

English translation of the Dutch text of the Privacy Covenant Digital Educational Resources 2.0

Covenant on the protection of Personal Data and safeguarding the careful handling of Personal Data that are processed in the context of Educational Institutions using Digital Educational Resources, including the use of learning resources, tests, administration and information systems.

This is the English translation of the Dutch text of the privacy covenant. In case the English translation differs or deviates from the Dutch text, the Dutch texts and interpretations prevail.

The Initiators of the Covenant:

- de Vereniging PO-Raad [Primary Education Council]
- de vereniging VO-raad [Secondary Education Council]
- de vereniging GEU [Trade Organization of Educational Publishers]
- de Vereniging Digitale Onderwijs Dienstverleners [Association of Digital Education Service Providers]
- members of the educational department of the vereniging Koninklijke Boekverkopersbond [Royal Society of Booksellers], namely:
Van Dijk Educatie B.V., Iddink Voortgezet Onderwijs B.V., de Rolf groep B.V., Heutink Primair Onderwijs B.V. , Odin Onderwijs B.V. (h.o.d.n. Heutink ICT), and Reinders Oisterwijk B.V.

Whereas:

- a. Schools in primary and secondary education are increasingly making use of Digital Educational Resources for the benefit of organising and teaching, including digital products or services for the purposes of the education process, such as learning resources, testing, pupil administration systems, electronic learning environments and pupil tracking systems;
- b. the use of these Digital Educational Resources has great advantages. It allows the provision of education that is more tailored to pupils: a wish that is gaining increasing support in the Netherlands;
- c. a condition for the use of Digital Educational Resources is that clear arrangements must be made on the Processing of Personal Data. Particularly pupils in primary and secondary education are a vulnerable group with regard to protection of Personal Data. It is therefore important that Schools make proper arrangements about regulating and safeguarding privacy with all parties (suppliers and providers) that process Personal Data in this context on behalf of Schools;
- d. for the purpose of this condition, arrangements are established in the Covenant between the Primary Education Council, Secondary Education Council and the members of the industry associations of suppliers of

learning resources, testing and educational services (GEU), suppliers of services and systems in ICT education (Vereniging Digitale Onderwijs Dienstverleners), and school suppliers/distributors (educational department of the Koninklijke Boekverkopersbond);

- e. the starting point for these arrangements is that Schools have and keep control over Personal Data and the Processing of Personal Data and determine to whom the information may be given. The Schools are the Data Controllers for Processing Personal Data within the meaning of the Covenant;
- f. this *Privacy Covenant Digital Educational Resources 2.0* replaces the first signed *Privacy Covenant Digital Educational Resources, Learning Resources and Testing*, from 2015.

and wish to record the following arrangements:

Clause 1: Definitions

For the purposes of the Covenant, the following concepts:

1. Data Subject, Processor, Third Party, Personal Data, Processing of Personal Data and Data Controller are understood to be the concepts as defined in Section 1 of the Wbp [Data Protection Act];
2. Covenant: this Privacy Covenant Digital Educational Resources;
3. Party to the Covenant: an School or Supplier that has joined the covenant;
4. Digital Educational Resource: Learning Resources and Testing and School and Pupil information resources;
5. Initiators: parties that are the initiators of the Covenant as set out in the preamble to the Covenant;
6. