA constitutes the entire agreement between You and Sumitomo with respect to the subject matter hereof and may not be amended or modified except in writing signed by You and Sumitomo. This EULA supersedes all prior or contemporaneous oral or written agreements, undertakings, or representation between You and Sumitomo with respect to the System.

**Article 18. Audit rights**

**18.1** If Sumitomo has reasonable grounds to believe that You have breached this EULA, Sumitomo may audit Your use of the System, including by way of example but not limitation, Your company name, address and usage purpose using the System, Your use of the System to calculate Your or Your Affiliates' products, such products' name, and Your and Your Affiliates' compliance with this EULA including the

management of Confidential Information. Therefore, You shall answer Sumitomo's inquiries, permit Sumitomo to enter Your or Your Affiliates' workplace in relation to the System and to check Your and Your Affiliates' PCs and other equipment and devices where the System is installed.

#### **Article 19. Confirmation**

- 19.1** You confirm that Sumitomo may change this EULA or the System and may terminate the provision of the System at any time.
- 19.2** If Sumitomo modifies this EULA, Sumitomo shall notify You of that modification, the details of the modified terms, and the effective date thereof by posting on Sumitomo's website ("[https://www.sumitomo-chem.co.jp/sustainability/information/cfp\\_tomo/](https://www.sumitomo-chem.co.jp/sustainability/information/cfp_tomo/)").

If You do not accept the modified terms, You shall immediately suspend the use of the System and notify Sumitomo thereof, and if You continue to use the System after any modification of this EULA, You shall be deemed to have accepted the modified terms, and in such case, any usage fees or other service provision conditions shall be governed by the modified terms.

#### **Article 20. Governing law and jurisdiction**

- 20.1** This EULA shall be governed by the laws of Japan, and the Tokyo District Court shall have exclusive jurisdiction in the first instance over any dispute arising from, or relating to this EULA and the System.