

**THIS CONSULTING AGREEMENT** made this 16th day of September, 2020.

B E T W E E N:

**Vance Lockton**

(the “Consultant”)

- and -

**Information and Privacy Commissioner of Ontario**

(the “IPC”)

**WHEREAS** the IPC has developed a plan to identify the office’s strategic priorities for the next five years and will be consulting with IPC staff, the public and stakeholders in sectors that are impacted by the work of the IPC;

**AND WHEREAS** the IPC is preparing a response to the Government of Ontario’s consultation on a private sector privacy law;

**AND WHEREAS** the IPC requires private consulting services to help lead the strategic priorities consultations, conduct research and analysis and prepare reports on the results of the consultations and to provide advice on the IPC’s submissions on a private sector privacy law, including research and reports on the necessary elements of the law;

**AND WHEREAS** the Consultant is in the business of providing private consulting services and has agreed to provide Consulting Services in accordance with the terms and conditions of this Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements and subject to the terms and conditions set out in this Agreement and other good and valuable consideration, the receipt of which is acknowledged, the parties to this Agreement covenant, promise and agree as follows:

## **1. DEFINITIONS**

1.1 In this Agreement,

- (a) “Agreement” means this consulting agreement between the IPC and the Consultant; and
- (b) “Consulting Services” means the consulting services to be provided by the Consultant pursuant to the terms and conditions set out in section 2 of this Agreement; and
- (c) “Director” means the IPC Director of Policy.

## **2. CONSULTING SERVICES TO BE PROVIDED BY THE CONSULTANT**

2.1 The Consultant shall assist the Director with planning and executing the consultation process for establishing the IPC's strategic priorities, including but not limited to:

- (a) defining and organizing the consultation process designed to seek input from IPC staff, stakeholders, and members of the public;
- (b) conducting relevant research on current access and privacy trends and issues and on the strategic priorities identified, and preparing relevant consultation papers;
- (c) analyzing the research and results of the consultation process and preparing briefing documents;
- (d) preparing a report on the results of the consultation process and the strategic priorities identified, with final approval as to the form and content resting solely and exclusively with the IPC; and
- (e) undertaking such other matters as may be assigned to him by the Director.

2.2 The Consultant shall provide advice on the IPC's submissions to the government regarding the potential enactment of a private sector privacy law in Ontario, including but not limited to:

- (a) reviewing information on the potential enactment of a private sector privacy law, including any drafts of the law;
- (b) conducting research on the potential issues associated with the enactment of a private sector privacy law, as directed by the Director;
- (c) analyzing research and materials related to the potential enactment of a private sector privacy law;
- (d) preparing or assisting in the preparation of related reports or submissions to the government as directed by the Director, with final approval as to the form and content resting solely and exclusively with the IPC; and
- (e) undertaking such other matters as may be assigned to him by the Director.

2.3 The Consultant shall attend, upon reasonable notice, all meetings, as required by the Director.

2.4 The Consultant represents and warrants that the Consultant:

- (a) has the expertise, experience, skills, and knowledge to provide the Consulting Services in a competent and professional manner;
- (b) will perform the Consulting Services in accordance with professional standards and in accordance with the terms of this Agreement;
- (c) will diligently carry out and devote such time as is necessary to complete the tasks and activities related to the Consulting Services by the times specified by the Director; and

(d) will comply with all applicable federal, provincial and municipal statutes, legislation, laws, rules, regulations, by-laws, orders, guidelines, policies and requirements.

2.5 The Consultant acknowledges that the IPC is relying on the representations and warranties set out in section 2.4 in entering into this Agreement.

### **3. TERM OF THE AGREEMENT**

3.1 The Consultant shall provide the Consulting Services beginning on the date of the execution of this Agreement and terminating the earlier of January 31, 2021, or when the maximum value of the Agreement is reached.

