



# MEDIA EVOLVED CONFIDENTIAL CREDIT APPLICATION

Fax To: 704-395-1688  
Media Evolved  
3205 Freedom Drive, Suite #51  
Charlotte, NC 28208  
Phone: 704-395-1002  
Credit Contact: Mr. Jamie Best, CFO, ext. 203

Media Evolved Salesperson: \_\_\_\_\_

Amount of Credit Requested: \_\_\_\_\_

Federal ID# \_\_\_\_\_ D&B # \_\_\_\_\_

### CUSTOMER INFORMATION:

### BUSINESS FORM AND DATE ESTABLISHED:

Legal Name of Firm: \_\_\_\_\_ Corporation:  Partnership:  LLC:  (check one)

Trade Name: \_\_\_\_\_ Incorporated/ Organized in what state: \_\_\_\_\_

Principal Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ A/P Contact: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Your Product(s): CD-Audio, CD-ROM, Mini CD, Optical Business Card, CD-Mixed Mode, CD-G, CD-I, DVD-5, DVD-10, DVD-9, Other: \_\_\_\_\_ (circle all that apply)

Name and Address of Parent Firm (if subsidiary): \_\_\_\_\_

Estimated volume - Dollars (Mthly/Annual): \_\_\_\_\_ Disc (Mthly/Annual): \_\_\_\_\_

### LIST ALL OWNERS, PARTNERS OR CORPORATE (INCLUDING FINANCIAL) OFFICERS:

Name: \_\_\_\_\_ SS#: \_\_\_\_\_ Title: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone #: \_\_\_\_\_

Name: \_\_\_\_\_ SS#: \_\_\_\_\_ Title: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone #: \_\_\_\_\_

Name: \_\_\_\_\_ SS#: \_\_\_\_\_ Title: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone #: \_\_\_\_\_

Name: \_\_\_\_\_ SS#: \_\_\_\_\_ Title: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone #: \_\_\_\_\_

**RECOMMENDED CONTACT FOR FINANCIAL INFORMATION:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax #: \_\_\_\_\_

PLEASE PROVIDE A COPY OF YOUR RESALE OR SALES TAX EXEMPTION CERTIFICATE FOR YOUR DIRECT PAY PERMIT CERTIFICATE.  
\*\*CERTIFICATES MUST BE IN THE POSSESSION OF MEDIA EVOLVED, LLC FOR THOSE STATES INTO WHICH PRODUCTS ARE SHIPPED FOR TAX EXEMPT STATUS TO APPLY.

**PRINCIPAL SUPPLIERS:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Contact: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Contact: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Contact: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Contact: \_\_\_\_\_

**LIST OF BANKS AND FINANCIAL INSTITUTIONS WITH WHICH YOU DEAL:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Amount of credit line \$: \_\_\_\_\_  
Account Number: Checking \_\_\_\_\_ Loan \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Amount of credit line \$: \_\_\_\_\_  
Account Number: Checking \_\_\_\_\_ Loan \_\_\_\_\_

ENCLOSE – A COPY OF YOUR COMPANY’S LATEST ANNUAL BALANCE SHEET AND RELATED INCOME STATEMENT, PREFERABLY AUDITED, OR SIGNED BY A CORPORATE OFFICER OR PRINCIPAL.

**Terms:** Net 30. Amounts past due 45 days or more are subject to a finance charge of the maximum allowed by State Law plus costs of collections including a minimum of 15% attorney fees. Media Evolved, LLC reserves the right to revoke open account terms and to hold production and shipping of orders on delinquent accounts.

THE FORGOING REPRESENTATIONS HAVE BEEN MADE TO MEDIA EVOLVED, LLC FOR THE PURPOSE OF OBTAINING CREDIT FOR GOODS AND SERVICES PURCHASES AND TO THE BEST OF MY KNOWLEDGE ARE ACCURATE IN ALL RESPECTS.

SIGNED \_\_\_\_\_  
(CORPORATE OFFICER OR PRINCIPAL)

DATE \_\_\_\_\_

Print Name \_\_\_\_\_

### **Personal Guaranty:**

For and in consideration of Media Evolved, LLC extending credit at the request of the undersigned to \_\_\_\_\_ ("Company"), the undersigned hereby personally guarantees to Media Evolved, LLC the payment of any obligation of the Company and the undersigned hereby agree to pay Media Evolved, LLC on demand, without offset, any sum which may become due to Media Evolved, LLC by the Company whenever the Company shall fail to pay the same, and further agree to pay all costs of collection including attorney's fees. It is understood that this guaranty shall be a continuing and irrevocable guaranty and indemnity for such indebtedness of the Company. The undersigned hereby agree to waive the Homestead exemption, notice of acceptance hereof, notice of presentment, demand, non-payment, dishonor and protest, and consents to waive notice of any modification, amendment or extension of the terms of the credit agreement hereby guaranteed.

