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Canadian Radio-television and Telecommunications Commission

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Memorandum of Understanding (CRTC and Chief Electoral Officer of Canada)

THIS ARRANGEMENT is made

BETWEEN

THE CHIEF ELECTORAL OFFICER OF CANADA
(HEREINAFTER REFERRED TO AS “ELECTIONS CANADA”)

AND

THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION
(HEREINAFTER REFERRED TO AS “THE CRTC”)

Collectively referred to as “the Participants”

BACKGROUND

WHEREAS the *Canada Elections Act* (“the CEA”) sets out the legal framework for the administration and enforcement of federal elections in Canada, and regulates certain aspects of communications with electors;

WHEREAS Division 1.1 of Part 16.1 of the CEA contains rules governing Voter Contact Calling Services;

WHEREAS, *inter alia*, the provisions of this Division require that Calling Service Providers and certain other entities engaged in Voter Contact Calling Services during a federal election file registration notices with the CRTC with identifying information and documents;

WHEREAS the provisions of this Division also require that the CRTC establish and maintain a Voter Contact Registry, in which the documents it receives in relation to Voter Contact Calling Services are to be kept;

WHEREAS the provisions of this Division include offences for various prohibitions and obligations relating to such communications, and provide that the CRTC is responsible for the administration and enforcement of these registration rules;

WHEREAS Elections Canada is the independent, non-partisan agency that conducts federal general elections, by-elections and referendums, whose mandate includes administering and monitoring compliance with the CEA, including aspects of communications with electors, except to the extent that any powers, duties or functions under the Act are otherwise assigned;

WHEREAS the CRTC regulates unsolicited telecommunications, including those made to electors pursuant to sections 41 to 41.7 and 72.01 to 72.15 of the *Telecommunications Act* and to the associated *Unsolicited Telecommunications Rules*;

WHEREAS the Participants each play an important role in administering the legal frameworks that govern communications with electors;

WHEREAS each Participant anticipates that they may receive correspondence, including Complaints, that properly falls within the mandate of the other Participant;

AND WHEREAS this Arrangement supersedes and replaces the Memorandum of Understanding between Elections Canada and the CRTC, signed April 1st, 2015;

NOW THEREFORE THE PARTICIPANTS AGREE AS FOLLOWS:

1. DEFINITIONS

In this Memorandum of Understanding, the following terms, in singular or plural form according to the context, are defined as follows:

“Arrangement” means this Memorandum of Understanding.

“Calling Service Provider” has the same meaning as defined in section 348.01 of the CEA.

“Complaint” means information in writing about a potential offence under the CEA or about an operational matter or occurrence related to a federal election, or a written account of such information if it was not provided in writing.

“Employees” include contractors.

“Reliable Carrier” means any delivery service that provides proof of shipping and, on request, a routing slip and acknowledgement of delivery.

“Voter Contact Calling Services” has the same meaning as defined in section 348.01 of the CEA.

“Voter Contact Registry” means the registry established pursuant to section 348.11 of the CEA.

“Virtual Private Network” or “VPN” means a mechanism for secure point-to-point encrypted transmission of information over the Internet.

2. PURPOSE AND SCOPE

This Arrangement sets out the manner in which the Participants will carry out the exchange of information or documents with respect to Complaints relating to the Participants’ respective mandates that are received at the other Participant’s office.

3. OBLIGATIONS OF ELECTIONS CANADA

3.1 Elections Canada undertakes to:

3.1.1 Without delay, transmit to the CRTC's Compliance and Enforcement Sector any Complaint that Elections Canada has received that relates to enforcement of the *Telecommunications Act* or its regulations, of the *Unsolicited Telecommunications Rules* or of Division 1.1 of Part 16.1 of the CEA.

3.1.2 Consult the CRTC in case of uncertainty as to whether any Complaint relates to administration or enforcement by the CRTC of the CEA, of the *Telecommunications Act* or its regulations, or of the *Unsolicited Telecommunications Rules*.

4. OBLIGATIONS OF THE CRTC

4.1 The CRTC undertakes to:

4.1.1 Without delay, transmit to the Electoral Integrity Office within Elections Canada any Complaint that the CRTC has received that relates to administration of the CEA, which excludes any Complaint related to Division 1.1 of Part 16.1 and any matter related to enforcement under Part 19 that falls within the powers, duties or functions of the Commissioner of Canada Elections.

4.1.2 Consult Elections Canada in case of uncertainty as to whether any Complaint relates to administration of the CEA by Elections Canada or relates instead to enforcement of the CEA by the Commissioner of Canada Elections.

5. CONFIDENTIALITY AND USE OF INFORMATION

Each Participant undertakes to:

5.1 Use the information provided by the other Participant solely for the purpose of:

- administering the CEA (other than Division 1.1 of Part 16.1 or enforcement under Part 19), in the case of Elections Canada; and

- ensuring compliance with and enforcement of the *Telecommunications Act*, its regulations and Division 1.1 of Part 16.1 of the CEA, in the case of the CRTC.

5.2 Treat information received from or provided to the other Participant in confidence and take all reasonable measures to preserve its confidentiality and integrity as well as to safeguard the information against accidental or unauthorized access, use or disclosure. The Participants expect that the information provided and received under this Arrangement will be no higher than Protected B and will be dealt with according to the legal framework described at paragraph 6.1.

