



Data Sharing Agreement

Between

Ministry of Education, *Te Tāhuhu o te Mātauranga*

And

Evolution Networks Limited

For the Purpose of

Matching Student address information against Evolution Networks' customer address data to support the connection of student addresses to home internet services (COVID 19 response)

Released under the Official Information Act 1982

Signatories

Signed for and on behalf of Ministry of Education / *Te Tahuhu o te Maturanga*



Date: 28./04./2020

Stuart Wakefield
Chief Digital Officer

Signed for and on behalf of Evolution Networks Limited



Date: 27/04/2020

Mark Simpson
Business Development Manager

Parties

The Ministry of Education (the Ministry)

AND

Evolution Networks Limited

Background

1. In the event that schools have closed, and/or school students need to be educated at home due to the COVID 19 virus, there is a need to ensure that students access to internet at home to enable distance online learning.
2. The Ministry has been working with Wireless Internet Service Providers (WISP's) to identify students that require internet access, and enable internet services to be connected for those students to enable that student's distance online learning at home.
3. The WISP's require student addresses from the Ministry to identify the **customer addresses where services are already enabled**.
4. The WISP's have acknowledged that they do not have the necessary capability or capacity to undertake the matching of the student addresses to their customer databases.
5. The Parties have agreed, that due to the urgency of connecting students to internet services, the WISP's will provide the Ministry with address data from its Customer database, and the Ministry will undertake the data matching and cleansing required.
6. The Parties acknowledge that this Agreement is limited to the exchange of information.
7. The Parties agree that the data sharing arrangements have had to be constructed in extremely compressed time due to the necessity to help alleviate COVID 19 risk and support the ongoing education of students in New Zealand.

Purpose

8. The purpose of this Agreement is to:
 - 8.1. acknowledge the statutory context in which the information sharing will occur;
 - 8.2. 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.
9. The purpose of the information sharing under this Agreement is to:
 - 9.1. Enable the Ministry to match student address information against Evolution Networks Limited's customer database address data to support the connection of student addresses to home internet services

10. 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

11. This Agreement confirms the relationship between the Parties based on a spirit of goodwill and cooperation.

12. Any schedules attached to this Agreement are regarded as part of the Agreement.

Term of this Agreement

13. This Agreement commences on the date it is signed by both Parties and continues in effect until terminated in accordance with clauses 15 and 16.

Variations to this Agreement

14. 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

15. This Agreement will be terminate when the matching of student addresses is completed.

16. This Agreement may be terminated earlier than what has been agreed in Clause 13:

16.1. at any time by agreement in writing of both Parties; or

16.2. by either Party on 20 days' written notice to the other Party.

17. Termination of this Agreement does not affect any accrued rights, obligations or liabilities of either Party.

Costs

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

General Administration

19. Any notice to be given under this Agreement must be in writing and delivered by hand, registered mail or email to Evolution Networks Limited 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).

20. 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.

21. 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.

22. 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.
23. 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.

Legal Authority and Application of the Privacy Act 1993

24. In carrying out their obligations under this Agreement, the Parties will comply with all New Zealand laws including, without limitation, the Privacy Act 1993 (Privacy Act).
25. The Parties acknowledge that the sharing under this Agreement is governed by the [Civil Defence National Emergencies \(Information Sharing\) Code 2013](#) (the Code) under the Privacy Act.
26. The Code provides that in the COVID-19 emergency, agencies can collect, use, or disclose personal information where they reasonably believe all of the following criteria are met:
- 26.1. The individual concerned may be involved in the national emergency;
 - 26.2. The collection, use or disclosure is for a purpose that directly relates to the government or local government management of response to, and recovery from, the state of national emergency caused by the COVID-19 pandemic, and
 - 26.3. In the case of disclosure, the personal information is disclosed to one of the following agencies:
 - 26.3.1. A public sector agency;
 - 26.3.2. An agency that is, or is likely to be, involved in managing or assisting in the management of the emergency; or
 - 26.3.3. An agency directly involved in providing repatriation, health, financial or other humanitarian assistance services to individuals involved in the emergency.
27. The Parties agree that the criteria in clause 26 are met, and that the Ministry and Evolution Networks Limited are agencies involved in managing or assisting in the management of the emergency.
28. 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

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

Ministry Information	[WISP] Information
Matched Address Dataset for addresses that currently have wireless internet services connected	Customer Address data (and relevant address metadata)

Use of the Information

30. The [WISP] will provide to the Ministry:

- 30.1. The customer address data base (WISP Information) as described in the table in Clause 29.

31. The Ministry will:

- 31.1. match the Evolution Networks Limited Customer Database address data described in Clause 29 and identify the students that have wireless internet services connected to their address (Data Matching Exercise); and
- 31.2. Supply a report to the Evolution Networks Limited detailing the addresses where wireless internet services are connected.

Confidential Information

32. Information shared under this Agreement, including personal information is considered Confidential Information.

33. For the purposes of this Agreement Confidential Information means (in any form, whether written, electronic or otherwise):

- 33.1. the WISP's information
- 33.2. The Ministry Information
- 33.3. The terms of this Agreement
- 33.4. The finances, strategies, management or business operations of a Party or its suppliers or customers
- 33.5. Any information of a Party which might reasonably be expected by that Party to be confidential in nature

34. Confidential Information does not include information which:

- 34.1. Was in the possession of the receiving Party prior to the execution of this Agreement
- 34.2. At the time of disclosure is generally available to, and known by, the public (other than as a result of the disclosure by the disclosing Party)
- 34.3. Is or becomes available to, and is legally and properly obtained by, the receiving Party from a source other than the disclosing Party
- 34.4. Is independently acquired or developed by the receiving Party without violating any of its obligations under this Agreement.