### **4. PAYMENT AND TRANSPARENCY FOR CONSULTING SERVICES**

4.1 The IPC shall pay the Consultant a fee for his Consulting Services of \$ 60 per hour, plus applicable taxes.

4.2 The Consultant acknowledges and agrees that the cost of completing the Consulting Services shall not exceed \$ 20,000, inclusive of all applicable taxes, and the IPC shall not be responsible for paying any fees that exceed this amount.

4.3 The IPC shall not be responsible for paying any other fees, disbursements, expenses, or charges incurred by the Consultant related to the provision of the Consulting Services.

4.4 Payment shall be made upon the Consultant's submission of monthly invoices to the IPC. The Consultant shall submit all invoices to the attention of Fiorinta Flammia, Director of Corporate Services for the IPC and all invoices shall include the Consultant's HST number.

4.5 The IPC shall provide payment within thirty (30) days of approval of the received invoice.

4.6 Notwithstanding any other section of this Agreement, the IPC may refuse payment or may approve only partial payment if the Consulting Services do not comply with the terms of this Agreement. If this occurs, the IPC will notify the Consultant at once and provide written reasons in a timely manner.

4.7 The Consultant acknowledges and agrees that the IPC will disclose the following details of this Agreement on its website: the name of the Consultant, the date of this Agreement, the purpose of this Agreement, and the total value of this Agreement.

### **5. TERMINATION**

5.1 The IPC may, at its sole option and without penalty, immediately terminate this Agreement upon written notice to the Consultant if any one or more of the following events occurs:

(a) the Consultant fails to satisfactorily perform the Consulting Services in accordance with the terms of this Agreement, or fails to comply with or violates any other provision of this Agreement;

- (b) a petition for an order of relief under any applicable legislation is filed against the Consultant, and is not discharged or dismissed; or
  - (c) the Consultant becomes bankrupt or voluntarily seeks relief from creditors under any applicable bankruptcy legislation or other legislation of like or substantially similar effect.
- 5.2 In the event that the IPC terminates this Agreement pursuant to section 5.1, the IPC shall pay all reasonable fees for work performed by the Consultant up to the date of termination less any costs incurred by the IPC in re-procuring and completing the Consulting Services. However, in no event shall the Consultant be paid for any amount that exceeds the hourly rate of \$ 60, plus applicable taxes or the maximum value of this contract of \$ 20,000, inclusive of all taxes.
- 5.3 Except where notice of termination pursuant to section 5.1 has been delivered by the IPC, the IPC may terminate this Agreement or any portion thereof at any time upon thirty (30) days written notice, without reason or cause, and without cost or penalty, except that the right to recover any and all consulting fees which shall have been accrued up to the date of such termination shall survive the termination of the Agreement.
- 5.4 Any termination of this Agreement shall be without prejudice to any other rights or remedies the IPC may have at law or equity, and the Consultant acknowledges that upon termination, the IPC may re-procure services for the same or similar Consulting Services provided pursuant to this Agreement.
- 5.5 Upon termination of this Agreement, the Consultant shall forthwith forward to the IPC any and all reports, proposals, drafts, records, files, reports, data, documentation, materials or information of any kind or in any form whatsoever in the possession of the Consultant relating to the Consulting Services provided under this Agreement, and shall not retain any copies in electronic, paper, or other format.

## **6. NOTICE**

- 6.1 Any notice, demand, acceptance or request required under this Agreement to be given in writing, shall be deemed to be given if either hand delivered, sent by email transmission, or mailed by registered mail to the addresses as follows:

In the case of the IPC to:

Fiorinta Flammia  
Director of Corporate Services  
Information and Privacy Commissioner of Ontario  
2 Bloor Street East, Suite 1400  
Toronto, Ontario  
M4W 1A8

Email: Fiorinta.Flammia@ipc.on.ca

In the case of the Consultant to:

Vance Lockton  
510-1169 Queen Street West  
Toronto, Ontario

M6J 0A4

Email: vancelockton@gmail.com

The notice, demand, acceptance or request delivered pursuant to this section is effective on the date of delivery if the notice, demand, acceptance or request is hand delivered or sent by email transmission, and on the fifth business day following mailing if the notice, demand, acceptance or request is sent by registered mail.