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_  
(Individual)

WITNESS: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_



## CONDITIONS OF SALE

These are the sole terms of trading of Media Evolved, LLC (the "Company") and shall govern all transactions between the Company and any customer (the "Customer") except as expressly agreed in writing on behalf of the Company by its duly authorized representative (an "Authorized Representative").

The term "Agreement" means these conditions together with any terms (including those as to price and quantity) contained in any order that is accepted in writing by an Authorized Representative or any separate Price and Service Agreement (where relevant) as described in paragraph 2.

The term "Goods" shall mean the goods that are the subject matter of any agreement, including any masters and any artwork or packaging applied to or supplied with those goods and including all material contained or embodied in those goods.

The term "Services" shall mean the services that are the subject matter of any agreement, including mastering, provision of artwork, film or packaging and delivery and physical distribution services.

1. **Quotations** by the Company shall not constitute an offer and may be withdrawn or revised at any time until written acceptance by the Company of the Customer's order or the commencement of work by the Company as referred to in paragraph 2 below (whichever is the sooner).

2. **An agreement** shall be concluded upon written acceptance by the Company of the Customer's written order or by the Company commencing work or preparatory procedures pursuant to such an order (whichever is the sooner) and its only terms shall be those specified herein and in any Price and Service Agreement ("PASA") that may be entered into with the Customer and in the event of any conflict or inconsistency between the terms specified herein and the terms of the PASA, then the terms of the PASA will take precedence (but only to the extent of the conflict or inconsistency). This Agreement shall apply in place of and prevail over any terms and conditions contained or referred to in documentation issued by the Customer or in correspondence or elsewhere or implied by custom, practice or course of dealing [including, expressly without prejudice to the generality of the foregoing, in any representation (written or oral) as to the time for performance of any obligation of the Company] unless specifically agreed to in writing by an Authorized Representative (and only the Company's President or any Vice-President shall be an Authorized Representative for the purposes of this Agreement) and any purported provision to the contrary or in conflict with the foregoing is hereby excluded by the Company and waived by the Customer.

3. **Price Variation.** At any time before delivery of the Goods or commencement of the Services, the Company may increase the price payable to reflect any increase in labor or material costs relating to providing such Goods and/or Services.

4. **Sales Tax.** The Customer understands that, except as otherwise expressly agreed in writing signed by an Authorized Representative, any prices contained in any pricing schedule or list or in any order are F.O.B. at the Company's plant in Charlotte, North Carolina and are exclusive of sales, use, excise and similar taxes, shipping and handling charges and storage and related fees and expenses, all of which the Company is entitled to bill to the Customer and which the Customer shall pay.

5. **Preliminary work.** All work carried out, whether experimentally or otherwise, at the Customer's request shall be charged for.

6. **Copy.** A charge may be made to cover any additional work involved where copy (including label copy) supplied by the Customer is not clear or legible.

7. **Proofs.** Proofs of all work may be submitted for the Customer's approval and the Company shall not incur any liability for any errors not corrected by the Customer. Any additional proofs necessitated thereby shall be charged extra. If any issues of style, type or layout are left to the judgment of the Company, changes arising from these issues made by the Customer shall be charged extra.

8. **Delivery of Goods and Services.** For the purposes of this Agreement, "days" shall refer to any day of the week (including Saturdays and Sundays) and "Working Days" shall refer to any day except Saturdays and Sundays and any public holiday. The Company shall endeavor to meet any agreed delivery date or dates but time shall not be of the essence and the Company shall not be liable for any loss arising out of any delay in delivery. The delivery date shall be agreed on acceptance of the order by the Company unless the Company agrees to defer agreement of the delivery date. The Company may, on terms it (in its sole and absolute discretion) deems appropriate, agree to any request from the Customer to vary the agreed delivery date. All costs associated with delivery shall be borne by the Customer unless expressly agreed otherwise by the Company in writing signed by an Authorized Representative. The Customer shall accept delivery of Goods when tendered or deemed tendered whether before or after the agreed delivery date. Tender shall be deemed made on the earlier of:

- (i) the agreed delivery date if the Goods are then ready to be delivered but have not previously been tendered or deemed tendered; or
- (ii) the expiration of three Working Days' after the Customer has been given written notice that the Goods are ready to be delivered.

If the Customer does not take delivery when tendered, the Company shall be deemed to have performed its obligations in respect of the Goods, and the Customer shall pay any additional expenses incurred by the Company, including (but not limited to) a storage charge. Any agreed time period shall be calculated by reference to the number of Working Days between receipt of a workable order and shipment of the Goods from the Company's premises or completion of the performance of the Services. Day one shall be the first Working Day after receipt by the Company of a workable order and the last Day shall be the Working Day of shipment. An order becomes a workable order on the Working Day when:

- (i) all of the components required for manufacture have been delivered;
- (ii) all components are to specification and in a condition suitable for use in manufacturing;
- (iii) all licenses and any other necessary clearances, permissions or certificates have been received by the Company;
- (iv) without prejudice to its rights under paragraph 17(A), if the material falls within a category that the Company considers offensive or potentially illegal, the Company has received clearances that are satisfactory to the Company in its sole and absolute discretion; and
- (v) the Company has all information required to perform the Services and the Customer has supplied such assistance and carried out such preparations as the Company may require. If performance of the Agreement is delayed for more than fourteen Days by failure of the Customer to duly supply any materials, copy, instructions or other matter to be supplied by the Customer or otherwise required by the Company, the Customer shall immediately pay for work so far carried out, materials specially ordered, and any other additional costs (including storage). At any time after the expiration of the fourteen Day period, the Company may give seven Days' notice to the Customer that it is treating such a failure as repudiation by the Customer of the whole or part of this Agreement.

9. **Damage or Loss in Transit.** If the Company or its carrier is to deliver Goods the Customer shall examine them immediately upon, and in any event within three Days of, receipt and shall notify the Company immediately if they are received in a damaged condition or if there are shortages and will indemnify the Company against any loss that it suffers because any such notification is received too late to enable it to claim against carriers or insurers in respect of such damage or loss in transit. The Company shall not in any case be liable for any loss to the Customer arising from delay in transit not caused by the Company. Subject to the above, in all circumstances of loss or damage to the Goods, the Customer's claim shall be limited to a maximum amount of the invoiced value of the Goods.

10. **Multiple Deliveries.** Subject to this Agreement, the Customer may collect or the Company may deliver the Goods in installments, and in such event each installment shall be deemed a separate contract for the following purposes:

- (i) no default by the Company in regard to any installment shall entitle the Customer to repudiate this Agreement in respect of any outstanding deliveries; and
- (ii) delivery of an installment shall be part performance under the Agreement and payment in respect thereof shall be made accordingly.

11. **Quantity.** The Company shall endeavor to deliver the quantity or quantities ordered, but such quantities are plus or minus 10%, credit or debit being given pro rata.

12. **Terms.** All monies payable by the Customer under this Agreement shall be paid in full net cash without any deduction, set-off or counterclaim whatsoever. All payments are to be made in the currency of the invoice and, if by check, the check to be drawn on a United States domestic bank account and to be received by the Company three Working Days before the due date. Payments by telegraphic or wire transfer may be made up to midday on the due date. In respect of approved credit accounts payment is due at the time specified in the PASA, or if none is so specified, then 30 Days from the invoice date. In all other cases payment is due against pro forma invoice on acceptance of the order. Without prejudice to any other rights of the Company the Customer shall pay interest on any sums overdue for payment at a rate one and one-half percent (1-1/2%) per month from the due date for payment until payment (whether before or after judgment). Sums payable for additional costs and extras shall be such as are in the circumstances fair and reasonable consistent with the Company's customary practices.

13. **Default.**

(A) If the Customer fails to pay any sum when due under this Agreement or any other agreement between the Customer and the Company or if any event mentioned under (B) occurs, then the Company may at its option:

- (i) treat this Agreement and any other agreement between the parties as having been repudiated by the Customer and recover damages accordingly;
- (ii) suspend further performance until all sums owing to the Company by the Customer under any agreement have been paid in full;
- (iii) withhold further performance under this Agreement or any other agreement until it has received payment in advance of all monies to become payable hereunder and/or thereunder;
- (iv) suspend any or all credit granted to the Customer on any account;
- (v) have a general and particular lien over all masters, artwork, paper parts, packaging, copy, film or other items supplied by the Customer to the Company for all outstanding sums and liabilities and that are due to the Company by the Customer and over all Goods produced by the Company and all products and proceeds thereof or therefrom. The Company may enforce its lien by the public or private sale of all or any part of the Customer's property (including part of an individual item) in its possession.

