



# Data Sharing Agreement

Between

Ministry of Education, *Te Tāhuhu o te Mātauranga*

And

GRAVITY INTERNET LIMITED

For the Purpose of

Matching student address information against Gravity customer data to support the connection of student's to home internet access (COVID 19 response)

Released under the Official Information Act 1982

## Signatories

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

..... Date: ...../...../.....

Stuart Wakefield  
Chief Digital Officer

Signed for and on behalf of *Org*



..... Date: 5/8/2020

Tim Johnson  
CEO

Released under the Official Information Act 1982

## Parties

The Ministry of Education (the Ministry)

**AND**

Gravity Internet Limited, NZBN 9429042489085 (*Org*)

## Background

1. In the event that schools will need to close, or school students need to be educated at home due to the COVID 19 virus, there is a need to ensure students will have access to internet at home for online learning.
2. The RSP's require student addresses to identify the customer addresses where service needs to be enabled or a new connection is required and a likely timeframe for providing the service.

## Purpose

3. The purpose of this Agreement is to:
  - 3.1. acknowledge the statutory context in which the information sharing will occur;
  - 3.2. 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.
4. The purpose of the information sharing under this Agreement is to:
  - 4.1. Enable RSP's to identify customer addresses where a suitable internet access needs to be enabled or provided to support a student's learning from home, and a likely timeframe for the provision of the service.
5. 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

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

## Term of this Agreement

8. This Agreement commences on the date it is signed by both Parties and continues in effect until terminated in accordance with clause 2.

### **Variations to this Agreement**

9. 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**

10. This Agreement may be terminated:

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.

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

### **Costs**

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

### **General Administration**

13. Any notice to be given under this Agreement must be in writing and delivered by hand, registered mail or email to *Org* 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).

14. 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.

15. 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.

16. 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.

17. 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**

18. The Parties will comply with all New Zealand laws including, without limitation, the Privacy Act 1993 (Privacy Act).
19. *Org* acknowledges the Ministry is relying on the following Privacy Principles in sharing information (in particular student addresses) with *Org* in relation to the purpose as set out in clause 3:
- 19.1. 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
- 19.2. 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.
20. 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

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

Ministry Information	<i>Org</i> Information
<ul style="list-style-type: none"> <li>• Student home addresses, as supplied in their school's roll return</li> <li>• For valid street addresses, the latitude and longitude of the address in the WGS84 EPSG: 4326 coordinate system</li> <li>• Profile Number of the school submitting the student's roll return</li> <li>• One row per student</li> </ul> <p><i>[Note: No student names will be provided to <i>Org</i> by the Ministry.]</i></p>	<p>Product consumed on the <i>Org</i> network at an address level.</p> <p>Identifying any service which could be provided and the likely timeframe for providing the service.</p>

22. The Ministry will:

- 22.1. Provide the student address data set as described in the table above – Ministry Information

23. *Org* will:

- 23.1. match the data described above and analyse whether an *Org* product is consumed at the address provided by the Ministry (Data Matching Exercise); and
- 23.2. Where no service is available, provide a report to the Ministry identifying whether a service could be provided, and the likely timeframe for providing the service.

### Use of the Information

24. Each party must at all times:

- 24.1. 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;
- 24.2. 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;
- 24.3. not disclose any Confidential Information of another party to any third party; and
- 24.4. 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.
25. 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 *Org*), 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.
26. 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:
- 26.1. immediately notify the other party in writing so that it may seek a protective order or other remedy;
- 26.2. only disclose the Confidential Information to the extent legally required; and
- 26.3. use its reasonable endeavours to obtain undertakings that confidential treatment will be accorded to the Confidential Information by the person to whom it is disclosed.
27. For the purposes of this Agreement, **Confidential Information** means (in any form, whether written, electronic or otherwise):
- 27.1. in relation to *Org*, the *Org* Information;
- 27.2. in relation to the Ministry, the Ministry Information;
- 27.3. the terms of this Agreement;
- 27.4. the finances, strategies, management or business operations of a party or its suppliers or customers;

27.5. any information which is treated as confidential by the party which owns the information;  
or

27.6. any information of a party which might reasonably be expected by that party to be confidential in nature;

but does not include any information which:

27.7. at the time of disclosure is generally available to, and known by, the public (other than as a result of a disclosure by a recipient);

27.8. is or becomes available to, and is legally and properly obtained by, the recipient from a source other than the disclosing party; or

27.9. is independently acquired or developed by the recipient without violating any of its obligations under this Agreement.

## **Method and Frequency of Information Exchange**

28. The information to be shared under this Agreement may include personally identifiable information (student addresses).

29. 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.

30. 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 RSP. 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.

31. Where additional address information is required to support the Data Matching Exercise by *Org*, or the understanding of results of the Data Matching Exercise by the Ministry, 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.

32. Requests for additional address information should be made in writing and to the relevant Relationship Manager.

## **Security of the Information**

33. The Parties will ensure that:

33.1. All information shared under this Agreement is protected from unauthorised access, use and disclosure

33.2. 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

33.3. All Ministry and *Org* 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

33.4. 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**

34. 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.

35. The Parties must also investigate any actual or suspected unauthorised access, use or disclosure of any information exchanged under this Agreement.

36. 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.

37. 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.

38. 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**

39. The Parties agree that information provided under this Agreement is subject to the Public Records Act 2005.

40. The Parties agree that all student addresses provided to *Org* under this Agreement will be securely disposed of once the matching and analysis process is completed.

### **Disputes Resolution**

41. 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:

41.1. 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.

- 41.2. The arbitration will take place in Auckland or Wellington (at the arbitrator's discretion).
  - 41.3. The arbitrator must adopt a procedure which, in the arbitrator's opinion, is the most simple and expeditious procedure practicable in the circumstances.
  - 41.4. 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.
  - 41.5. Schedule 2 to the Arbitration Act 1996 will apply.
  - 41.6. The costs of the arbitrator will be borne equally by the parties unless the arbitrator determines otherwise.
  - 41.7. 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.
  - 41.8. 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.
42. For the purposes of clause 41, **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.
43. 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.
44. 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**

45. 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**

46. The Parties are responsible for complying with their respective obligations under the Privacy Act and the Official Information Act 1982 (Official Information Act).
47. 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.

48. 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**

49. 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.

50. 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.

51. 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 (EDA)

#### **Technical Contact(s)**

1. Mehrdad Fatemi  
Architect - ICT Strategy and Planning

### **Org**

#### **Relationship Manager**

Tim Johnson

CEO

#### **Technical Contact(s)**

Toby Cunliffe-Steel

Operations Manager