5.3 Treat information received from the other Participant in accordance with the security markings on it and undertake to provide equivalent protection to it while it is in the receiving Participant's possession.

5.4 Maintain appropriate records concerning the transmission and receipt of information exchanged.

5.5 Not disseminate the information to any third party without the prior written consent of the supplying Participant (or agency from which the information originated, as appropriate), except as required by law or in the course of normal activities that are expected in the delivery of their respective mandates under either the CEA or the *Telecommunications Act* and its regulations.

5.6 Limit access to the information to those of its Employees whose duties require such access, who are legally bound to keep confidences and who have the appropriate security clearance or reliability status.

6. INFORMATION MANAGEMENT

6.1 The information disclosed under this Arrangement will be administered, maintained and disposed of in accordance with the law that applies to record retention and personal information as well as with all applicable policies and guidelines, including the *Privacy Act*, the *Access to Information Act*, the *Library and Archives of Canada Act* and the *Policy on Government Security*.

6.2 Each Participant will:

6.2.1 Securely transmit by Virtual Private Network (VPN), using an accredited Protected B authentication mechanism, the information mentioned in sub-clauses 3.1.1 and 4.1.1.

6.2.2 Be responsible for installing and supporting the VPN solution within their network environment.

6.2.3 Dispose of the information mentioned in sub-clauses 3.1.1 and 4.1.1 that it successfully transmitted to the other Participant in accordance with these sub-clauses, unless the information also relates directly to one of the Participants' operating programs or activities.

6.2.4 Promptly notify the other Participant of any unauthorized use or disclosure of the information exchanged under this Agreement and furnish the other Participant with details of such unauthorized use or disclosure. In the event of such an occurrence, the Participant responsible for the safeguarding of the information will take all reasonably necessary steps to prevent a reoccurrence.

6.2.5 Return any information that should not have been provided to it by the other Participant.

6.3 Each Participant will designate one or more individuals as Senders and Addressees of the information to be transmitted under this Arrangement, and supply the list of its Senders and Addressees to the other Participant. A Participant's Sender will obtain confirmation that the transmission by that Sender of information to the other Participant was successful.

6.4 In the event that either Participant is having problems using the VPN to transmit information to the other, it will inform the other Participant without delay and the Participants will together determine whether the transmission will be postponed until the problems are resolved or will instead be done using a Reliable Carrier.

6.5 In the event that a Complaint to be transmitted by a Participant under this Arrangement was not received in electronic form, the Sender of that Participant will transmit it to the Addressee of the other Participant using a Reliable Carrier.

7. ACCURACY OF INFORMATION

Each Participant will:

7.1 Use its best efforts to transmit accurately and completely any Complaint provided to the other Participant under this Arrangement.

7.2 Promptly notify the other Participant if it learns that inaccurate or incomplete information may have been provided or received, and take all reasonable remedial steps.

8. PARTICIPANT REPRESENTATIVES

The following officials are designated as the participant representatives for purposes of this Arrangement. Any notices required under this Arrangement will be delivered as follows:

For Elections Canada:	Senior Director, Electoral Integrity and Internal Audit Elections Canada 30 Victoria Street Gatineau, Quebec K1A 0M6
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For the CRTC:	Director, Telecommunications Enforcement CRTC 1 Promenade du Portage, Gatineau, Quebec J8X 4B1
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The transfer of information described at paragraphs 3 and 4 under this Arrangement is not considered a notice for the purpose of this section.

9. LIABILITY

Each Participant uses the information transferred under this Arrangement for purposes of its own duties, powers and functions and at its own risk. Neither Participant shall be liable to the other for any damages, costs, losses or expenses, nor commence or otherwise maintain against the other Participant any claim, action, suit or other proceeding.

10. DISPUTE RESOLUTION

In the event of a dispute arising from the interpretation or operation of this Arrangement, it will be referred to the Participants' representatives set out above, who will use their best efforts to resolve the matter amicably.

11. MONITORING

The Participants will meet within 90 days after polling day for the next federal general election to review and assess the operation and effectiveness of this Arrangement.

12. FINANCIAL ARRANGEMENTS

Each Participant will bear its own costs and expenses incurred in connection with this Arrangement.

13. TERM

This Arrangement will become effective upon the date of the last signature of the Participants and will remain in effect until October 31, 2024 unless terminated in accordance with the paragraph 14 below.

14. TERMINATION

This Arrangement may be terminated by either Participant upon 30 days' written notice. Termination does not release a Participant from any obligations that accrued while the Arrangement was in force.

15. AMENDMENT TO THE ARRANGEMENT

An amendment to this Arrangement must be in writing and be signed by one of the authorized representative of each Participant.

The following officials are authorized to make amendments to this Arrangement:

For Elections Canada:	Chief Electoral Officer
	Deputy Chief Electoral Officer - Regulatory Affairs

For the CRTC:	Chairperson and Chief Executive Officer
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SIGNATURE

This Arrangement is signed in duplicate by an authorized signatory of each Participant, each copy being equally authentic.

For Elections Canada:

Stéphane Perrault
Chief Electoral Officer
11 July 2019

For the CRTC:

Ian Scott
Chairperson and Chief Executive Officer
22 July 2019



Date modified:

2020-06-05