

CITY CLERK  
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C-10298  
09/28/2015

# MEDIA S(•)NAR

Address: 569 Consartium Court, London, ON N6E 2S8 Phone: 855-898-4044 Fax: 519-964-0021

September 21, 2015

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To: Glendale Police Department  
From: **Media Sonar**  
Re: Quote for Media Sonar per proposal #GLENDALE001

**Terms:**

- Signature of this document creates a binding contract.
- Unless indicated otherwise, the date of signature by Glendale shall be considered the first day of the contract term.
- Billing information must be submitted by the client as part of this document.
- This quote is valid for 30 days from the data of issue.

**Quote Outline:**

Product	Term	Inclusions:	Pricing
Media Sonar	1 Year	<ul style="list-style-type: none"><li>• Unlimited data within your serving area</li><li>• All data within Sonars will be stored for up to six months</li><li>• Unlimited e-mail support</li><li>• Free web-based training on the Media Sonar platform</li></ul>	<ul style="list-style-type: none"><li>• \$10,000.00 for "unlimited" users within the Intelligence Unit</li></ul>
TOTAL AMOUNT : \$ 10,000.00			

## END USER SERVICES AGREEMENT:

The customer identified below (the "Customer") desires to use the Media Sonar product provided by Media Sonar Technologies Inc.

**1. Services:** Services ("Service(s)") will be the ability to use the Media Sonar product via internet access to the Media Sonar site. The Customer's use of the Services are subject to the scope, use restrictions and limitations described in this quote. Services may be modified from time to time by the parties entering into Schedules that refer to this Agreement. Nothing in a Schedule may amend this Agreement unless the Schedule explicitly states that the Schedule is amending this Agreement, and refers to the section being amended. Any specifications, statements of work or other documents that are signed by the parties or explicitly incorporated by reference within other signed documents from time to time form part of this Agreement and the applicable Schedule under which they are prepared.

**2. Fees:** The Customer will pay Media Sonar fees specified in the "quote outline" above. Media Sonar agrees to hold fees firm during the period of the contract. One-time fees are payable in advance or at the time the service is provided, as outlined in the quote. Recurring monthly fees and fees for other Services are payable monthly in arrears within 15 days of the date of invoice. Any payments or deposits are not refundable absent default by Media Sonar. Failure by the Customer to pay the invoiced amount within 15 days of the date of invoice may result in termination of Services following 10 days' notice.

**3. Service Details:** Customer shall nominate one individual as a contact for Media Sonar regarding the Services. Communications regarding the Services will be primarily between that contact and the Media Sonar contact specified in this document. Either party may change that contact by giving written notice.

**4. Term:** This Agreement will commence on execution. The Term of the Services shall begin on the date contained in the applicable Pricing Proposal and will continue thereafter for the Term specified on Pricing Proposal, unless terminated by either party as permitted by this Agreement.

The Term for Services will be automatically extended on a month-to-month basis upon the expiration of the Term. Media Sonar may terminate any Services effective after the end of a Term by giving the Customer at least 6 month's advance written notice. The Customer may terminate any Services effective after the end of a Term by giving Media Sonar at least 60 day's advance written notice.

**5. Change Control:** If the Customer desires to make additions or changes to the Services, it shall make a written request to Media Sonar. Media Sonar shall provide the Customer with a written response within 10 business days; or such longer period as the parties may agree, detailing: (i) how the proposed change will be implemented (or if it is not possible or practical to implement); (ii) any effect it will have on the schedule for the performance of Services; (iii) any effect it will have on the performance of the Services; and (iv) any additional costs required. Media Sonar may choose to implement such changes for its services generally. If the Customer desires to proceed with the change it must provide written authorization to proceed, in which case the change shall be deemed to be part of this Agreement.