35. Each Party must at all times:

- 35.1. Keep confidential all the Confidential Information of the 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.
- 35.2. Only disclose Confidential Information only disclose Confidential Information of the other 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;

- 35.3. Not disclose Confidential Information of a Party to any third party unless permitted the other Party
- 35.4. 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 the other Party.
36. If a party becomes aware of any disclosure or distribution of Confidential Information in breach of this Agreement, that party will promptly notify the other, 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
37. Nothing in Clause 35 prohibits a party from disclosing information to the extent required by any statute, regulation, or court order.
38. If a Party is required to disclose any information covered by Clause 33, that Party will:
- 38.1. Immediately notify the other Party in writing so that it may seek a protective order or other remedy; and
- 38.2. Only disclose the Confidential Information to the extent legally required.

Method and Frequency of Information Exchange

39. The information to be shared under this Agreement may include personally identifiable information ([WISP] Customer details, student's addresses).
40. All information shared under this Agreement will be supplied by way of secure Iron Key or password protected spreadsheet. Any password required to access the information will be provided by the Ministry separately.
41. The expectation is that information to be shared under this Agreement will be exchanged on a one-off basis, covering the entire customer base of the WISP. However to enable the Ministry to seek status information at different points in time as the COVID 19 response activity requires there may be a need for additional data matching to take place.
42. Where additional address information is required to support the Data Matching Exercise by the Ministry, or the understanding of results of the Data Matching Exercise by the Evolution Networks Limited, additional address information may be sought by either Party so long as the information sought, and the use of that address information, is consistent with this Agreement.
43. Requests for additional address information should be made in writing and to the relevant Relationship Manager.

Security of the Information

44. The Parties will ensure that:
- 44.1. All information shared under this Agreement is protected from unauthorised access, use and disclosure
- 44.2. All information shared under this Agreement is stored on the Parties own securely managed computer systems with password and firewall protection with access allowed only to employees doing work directly related to this Agreement

- 44.3. All Ministry and Evolution Networks Limited employees or contractors dealing with the information exchanged under this Agreement are aware of their responsibilities and the strict limitations on use and disclosure of any information subject to this Agreement
- 44.4. Where information shared under this Agreement is kept or stored in any form that might be easily portable (e.g. printed material, laptop, portable digital assistant, DVD, CD, memory card, or USB portable device) appropriate safeguards will be in place to guard against any unauthorised access, use or disclosure of the information. If the information is kept or stored on such a device for the purpose of transfer of source or comparison information, it will be permanently disposed of once the transfer has been complete.

Breaches of Security or Confidentiality

45. The Parties must immediately notify the other Party of any actual or suspected unauthorised access, use or disclosure of any information exchanged under this Agreement.
46. The Parties must also investigate any actual or suspected unauthorised access, use or disclosure of any information exchanged under this Agreement.
47. If either Party has reasonable cause to believe that a breach of any other security provision in the Agreement has occurred or may occur, that Party may undertake such investigations as it deems necessary.
48. Where an investigation is commenced under this clause, the other Party will provide the investigating Party with reasonable assistance, and the investigating Party will keep the other Party informed on the progress and outcome of that investigation.
49. If there has been a security breach, either Party may suspend the exchange of information under this Agreement by notice in writing to give the other Party time to remedy the breach.

Destruction and Retention of Information

50. The Parties agree that information provided under this Agreement is subject to the Public Records Act 2005.
51. The Parties agree that the [WISP] customer database information shared under this Agreement will be securely disposed of by the Ministry once the matching and analysis process is completed.
52. The Parties agree that the Ministry will retain the data set resulting from the Data Matching Exercise for as long as necessary to respond and manage its response to Covid-19.
53. The Parties agree that the [WISP} will securely delete the data set provided by the Ministry once the internet services have been provided to the identified addresses.

Disputes Resolution

54. 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:

- 54.1. 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.
- 54.2. The arbitration will take place in Auckland or Wellington (at the arbitrator's discretion).
- 54.3. The arbitrator must adopt a procedure which, in the arbitrator's opinion, is the most simple and expeditious procedure practicable in the circumstances.
- 54.4. 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.
- 54.5. Schedule 2 to the Arbitration Act 1996 will apply.
- 54.6. The costs of the arbitrator will be borne equally by the parties unless the arbitrator determines otherwise.
- 54.7. 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.
- 54.8. 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.
55. For the purposes of clause 54, **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.
56. 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.
57. 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

58. 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

59. The Parties are responsible for complying with their respective obligations under the Privacy Act and the Official Information Act 1982 (Official Information Act).

60. 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.

61. 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

62. 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.

63. 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.

64. Schedule One records the Relationship Managers and Technical Contacts for each Party.

Schedule One – Relationship Managers and Technical Contacts

Ministry of Education

Relationship Manager

Ann Bentley

Project Manager, Equitable Digital Access for Students

Ann.bentley@education.govt.nz

Technical Contact(s)

Mehrdad Fatemi

Architect, ICT Strategy and Planning

Mehrdad.fatemi@education.govt.nz

Evolution Networks Limited Relationship Manager

Mark Simpson

BDM

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Technical Contact(s)

Paul Andrew

Network Operations Manager

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