(B) Without prejudice to any other rights under this Agreement or otherwise, the Company may terminate forthwith by notice in writing this or any other agreement with the Customer if:

- (i) the Customer is in breach of any term of this Agreement or any other agreement with the Company;
- (ii) any person becomes entitled to levy or does levy distress, execution or other legal process upon, or otherwise liens or attaches, any of the Customer's property or assets or if the Customer makes or offers any arrangement with its creditors or commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against the Customer or if any resolution or petition to wind up a corporate customer (whether voluntary or compulsory) is presented or if an administrator, receiver or administrative receiver of the Customer's under taking property and assets or any part thereof is appointed or the Company has reasonable grounds for believing that the Customer will fail to discharge its obligations to the Company when due.

(C) Upon termination or expiration of this Agreement (for whatever reason):

- (i) the Customer shall pay to the Company all sums due to the Company with immediate effect; and
- (ii) the Company shall, in its sole discretion, have a general and particular lien over (a) all masters, artwork, paper parts, packaging, copy, film or other items supplied by the Customer to the Company and (b) all Goods provided by the Company (and all products and proceeds thereof or therefrom) for outstanding sums and liabilities due to the Company by the Customer. The Company may

enforce its lien by the public or private sale of all or any part of the Customer's property (including part of an individual item) in its possession or in which the Company otherwise has a security interest.

**14. Property and Retention of Title.**

(A) Title to the Goods will pass to the Customer only when payment (including any interest payable under paragraph 12) in full for such Goods has been received by the Company. Until title to the Goods passes in accordance with this paragraph, the Customer shall hold the Goods as bailee of the Company and if the Company requires, the Customer shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company. The Company by its employees or agents shall be entitled to enter upon or into any land, buildings or vehicles of the Customer to satisfy itself that this obligation is being complied with.

(B) The Company by its employees or agents shall be entitled to enter upon or into any land, buildings or vehicles of the Customer to retake possession of those of the Goods in respect of which title has not passed to the Customer.

(C) Upon:

(i) the happening of any event which would give the Company the right to terminate this Agreement; or

(ii) the Company reasonably considering for any reason that the Goods are in jeopardy; or

(iii) the happening of any event or default that causes the Company reasonably to consider that its title to the Goods or proceeds of sale may be adversely affected, all Goods in respect of which title has not passed to the Customer shall be redelivered to the Company and all proceeds of sale received by the Customer from sales made prior thereto shall be paid directly to the Company or paid into a bank account separate from all other monies of the Customer and held in such account in trust for the Company.

(D) The Customer shall not be entitled to pledge or grant any security in any way for any indebtedness or obligation over or in respect of any of the Goods in respect of which title has not passed to the Customer.

**15. Metal Parts and Printing Plates.** All masters, metal parts, label films used for printing on discs and packaging, paper parts and other components purchased or manufactured by the Company and used by the Company in relation to the Goods or Services shall remain the exclusive property of the Company, including any items subject to an extra charge. The Company shall not be obliged to preserve such components relating to the Goods or Services unless previously agreed in writing by an Authorized Representative. The Company reserves the right to charge additional charges for any such components preserved.

**16. Customer Supplied Materials.** The Company may, without assigning any reasons, reject any masters, paper parts, packaging, copy, film or other materials agreed to be supplied or specified by the Customer. Quantities of materials supplied by the Customer shall allow for normal spoilage. The Customer shall indemnify the Company against any loss, damage or expense howsoever arising that the Company may suffer or incur because any material supplied by the Customer is defective or unsuitable in any way.

**17. Customer's Warranties.**

(A) The Company may refuse to manufacture, replicate, supply or otherwise deal with any matter that it considers may be illegal or unlawful or in circumstances in which the Company believes that any such manufacture or dealing by it may infringe the rights of any third party or involve it in any illegal or unlawful act or default.

(B) It is a condition of this Agreement (and the Customer undertakes, represents and warrants) that:

(i) The manufacture or supply of or other dealing with the Goods or the performance of the Services by the Company will not infringe the copyright or other rights of any third party and will not result in the Company engaging or being involved with any unlawful act, and neither will it result in the Company incurring any liability whatsoever to any person, firm, company or other organization;

(ii) The Customer has complied with all obligations and has obtained all permissions and consents necessary for the manufacture, supply, distribution and other dealings with the Goods;

(iii) The Goods will comply with all statutory and regulatory provisions applying to the Goods;

(iv) The Goods (and any dealing with them or Services performed in connection with them) will not be obscene, defamatory, blasphemous or pornographic or in any other way illegal or unlawful.