**6. Restrictions on Use:** Unless otherwise explicitly permitted by Media Sonar in writing, the Services are meant to be used for internal Customer use only. The Customer will not: (a) sell, rent,

assign, lease, sublicense, market or commercially exploit the Services or any component thereof in any way, except as provided in this Agreement; (b) use the Services except as authorized herein; (c) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear during use of any Services; or (d) use the Services for activities that are unlawful or unethical.

**7. API or additional Customer services:** The Customer will not (a) add its own or any other services on top of or using the Services, (b) access or use Media Sonar API's, or (c) resell the Services as is or as modified unless explicitly provided for in a Schedule. If Media Sonar grants the Customer such rights, the Customer may not remove any Media Sonar branding or change the look and feel without express Media Sonar permission. The Customer must ensure that any third party users are subject to terms of use no less protective of Media Sonar than in this Agreement.

**8. Ownership:** The intellectual property relating to the Services is owned by Media Sonar (or it has the right to use same), not the Customer. If the Services include changes or additions requested by the Customer, Media Sonar shall own same, which shall be useable by the Customer on the same terms as the Services.

**9. Training:** Media Sonar will provide web-based training for the Services as outlined in the "quote outline" above.

**10. Updates:** The Services will be updated by Media Sonar from time to time at no additional cost to the extent it provides such updates to its Customers generally, provided that the Services are not materially downgraded by doing so.

**11. Default:** This Agreement and each Schedule is effective until terminated.

Media Sonar may immediately terminate this Agreement (or one or more Schedules at its discretion – leaving this Agreement and other Schedules in force) or suspend the provision of Services without notice upon the occurrence of any of the following events: (a) the Customer fails to comply with any provision of this Agreement or uses the Services beyond the scope described herein; (b) the Customer attempts to assign, sub-license, or otherwise transfer any of its rights under this Agreement without the consent of Media Sonar; or (c) the Customer files an assignment in bankruptcy or is or becomes bankrupt and/or insolvent, upon the appointment of a receiver for all or substantially all of the property or assets of the Customer, upon the making of any assignment or attempted assignment for the benefit of creditors or on the institution by the Customer of any act or proceeding for the winding up of its business. Upon termination Media Sonar may retain any pre-paid fees as liquidated damages.

**12. Customer Responsibility:** The Customer is responsible for all activity it conducts using the Services. The Customer must use the Services in accordance with all relevant laws and ethical requirements.

Media Sonar is a search engine and aggregator of social media content. The material being displayed by the Service is not owned, controlled, or endorsed by Media Sonar. The Customer may be exposed to content that might be unlawful, offensive, harmful, inaccurate, or otherwise inappropriate or deceptive. Media Sonar does not pre-screen content and is not responsible for the content accessed through the Services. Media Sonar does not routinely monitor content provided by the Service, but may delete or

modify any content that comes to its attention that Media Sonar in its sole discretion determines offends this Agreement, or is unlawful, offensive, inappropriate, or may attract risk to Media Sonar.

The Customer takes all risks associated with the Services and any content accessed through the Services. The Customer is responsible for adhering to applicable laws relating to such content (such as, without limitation, copyright and defamation), as well as any applicable terms of use of the underlying social media platforms and permissions required from individuals. If the Customer receives any demands or complaints regarding the Services, it must forward them to Media Sonar forthwith.

Logon ID's, passwords or other authentication is required to access the Services. It is the Customer's responsibility to protect that information, including without limitation, to use effective passwords that are not easily guessed or discoverable, and not share them with others. The Customer is responsible for all activity carried on under its accounts. If it suspects that any of its authentications have been compromised, it should notify Media Sonar immediately.

**13. Service Levels:** Media Sonar will use commercially reasonable efforts to keep the Services operational on a continuous basis, subject to reasonable maintenance requirements and matters beyond its reasonable control. Media Sonar will endeavor to acknowledge support requests and provide an estimated repair time within 48 hours of receiving support requests.