## **7. INDEMNIFICATION**

- 7.1 The Consultant shall, both during and following the term of this Agreement, indemnify and save harmless the IPC, its executive, officers, directors, agents, servants, employees, contractors, successors and assigns from and against any and all claims, actions, judgments, losses, expenses, costs, demands, suits, complaints and damages of every nature and kind whatsoever based upon, occasioned by, or attributable to anything done or omitted to be done by the Consultant or in connection with the Consultant's failure to exercise reasonable care, skill or diligence in the performance of the Consulting Services or in connection with the Consulting Services and the obligations provided, purported to be provided, omitted to be provided or required to be provided by the Consultant pursuant to this Agreement.

## **8. INSURANCE**

- 8.1 The Consultant shall carry adequate insurance coverage, including comprehensive general liability for injuries to persons and damage to the property of others, and shall provide certificates evidencing such insurance to the IPC upon request.

## **9. CONFIDENTIALITY**

- 9.1 The Consultant shall maintain the confidentiality of and shall not, at any time during or following the term of this Agreement, use, disclose, release or permit the disclosure or release of any information communicated to or acquired by the Consultant during the course of providing the Consulting Services without obtaining the prior written consent of the IPC, which consent may be withheld at the sole and absolute discretion of the IPC, or be given subject to such terms and conditions as the IPC may, in its sole and absolute discretion, impose.
- 9.2 The Consultant shall maintain the confidentiality of and shall not, at any time during or following the term of this Agreement, retain, use, disclose, release or permit the disclosure or release of any reports, proposals, drafts, data, documents, material and information of any kind or in any form whatsoever prepared during the course of providing the Consulting Services without the prior written consent of the IPC, which consent may be withheld at the sole and absolute discretion of the IPC, or be given subject to such terms and conditions as the IPC may, in its sole and absolute discretion, impose.
- 9.3 The Consultant shall not use any of the information described in sections 9.1 or 9.2 for purposes other than carrying out this Agreement.
- 9.4 The Consultant shall take all reasonable steps to protect the security and confidentiality of the information described in sections 9.1 and 9.2 against theft, loss and unauthorized use or disclosure and to ensure that the information is protected against unauthorized copying, modification or disposal, including but not limited to:

- (a) ensuring that all electronic equipment used in providing the Consulting Services are locked when not in use;
- (b) ensuring that all documents in paper format used in providing the Consulting Services are stored in a secure place when not in use; and
- (c) ensuring that no one else in the Consultant's home or any place where the Consulting Services are provided can access the information.

9.5 The Consultant shall promptly notify the IPC when it becomes aware of any unauthorized collection, transfer, use, access, disclosure, release, dissemination, duplication or disposal of the information described in sections 9.1 and 9.2.

9.6 Upon completion of the Consulting Services, the Consultant shall return to the IPC all documents, information and materials belonging to the IPC obtained by the Consultant for use in carrying out this Agreement, and shall not retain any copies in electronic, paper, or other format.

9.7 The Consultant agrees not to use the name of the IPC in any manner of advertising without the advance written permission of the IPC, which is not automatically assumed to be given.

## **10. OWNERSHIP OF MATERIALS**

10.1 The Consultant acknowledges and agrees that all reports, proposals, drafts, data, documents, material and information of any kind whatsoever prepared by the Consultant pursuant to this Agreement and the Consulting Services are the sole and exclusive property of the IPC and the IPC reserves all proprietary rights over this property, including rights of copyright.

## **11. STATUS OF PARTIES**

11.1 No term in this Agreement shall be construed or interpreted so as to imply a partnership, joint venture or other relationship between the parties other than as client (IPC) and independent contractor (Consultant).