(C) The Customer will indemnify the Company against all losses, damages, costs and expenses (including legal fees) that the Company incurs or becomes liable for as a result of any claim that the manufacture or supply of or other dealing with the Goods or any Services performed in connection with any Goods by the Company infringes the rights of any third party or is otherwise illegal or unlawful or as a result of any breach by the Customer of any term of this Agreement.

#### **18. Company's Warranties.**

The Company warrants to the Customer only that the units of Goods shall be free from defects in material or workmanship under normal conditions and use and when used in conjunction with appropriate equipment, provided that such warranty shall be effective with respect to any such unit for only one (1) year from the date such unit (a) is tendered or deemed tendered to the Customer or (b) if earlier, such unit is placed in storage at the request of the Customer or as contemplated under paragraph 8 above. The Company's liability and responsibility with respect to any such defect or for any damage or liability relating or stemming from any such defect, shall be limited, at the Company's sole option, to (i) replacement of such defective unit with a non-defective unit, (ii) if the Customer has not yet paid for such unit, relieving the Customer of its obligation to pay for such unit or (iii) if the Customer has already paid for such unit, refunding to the Customer the price it paid for such unit. Except as expressly provided above, (a) the Company provides no warranty with respect to any unit of any Goods, (b) all other warranties [express or implied], are expressly waived by the Customer and (c) the Company shall have no liability or responsibility with respect to any defective unit or any damages resulting therefrom or occasioned thereby. The Customer acknowledges and agrees that, except as expressly provided above in this paragraph 18, the Company shall have no liability with respect to the manufacture, replication or other production of any Goods, including, without limitation, with respect to any defect in any units thereof provided to the Customer. Without limiting the generality of the foregoing, the Company shall not be liable or responsible for any special incidental, consequential, exemplary or punitive damages of any nature whatsoever (including, without limitation, any damages measured by, or premised on, lost profits, revenues or savings, loss of use of any product, equipment or other property or asset, cost of capital, cost of any substituted equipment, product or service, downtime, or injury to property, lost business, resources or profits, reputation or relations or relationships with customer or clients (actual, prospective or potential) or any claim by any third-party), whether based upon breach of warranty or contract, negligence, strict tort or any other legal theory. Any representation or warranty by the Company contained herein is for the sole and exclusive benefit of the Customer, and no person or entity shall be deemed a third-party beneficiary of any such representation or warranty. Any action based or premised on any alleged breach of the warranty set forth in this paragraph 18 with respect to any unit of Goods must be commenced within eighteen (18) months from the date such unit is tendered or deemed tendered to the Customer. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

**19. Acceptance of the Goods.** If the Customer does not, within five (5) Working Days following shipment or delivery of any units of any Goods, inform the Company by written notice that the Customer is rejecting and electing to return such units, the Customer shall be deemed to have accepted such units, subject, however, only to the warranty provided by the Company under paragraph 18. Notwithstanding any such notice, the Customer shall remain obligated to pay for such units except as otherwise expressly provided herein. The Customer shall bear the risks of loss or damage with respect to any units that are rejected and returned to the Company until such time as the Company shall have regained actual possession and control of same.

**20. Risk.** If the Customer or its carrier collects, accepts or takes possession of the Goods, the risk in them shall pass upon commencement of loading onto the collecting transport or otherwise being taken

into the possession or control of the Customer, its servants or agents. If the Goods are to be delivered by the Company or its carrier, the risk shall pass to the customer when the Goods have been so delivered. If the Customer does not take delivery of the Goods when duly tendered or deemed tendered, the risk shall pass when delivery should have been accepted. The Company may at its option store or insure the Goods at the expense of the Customer. All other material (including but not limited to the Customer's supplied materials) in the possession of the Company or otherwise shall be held, worked on and carried at the Customer's risk in every respect.

