



# Mutual Confidentiality and Non-Disclosure Agreement

## Mutual Confidentiality and Non-Disclosure Agreement

McDonough Braungart Design Chemistry, L.L.C., d.b.a. MBDC, L.L.C., having an address at 1001 East Market Street, Suite 101, Charlottesville, VA 22902 ("MBDC"), and **CLIENT COMPANY FULL NAME**, having an address at **ADDRESS** ("**CLIENT SHORT NAME**"), desire to disclose to each other certain confidential or proprietary information for the purpose of Cradle to Cradle™ Certification and/or product evaluation. ("Purpose") Both parties consider the information to be disclosed confidential. Therefore, in consideration of each other's disclosures, each party hereby agrees to receive the other party's information under the terms of this Agreement.

"Confidential Information" shall mean any information disclosed by either party or their authorized designee which is in oral, written, visual or physical form and which is nonpublic, proprietary, a trade secret or confidential in nature. Notwithstanding the foregoing, no such information which is initially disclosed other than in writing shall be deemed Confidential Information unless, within sixty (60) days after such initial disclosure, the Disclosing Party (as hereinafter defined) delivers written notice to the Receiving Party (as hereinafter defined) designating such information as Confidential Information. The results of any evaluation or analysis using Confidential Information shall be considered Confidential Information within the scope of this Agreement. "Disclosing Party" means a party to this Agreement which supplies Confidential Information to the other party to this Agreement. "Receiving Party" means a party to this Agreement which receives Confidential Information from a Disclosing Party. MBDC may disclose to **CLIENT SHORT NAME** Confidential Information relating to MBDC's processes, procedures and design tools, including the MBDC Cradle to Cradle Design Protocol. **CLIENT SHORT NAME** may disclose to MBDC Confidential Information relating to its business and the like.

In order to safeguard Confidential Information received hereunder, both MBDC and **CLIENT SHORT NAME** agree to the following:

1. Unless Disclosing Party grants specific, written, advance permission to do so, Receiving Party shall not disclose any Confidential Information to any third party except as provided for in paragraph 4 below, nor use or reproduce any Confidential Information for any purpose other than to carry out the Purpose of the Agreement. However, Receiving Party may disclose Confidential Information in compliance with applicable law or an order of a court of competent jurisdiction if Receiving Party gives Disclosing Party prompt, advance notice of its need to disclose and cooperates with Disclosing Party in an effort to narrow or avoid such disclosure, obtain any available protective order, or the like.
2. Information shall not be considered Confidential Information if it can be shown to have been:
  - a. Rightfully in Receiving Party's possession prior to the date of Disclosing Party's disclosure to Receiving Party,
  - b. Available to the public prior to the date of Disclosing Party's disclosure to Receiving Party or to have become available to the public thereafter without any unauthorized act or omission by Receiving Party,
  - c. Disclosed to Receiving Party without restriction by a third party who had a right so to disclose and was not under an obligation of confidence to Disclosing Party, or
  - d. Independently developed by Receiving Party by a person having no access to the Confidential Information.

3. Confidential Information shall not be deemed to be available to the public or to be in Receiving Party's possession merely if it:
  - a. Is specific information that falls within an area of general knowledge available to the public or to Receiving Party, but without the specific Confidential Information, including its meaning and importance, being public knowledge or known to Receiving Party; or
  - b. Can be reconstructed from a combination of information that can be pieced together from multiple sources that are available to the public or to Receiving Party, if no one of those sources actually leads one to the entire combination, together with its meaning and importance.
  
4. Receiving Party shall limit access to the Confidential Information to employees of Receiving Party directly involved with the Subject Matter. With the exception of disclosures according to paragraph 10 below, should Receiving Party determine that it needs to disclose Confidential Information to any third party, Receiving Party shall do so only with Disclosing Party's prior written permission and only then in accordance with the requirements of said written permission.
  
5. At any time within the term of this Agreement, Disclosing Party may request the return of the Confidential Information. If Disclosing Party does so, Receiving Party promptly shall comply, returning to Disclosing Party any and all written or physical embodiments of the Confidential Information that are then in Receiving Party's possession or control (including all physical or electronic copies).
  
6. THIS AGREEMENT RELATES ONLY TO THE DISCLOSURE OF INFORMATION, IT DOES NOT CONSTITUTE AN AGREEMENT OR OFFER BY EITHER PARTY TO PURCHASE OR SUPPLY MATERIALS OR A PRODUCT, DEVELOP A PRODUCT, LICENSE ANY INTELLECTUAL PROPERTY RIGHTS, CONDUCT RESEARCH, ENTER INTO A JOINT PROJECT OF ANY SORT, OR PROVIDE CONSULTING OR OTHER SERVICES. Any such other arrangement must be separate written agreement between the parties. Also, this Agreement does not represent an exclusive arrangement between the parties. Either party is free to deal in any way with third parties provided that there is no use or disclosure of Confidential Information in violation of this Agreement. The provisions of this Agreement shall be severable, and if any of them is held invalid, by a court of competent jurisdiction, because of its duration, scope of area or activity, or any other reason, the parties agree that such provision shall be adjusted or modified by the court to the extent necessary to cure that invalidity, and the modified provision shall thereafter be enforceable as if originally made in this Agreement.
  
7. Neither this Agreement nor Disclosing Party's disclosure of Confidential Information shall be deemed by implication or otherwise to vest in Receiving Party any rights in any patents, trade secrets, know-how, or other, property of Disclosing Party.
  
8. The term of this Agreement shall begin upon the date this Agreement is accepted by **CLIENT SHORT NAME**.
  
9. This Agreement supersedes any previous oral or written agreement between the parties relating to the subject matter of this Agreement. Any amendment to this Agreement must particularly refer to this Agreement, state that it is an

amendment, be in writing, and be executed by an authorized person for each party.

- 10. **CLIENT SHORT NAME** may disclose MBDC's Confidential Information disclosed hereunder to its parent company, subsidiary or affiliates, provided that such entity agrees, prior to any such disclosure, to be bound by the terms of this Agreement.
- 11. MBDC may disclose **CLIENT SHORT NAME**'s Confidential Information disclosed hereunder to affiliates or subsidiaries, provided that such entity agrees, prior to any such disclosure, to be bound by the terms of this Agreement.

for MBDC, L.L.C.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

for **CLIENT COMPANY FULL NAME**

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_