

Data Sharing Agreement

Between

Ministry of Education, *Te Tāhuhu o te Mātauranga*

And

Chorus New Zealand Limited

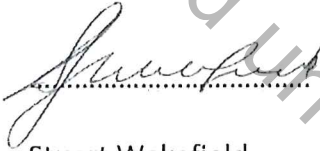
For the Purpose of

Matching student address information against Chorus network data to support the
Equitable Digital Access initiative

Released under the Official Information Act 1982

Signatories

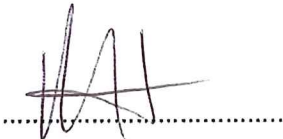
Signed for and on behalf of Ministry of Education / *Te Tahuu o te Matauranga*



Date: 28/5/19

Stuart Wakefield
Chief Digital Officer

Signed for and on behalf of Chorus New Zealand Limited



Date: 30/5/19

Mike Lott
Head of Innovation

Released Under the Official Information Act 1982

Parties

1. The Ministry of Education (the Ministry)

AND

2. Chorus New Zealand Limited (Chorus)

Background

3. Equitable Digital Access (EDA) is an initiative designed to provide solutions to increase affordable and safe connectivity to the internet for school students outside of the school environment.
4. This work aligns with Treasury's wellbeing framework and DIA's population-wide equitable digital access strategy.
5. There are three pilots currently underway as part of EDA where low internet uptake by school students families are known. The challenge for providing a national solution is that the specific locations of digital exclusion for students at a national level is not known.
6. In order to design a solution to address digital exclusion understanding exactly where those students live will be necessary for a number of reasons:
 - 6.1. Technology options and technology partners will be influenced by location;
 - 6.2. The geographical location density of the excluded student with respect to a particular school roll will influence the implementation approach taken; and
 - 6.3. Understanding the locations of digital exclusion will inform planning and sequencing for a national solution

Purpose

7. The purpose of this Agreement is to:
 - 7.1. set out the principles that the Parties are to take into account when sharing information with one another to support the Equitable Digital Access Initiative and the design of a solution to address digital exclusion of students by the Ministry;
 - 7.2. acknowledge the statutory context in which the information sharing will occur;
 - 7.3. record the Parties agreement of their understanding of what information will be shared, the justifications for the information sharing, and how that information will be used by the Parties.
8. This Agreement is **not** an Approved Information Sharing Agreement under Part 9A of the Privacy Act 1993 and does **not** authorise any breach of the Information Privacy Principles in that Act.

Effect of this Agreement

9. This Agreement confirms the relationship between the Parties based on a spirit of goodwill and cooperation.
10. Any schedules attached to this Agreement are regarded as part of the Agreement.

Term of this Agreement

11. This Agreement commences on the date it is signed by both Parties and continues in effect until terminated in accordance with clause 13.

Variations to this Agreement

12. This Agreement may only be varied with the agreement of both Parties, and any such variation shall be set out in writing and signed by both Parties.

Termination of this Agreement

13. This Agreement may be terminated:
 - 13.1. at any time by agreement in writing of both Parties; or
 - 13.2. by either Party on 20 days' written notice to the other Party.
14. Termination of this Agreement does not affect any accrued rights, obligations or liabilities of either Party.

Costs

15. Each Party will bear their own costs in relation to this Agreement.

Legal Authority and Application of the Privacy Act 1993

16. The Parties will comply with all New Zealand laws including, without limitation, the Privacy Act 1993 (Privacy Act).
17. Chorus acknowledges the Ministry is relying on the following Privacy Principles in sharing information (in particular student addresses) with Chorus in relation to the purpose as set out in clause 7:
 - 17.1. Privacy Principle 10(f)(i) which provides that the Ministry can use information for another purpose than that for which it was collected if it believes on reasonable grounds that the information will be used in a form in which the individual concerned is not identified; and
 - 17.2. Privacy Principle 11(h)(i) which provides that the Ministry can disclose the information if it believes on reasonable grounds that the information is to be used in in a form in which the individual is not identified.
18. The Parties do not consider that the information matching provisions under Part 10 of the Privacy Act apply to the data matching exercise to be undertaken under this Agreement.

Information to be shared and matched

19. The information to be shared under this Agreement is as follows:

Ministry Information	Chorus Information
Student addresses <i>[Note: No student names will be provided to Chorus by the Ministry.]</i>	Product availability (i.e. fibre and/or copper) on the Chorus network at an address level.

20. Chorus will

- 20.1. match the data described above and analyse what products are available on the Chorus network at each student address provided by the Ministry (Data Matching Exercise); and
- 20.2. provide a report to the Ministry identifying the results of the Data Matching Exercise (Chorus Report).

Use of the Information

21. Each party must at all times:

- 21.1. keep confidential all of the Confidential Information of each other party that it holds and not use or allow to be used or reproduce any such Confidential Information other than for the purposes of this Agreement;
- 21.2. only disclose Confidential Information of another party to its employees, agents, consultants or contractors who need to know the Confidential Information for the purposes of or as contemplated by this Agreement or to enforce any rights under this Agreement;
- 21.3. not disclose any Confidential Information of another party to any third party; and
- 21.4. ensure that its employees, agents, consultants, and contractors are aware of and are bound by the duty of confidence that is owed by that party to each other party.

22. If a party becomes aware of any disclosure or distribution of Confidential Information in breach of this Agreement, that party will promptly notify the others (or, in the case of Licensee, Licensee shall notify Chorus), and the relevant parties shall provide all reasonable assistance in connection with any proceedings which may be brought in respect of such disclosure or distribution.