21. **Indemnification.** The Customer shall indemnify the Corporate Parties (as hereinafter defined) for, shall hold the Corporate Parties harmless from and against, and shall reimburse the Corporate Parties for, any and all claims, threats, suits, liabilities, losses, charges, penalties, damages, costs and expenses (including, without limitation, attorneys' fees and other legal expenses) incurred on account of, or resulting from or occasioned by, (a) any breach or violation of, or default with respect to, any of the Customer's covenants, promises, representations, warranties and other agreements contained herein (including without limitation, this paragraph 21), (b) any third-party claim or allegation that, if true, would constitute a breach or violation of, or default with respect to, any of such covenants, promises, representations, warranties and other agreements and/or (c) any damage or injury (including, without limitation, death) to any property or person (including without limitation, any employee of the Customer), however caused (including, without limitation, by the Company's sole, concurrent or contributory negligence), arising or resulting from any sale, resale, repair, replacement, distribution or other use or misuse of any units of Goods or of any other product or service manufactured, replicated or otherwise produced or provided by the Company (or any subcontractor thereof) as provided or contemplated hereunder. As used herein, "Corporate Parties" means, collectively, the Company, its parents, subsidiaries and other affiliates, the Company's subcontractors, the directors, officers, employees and other agents and representatives of any of the foregoing and the successors, assigns and legal representatives of any of the foregoing.

22. **Force Majeure.** The Company shall not be liable for any failure to perform any or all of its obligations under this Agreement arising from any inability to secure or procure at reasonable cost, labor, materials or other supplies of any kind or any act of God, war, strike, lockout or other labor dispute, fire, flood, drought, air-pollution, equipment failure, legislation, order of public authority or any other cause whatsoever beyond its control.

23. **Severability.** If and to the extent that any provision of this Agreement is wholly or partly illegal, void or unenforceable, then such provision, or offending part thereof, shall be severable from the remaining provisions, or parts of provisions which shall remain in full force and effect.

24. **Cancellation.** This Agreement may be cancelled by the Customer only with the Company's written consent. In the event of such cancellation, the Company reserves the right to require the Customer to pay to the Company a cancellation charge, commensurate with the Company's costs incurred up to the date of cancellation plus the Company's loss of profit.

25. **Notices.** All notices or other communications are to be in writing and shall be sent by first class post or facsimile transmission to the parties at their respective addresses set out in this Agreement or such other address as the party being served shall from time to time notify to the other.

26. **Applicable Law.**

(A) Notwithstanding the jurisdiction of formation or the place of business of either party hereto, the parties agree that this Agreement shall be governed by, and enforced and interpreted in accordance with, the internal laws of the State of North Carolina applicable to contracts executed and to be wholly performed within such State, without giving effect to the conflict or choice of laws provisions or principles thereof. This Agreement shall be interpreted and enforced without consideration of (a) any conduct of the parties or any course of dealings between the parties (whether prior to or after the effective date of this Agreement) or (b) any custom, usage or practice in any trade, business or industry. CUSTOMER SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITUATED IN THE CITY OF CHARLOTTE AND/OR MECKLENBURG COUNTY, NORTH CAROLINA FOR THE RESOLUTION OF ANY SUIT, ACTION, LITIGATION OR OTHER PRECEEDING OR OTHER DISPUTE ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT OR THE PERFORMANCE THEREOF,

subject to (B). With respect to any suit, action, litigation, or other proceeding that may be instituted by the Company or any other Corporate Party under, with respect to, arising out of or otherwise connection with this Agreement, service of process shall be deemed sufficient if, in addition to or in lieu of any other method that may be required or permitted under applicable law, such service of process is made by both first class mail and registered or certified mail to the Customer at its address to which notices are to be sent as provided in paragraph 25 above. Each party hereto expressly waives its right to jury trial with respect to any litigation under or related to this Agreement or any right or remedy hereunder or with respect hereto.

(B) In the event any suit, action, litigation or other proceeding is commenced against the Company by a third party and the same would give rise to any claim against the Customer under this Agreement, the Customer agrees to be joined in such suit, action, litigation or other proceeding, irrevocably submits to the personal jurisdiction of any court in which such suit, action, litigation or other proceeding has been brought or is pending and waives any defense, challenge or objection it may have that any such court is inconvenient for resolving any dispute arising under or in connection with this Agreement. The captions and sections headings used herein are for convenience of reference only and shall not be used to interpret any provision hereof.

IN WITNESS WHEREOF, the parties hereto intending to be bound hereby, have executed and delivered this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Media Evolved, LLC

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

\_\_\_\_\_  
Name of Customer

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

(Authorized Officer)

Title/Position: \_\_\_\_\_

Incorporated/Formed In: \_\_\_\_\_

Principal Place of Business: \_\_\_\_\_

\_\_\_\_\_