**14. Warranty:** Media Sonar will use reasonable efforts to enforce any service level and warranty obligations of its suppliers. Media Sonar will correct at no additional cost any failure of the Services to function in accordance to written specifications/the User Guide. Media Sonar does not warrant that the Services are error free, that they will operate without problems or without interruption, or that it will satisfy the Customer's expectations. The Customer acknowledges that Media Sonar may provide Services using services and software provided by third parties. Notwithstanding anything else contained in this Agreement, Media Sonar's, and such third parties, warranties and liabilities for any matters arising from such services and software shall not exceed those provided to Media Sonar from such third parties.

**15. Limitations:** All promises made by Media Sonar are contained in this Agreement. No promises implied by law (whether described as warranties, conditions, representations, or otherwise, and whether relating to merchantability, fitness, non-infringement, or otherwise) apply. The Customer cannot collect any damages from Media Sonar for any reason (whether under legal theories of contract, tort, negligence, strict liability, operation of law or otherwise) that are not direct damages or that exceed the amount paid by the Customer to Media Sonar hereunder for 3 months for the Services at issue.

Media Sonar relies on these limitations when entering this Agreement and setting its fees. They are a fundamental and essential part of our arrangement, and apply even if this Agreement has failed in its fundamental or essential purpose or been fundamentally breached.

**16. Indemnity:** The Customer will indemnify Media Sonar for any expenses, loss, cost, liability, damages, or expense (including court costs, arbitration fees, penalties, fines, amounts paid in settlement of claims, legal fees and disbursements and dispute resolution related costs and expenses) Media Sonar may incur resulting from the Customer's violation of this Agreement, or to the extent contributed to by any act, omission or negligence of the Customer or the Customer's employees or others for whom the Customer is in law responsible.

**17. Intellectual Property Indemnity:** Subject to the limitations and disclaimers set forth in this Agreement, Media Sonar shall indemnify the Customer against any direct damages and reasonable legal fees and expenses arising from any third party claim ("claim") that has been adjudicated by a court and held to be valid, following the exhaustion of all appeals, that the Services infringe any registered U.S. or Canadian patent, or U.S. or Canadian copyright or trademark when used as prescribed, provided that (a) the Customer notifies Media Sonar in writing within 10 days of becoming aware of a claim; (b) the Customer gives Media Sonar the right to assume sole control over the defense, settlement or compromise of any such claim; and (c) the Customer provides Media Sonar with the information, assistance and authority to enable Media Sonar to perform its obligations under this section and co-operates fully in Media Sonar's defense or settlement.

If a claim described above may be or has been asserted, Media Sonar may, at Media Sonar's option and expense, (i) procure the right to continue using the Services; (ii) modify the Services to eliminate the infringement while providing equivalent functionality; or (iii) terminate the Services.

This section states Media Sonar's entire liability to the Customer and the Customer's entire remedy with respect to any infringement of third party intellectual property rights.

**18. Governing Law:** This Agreement shall be interpreted in accordance with and governed by the laws of the State of Arizona, U.S.A. The parties hereby submit to the non-exclusive jurisdiction of the courts of the state of Arizona, Maricopa County. Any actions against Media Sonar must be commenced in the Superior Court of Maricopa County.

**19. Dispute Resolution:** To resolve disputes which may arise between the parties, any party will notify the other in writing of its intent to escalate to each party's President or CEO. If the issue is not resolved within ten (10) days, then the resolution of the dispute shall be referred to a mediator chosen by the parties. If the parties are unable to agree on a mediator, then either party may apply to a judge of the Superior Court of Maricopa County, and such judge shall appoint an independent mediator with relevant experience and sufficient qualifications to provide mediation services to the Parties. If the parties are unable to resolve the dispute with the assistance of the mediator, within fifteen (15) days of the appointment thereof, the dispute shall be settled by suit in Arizona Superior Court. The award of the arbitration shall be final and binding upon the parties hereto, and enforceable in any court of competent jurisdiction. The venue for any arbitration shall be Maricopa County, Arizona. Nothing in this section shall interfere with the ability of either party to obtain injunctive relief.