23. Nothing in clause 6 prohibits a party from disclosing information to the extent required by any statute, regulation, court order or the regulations of any stock exchange on which the shares of the relevant party are listed or quoted, provided that if a party is required to disclose any information covered by this clause, that party will:

- 23.1. immediately notify the other party in writing so that it may seek a protective order or other remedy;
- 23.2. only disclose the Confidential Information to the extent legally required; and

Disputes Resolution

38. If a party believes there is a dispute, that party will promptly notify the other party in writing, giving details of the dispute. If the dispute isn't resolved by senior representatives within 20 Working Days of notice, either party will be entitled to promptly submit the dispute to arbitration by a sole arbitrator (being a New Zealand resident) under the Arbitration Act 1996 and the following provisions will apply:
- 38.1. The arbitrator must be appointed by agreement between the parties provided that, if the parties cannot agree on an arbitrator within five Working Days of the referral being made, then the arbitrator will, at the written request of either party, be appointed by the president for the time being of the New Zealand Law Society (or his/her nominee) or its successor body. The party making such a request must copy it to the other party.
 - 38.2. The arbitration will take place in Auckland or Wellington (at the arbitrator's discretion).
 - 38.3. The arbitrator must adopt a procedure which, in the arbitrator's opinion, is the most simple and expeditious procedure practicable in the circumstances.
 - 38.4. The arbitrator may determine the dispute without a hearing unless either party gives notice requiring one, in which case the arbitrator must treat that as a material consideration in assessing costs.
 - 38.5. Schedule 2 to the Arbitration Act 1996 will apply.
 - 38.6. The costs of the arbitrator will be borne equally by the parties unless the arbitrator determines otherwise.
 - 38.7. The parties must co-operate to ensure the expeditious conduct of the arbitration. In particular, each party must comply with any reasonable time limits sought by the other for settling the terms of reference, interlocutory matters and all other steps preliminary and incidental to the hearing and determination of the dispute.
 - 38.8. The Parties must use all reasonable endeavours to co-operate with the arbitrator so that a final decision can be provided within 40 Working Days from the arbitrator being appointed.
39. For the purposes of clause 38, **Working Day** means any day except Saturday, Sunday, a public holiday in New Zealand, an Anniversary day in Auckland or Wellington or any day in the period commencing on 24 December in any year and ending on 5 January the following year.
40. Pending resolution of a dispute, each party will make all reasonable efforts to resolve the dispute promptly and in a way that minimises any impact on the performance of their respective obligations under the Agreement. Nothing in this clause will prevent either party from seeking urgent interlocutory or injunctive relief from the Court.
41. The obligations in this Agreement concerning use, security and disposal of information shall remain in force notwithstanding any suspension or termination of this Agreement.

Third Party Contracting

42. Any third party contracted to carry out any work in relation to this Agreement that may involve access to, or use information received under this Agreement, must be subject to confidentiality and compliance with laws obligations substantially similar to those set out in this Agreement, which will be reflected in any associated Contract for Services with the third party.

External Communications

43. The Parties are responsible for complying with their respective obligations under the Privacy Act and the Official Information Act 1982 (Official Information Act).
44. In the event that either Party receives a complaint or request under the Privacy Act or Official Information Act in relation to information exchanged, accessed, used or disclosed under this Agreement, the Party which receives the complaint or request will consult with the other Party on the proposed response prior to making a decision on the complaint or request.
45. In the event that either Party receives a request from the media in relation to this Agreement or any information exchanged, accessed, used or disclosed under this Agreement, the Party will advise the other Party of the media request, and any proposed response to the media.

Relationship Management and Oversight

46. To facilitate and support the relationship between the Parties to this Agreement, and to provide operational oversight of the information sharing activity, each Party will nominate a Relationship Manager.
47. The Relationship Manager will have oversight of the operation of this Agreement, and be the first point of contact for each Party with regards to the operation of this Agreement.
48. Schedule One records the Relationship Managers and Technical Contacts for each Party.

General

49. Any notice to be given under this Agreement must be in writing and delivered by hand, registered mail or email to Chorus or the Licensee (as the case may be) at the respective address or number specified in Part 1 of Schedule 1 of this Agreement or most recently notified by the recipient to the sender. Receipt will be deemed upon delivery by hand or email or 3 Business Days after posting (whichever is applicable).
50. If any provision contained in this Agreement is held to be illegal, invalid or unenforceable it will be severable, will be deemed to be deleted from this Agreement and will not affect the validity or enforceability of the other provisions of this Agreement.
51. This Agreement is governed by the laws of New Zealand and the Parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.
52. The Agreement contains the entire agreement of the Parties with respect to its subject matter and supersedes all prior understandings or agreements between any of the Parties in respect of that subject matter.
53. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which taken together will constitute a single instrument. Any party may enter this Agreement by executing such a counterpart. Copies of an executed Agreement transmitted by email or facsimile will be sufficient evidence that an original of the Agreement has been executed.

Schedule One – Relationship Managers and Technical Contacts

Ministry of Education

Relationship Manager

Ann Bentley

Project Manager - Equitable Digital Access for Students (EDA)

Technical Contact(s)

1. Mehrdad Fatemi

Architect - ICT Strategy and Planning

Chorus

Relationship Manager

Hamish Girvan

Product Manager Innovation

Technical Contact(s)

Kurt Rogers

Network Strategy Manager