11.2 The Consultant acknowledges and agrees that this Agreement is not to be deemed to be or construed to be an agreement of or for employment. The Consultant further acknowledges and agrees that the IPC shall not, under any circumstances or for any purpose whatsoever, be deemed to be the employer of the Consultant including, but not limited to, for purposes of the *Income Tax Act*, the *Canada Pension Plan Act*, the *Employment Insurance Act*, the *Employment Standards Act, 2000*, the *Workplace Safety and Insurance Act*, the *Occupational Health and Safety Act*, the *Pay Equity Act* or the *Health Insurance Act*, as amended or substituted.

## **12. WAIVER**

12.1 The failure at any time to require performance of any term, agreement, provision, obligation or condition of this Agreement shall not be deemed to be a waiver of such term, agreement, provision, obligation or condition or of any subsequent breach of the same or of any other term, agreement, provision, obligation or condition contained in this Agreement.

12.2 No term, agreement, provision, obligation or condition of this Agreement shall be deemed to have been waived by either party, unless such waiver is in writing and signed by the parties.

- 12.3 No waiver of any provision of this Agreement shall be deemed to or shall constitute a waiver of any other provisions, whether or not similar, nor shall such waiver constitute a continuing waiver unless expressly provided.

### **13. ASSIGNMENT AND SUBCONTRACTING**

- 13.1 The parties agree that the Consulting Services under this Agreement shall be performed by Vance Lockton. The Consultant shall not assign or subcontract this Agreement, in whole or in part, or any or all of his rights under this Agreement without the prior written consent of the IPC, which consent may be withheld at the sole and absolute discretion of the IPC or be given subject to such terms and conditions as the IPC may, in its sole and absolute discretion, impose.
- 13.2 If the IPC consents to an assignment or subcontract, the assignment or subcontract will not release or relieve the Consultant from its obligations to the IPC or from the performance of the Consulting Services in accordance with this Agreement.

### **14. ENUREMENT**

- 14.1 This Agreement shall be binding on and enure to the benefit of the parties and their respective permitted successors and assigns.

### **15. ENTIRE AGREEMENT AND AMENDMENTS**

- 15.1 This Agreement forms the entire agreement between the parties and supersedes any other understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution of this Agreement.

### **16. GENERAL**

- 16.1 Whenever used in this Agreement, the word "shall" shall be construed as mandatory and the word "may" shall be construed as permissive.
- 16.2 The headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of any provision of this Agreement.
- 16.3 Where the context permits or requires, the singular shall include the plural and the plural shall include the singular.
- 16.4 Should any provision(s) of this Agreement be found to be void, illegal, unenforceable or beyond the power, jurisdiction or capacity of any party by a court of competent jurisdiction, that provision(s) only shall be expunged and severed from the Agreement and the balance of the Agreement's provisions shall remain in full force and effect.
- 16.5 Nothing in this Agreement shall be construed to give the Consultant any exclusive right or privilege in providing the Consulting Services to the IPC. The IPC shall, during and after the term of this Agreement and any renewal of the term, retain the right to perform or contract for the same or similar services as the Consulting Services provided by the Consultant.

- 16.6 This Agreement shall be construed, interpreted and governed by the laws of the Province of Ontario and the applicable laws of Canada, and each of the parties shall attorn to the jurisdiction of the courts of Ontario. Sections 7, 9, 10 and 16.5 shall survive the termination or expiration of the Agreement.
- 16.7 The Consultant represents and warrants that he has full capacity to enter into this Agreement and any documents arising from this Agreement.
- 16.8 Time shall be of the essence in this Agreement.
- 16.9 Work under this Agreement shall commence on execution of the Agreement, or as otherwise specified in this Agreement or by the IPC in writing.

**Information and Privacy Commissioner of Ontario**

**Consultant**

**By:**

**By:**

*Fiorinta Flammia*

*V Lockton*

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**Fiorinta Flammia, Director of Corporate Services  
on behalf of the Information and Privacy Commissioner of  
Ontario**

\_\_\_\_\_  
**Vance Lockton**

**Date** September 16, 2020

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