**20. Prior Agreement:** This Agreement contains the complete and exclusive statement of the agreement between the parties and supersedes all prior and contemporaneous agreements, purchase orders, understandings, proposals, negotiations, representations or warranties of any kind whether written or oral. No oral or written representation that is not expressly contained in this Agreement is binding on either party. This Agreement cannot be amended or modified, other than by a change made in writing, dated and executed by the parties. If there is both an executed and a click-wrap version of this Agreement, the executed version shall govern if the terms differ.

**21. Survival:** The provisions of this Agreement pertaining to privacy, and rights and restrictions shall survive the termination of this Agreement. Other sections pertaining to rights and obligations which by their nature should survive are hereby confirmed to so survive.

**22. Force Majeure:** Media Sonar is not liable for an omission or delay in the execution of its obligations hereunder caused by an event beyond its reasonable control. The time for the performance of the obligation that is so delayed shall be extended by a reasonable time, provided that payments shall not be delayed.

**23. Notice:** All notices provided in accordance with this Agreement shall be in writing and shall be duly provided for if the notice is remitted to its addressee by registered or certified mail. Every notice delivered in the manner provided for herein shall be deemed to have been received: when delivered.

Glendale:

Glendale Police Department  
Chief of Police  
6835 North 57<sup>th</sup> Drive  
Glendale, Arizona 85301

Media Sonar:

*Angeline MacIvor  
SVP & CO-FOUNDER  
569 CONSORTIUM COURT  
LONDON, ONTARIO  
CANADA  
NOE 258*

**Billing Information:**

Official Agency or Organization Name: City of Glendale, Police Dept

**Billing Address:**

Street: 6835 N 5th Dr

City: Glendale

State/Province/Territory/Region: AZ

Mailing Code (Postal/Zip): 85382

Email address: dkrause@glendaleaz.com

Fax: 623 847 5374

Telephone Number: 623 930 3398

Contact name for billing: Denise Krause

Mode of Billing: Credit Card:  OR Invoice:

Do you wish to be billed (indicate with a "Yes" or "X"):

One-time payment:  OR 12 equal monthly payments:  (Annual Subscription Only)

*IF payment is being made by credit card (only), please fill out the following fields. Note all credit card charges will be made in USD\$:*

CARD TYPE: VISA  MASTERCARD  DISCOVER CARD

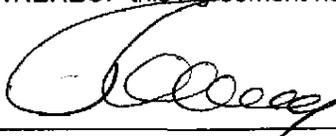
NAME ON CARD (EXACT): \_\_\_\_\_

CREDIT CARD NUMBER: \_\_\_\_\_ CSV # (3 digit code): \_\_\_\_\_

EXPIRY DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

EMAIL ADDRESS FOR RECEIPT: \_\_\_\_\_

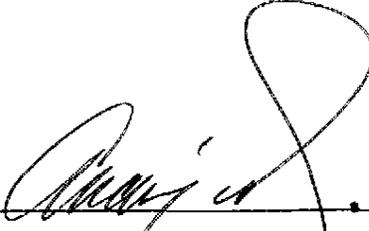
**Approval (Customer):** IN WITNESS WHEREOF this Agreement has been entered into by the parties hereto:

Authorized signatory (signature line): 

Authorized signatory (written name): Richard A. Bowers

Date of signature: 9/28/15

**Approval (Media Sonar):**

Authorized signatory (signature line): 

Authorized signatory (written name): Angeline MacIvor SVP

Date of signature: 9/21/2015

C/O: Angeline MacIvor  
SVP & Co Founder, Media Sonar  
226 927 5594  
[www.mediasonar.co](http://www.mediasonar.co)

ATTEST:   
City Clerk

Approved as to form

  
City Attorney