



Data Sharing Agreement

Between

Ministry of Education, *Te Tāhuhu o te Mātauranga*

And

Mod Limited (SchoolKit)

For the Purpose of

Delivering distance learning resources (School Kits) to students (COVID 19 response)

Released under the Official Information Act 1982

Signatories

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

Pauline Cleaver

Date: 03 / 04 / 2020

Pauline Cleaver
Associate Deputy Secretary
ELSA

Signed for and on behalf of SchoolKit

DocuSigned by:
Kylie Power
A055AAF502744BB...

4/2/2020

Date: / /

Kylie Power
SchoolKit Founder

Released under the Official Information Act 1982



Parties

The Ministry of Education (the Ministry)

AND

Mod Limited (SchoolKit)

Background

1. New Zealand's response to COVID-19 has resulted in school closures for a period of time.
2. The Ministry is working to ensure that all students have the ability to continue their learning from home through the provision of necessary IT equipment, internet connectivity and hard copy learning materials.
3. SchoolKit works with the Ministry to create and deliver school kits for students (years 0 – 8) and teaching resources.
4. The Ministry and SchoolKit have a number of school kits that can be delivered to students during the period schools are closed to assist with learning in the home.
5. SchoolKit can support the Ministry, students and their whanau, by facilitating the delivery of the school kits to students identified by the Ministry as requiring these at home learning materials.
6. The Parties acknowledge that the subject of 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 context in which the information sharing will occur;
 - 8.2. record the Parties understanding of the type of information that will be shared, the rationale 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 SchoolKit to deliver distance learning resources (school kits) to students
10. The information sharing is necessary to address the urgent requirement for students to continue their education in the home environment as part of the COVID 19 response.

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 clause 15.

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 terminate automatically on the date 6 months after the date of its signature by the last of the parties to sign this Agreement.

16. This Agreement may be terminated earlier:

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

12.2 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 and no party is entitled to bind, enter into any commitment or incur any debt or other obligation on behalf of the other Party.

General Administration

19. Any notice to be given under this Agreement must be in writing and delivered by hand, registered mail or email to SchoolKit or the Ministry 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 in sharing under this Agreement is governed by the [Civil Defence National Emergencies \(Information Sharing\) Code 2013](#) (the Code) under the Privacy Act 1993.
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 SchoolKit is an agency involved in managing or assisting in the management of the emergency.

Information to be shared

28. The Ministry information to be shared under this Agreement is as follows:
- 28.1. Student residential addresses
 - 28.2. Student Name (first and last)
 - 28.3. Student Year Level
 - 28.4. School ID Number
29. SchoolKit will provide to the Ministry a delivery status report, using the following statuses:
- 29.1. Dispatched
 - 29.2. In-Transit
 - 29.3. Out for Delivery
 - 29.4. Delivered
30. SchoolKit will provide regular status reports to the Ministry Relationship Manager (or delegate) to enable the Ministry to track and monitor the delivery of the school kits in a timely manner.

Use of the Information

31. SchoolKit will only use the information to enable the delivery of the school kit learning materials to identified students, and create the delivery status report for the Ministry.
32. SchoolKit will not disclose the Ministry Information with any other third party without express permission of the Ministry.

Confidential Information

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

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

- 34.1. the SchoolKit Delivery Report
- 34.2. The Ministry Information
- 34.3. The terms of this Agreement
- 34.4. The finances, strategies, management or business operations of a Party or its suppliers or customers
- 34.5. Any information of a Party which might reasonably be expected by that Party to be confidential in nature

35. Confidential Information does not include information which:

- 35.1. Was in the possession of the receiving Party prior to the execution of this Agreement
- 35.2. 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)
- 35.3. Is or becomes available to, and is legally and properly obtained by, the receiving Party from a source other than the disclosing Party
- 35.4. Is independently acquired or developed by the receiving Party without violating any of its obligations under this Agreement.

36. Each Party must at all times:

- 36.1. 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.
- 36.2. 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;
- 36.3. Not disclose Confidential Information of a Party to any third party unless permitted the other Party
- 36.4. 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.

37. 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

38. Nothing in Clause 36 prohibits a party from disclosing information to the extent required by any statute, regulation, or court order.

39. If a Party is required to disclose any information covered by Clause 34, that Party will:

- 39.1. Immediately notify the other Party in writing so that it may seek a protective order or other remedy; and
- 39.2. Only disclose the Confidential Information to the extent legally required.

Method and Frequency of Information Exchange

40. All information shared under this Agreement will be supplied by way of Excel Spreadsheet via email in the agreed data format.
41. The Ministry will password protect the Excel spreadsheet, and provide the password to SchoolKit in a separate email.
42. The expectation is that information to be shared under this Agreement will be exchanged on an as needed basis for the delivery of school kits while schools are closed due to the COVID 19 government response.
43. Requests for any additional information that are within the scope of this Agreement shall be made in writing and will be subject to the terms of this Agreement.

Security of the Information

44. The Parties will ensure that:
 - 44.1. All personal information shared under this Agreement is protected from unauthorised access, use and disclosure
 - 44.2. All personal 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 SchoolKit 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 personal 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 Confidential Information.
46. The Parties must also investigate any actual or suspected unauthorised access, use or disclosure of any Confidential Information.
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 all information provided under this Agreement will be securely disposed of once delivery process is completed.

Disputes Resolution

52. 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:
- 52.1. 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.
- 52.2. The arbitration will take place in Auckland or Wellington (at the arbitrator's discretion).
- 52.3. The arbitrator must adopt a procedure which, in the arbitrator's opinion, is the most simple and expeditious procedure practicable in the circumstances.
- 52.4. 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.
- 52.5. Schedule 2 to the Arbitration Act 1996 will apply.
- 52.6. The costs of the arbitrator will be borne equally by the parties unless the arbitrator determines otherwise.
- 52.7. 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.
- 52.8. 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.
53. For the purposes of clause 52, 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.

54. 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.
55. 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

56. 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

57. The Parties are responsible for complying with their respective obligations under the Privacy Act and the Official Information Act 1982 (Official Information Act).
58. In the event that either Party receives a complaint or request under the Privacy Act or Official Information Act in relation to Confidential Information, 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, unless such consultation is prohibited by statute, regulation, court order or the regulations of any stock exchange on which the shares of the relevant party are listed or quoted.
59. 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

60. 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.
61. 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.
62. Schedule One records the Relationship Managers and Technical Contacts for each Party.

Schedule One – Relationship Managers and Technical Contacts

Ministry of Education

Relationship Manager

Christine Dew

Senior Manager, ELSA

Christine.dew@education.govt.nz

Technical Contact(s)

Paul Monahan

Senior Data Analyst

Data Team, EDK

Paul.monahan@education.govt.nz

SchoolKit

Relationship Manager and Technical Contact

Kylie Power

SchoolKit

Kylie@schoolkit.co.nz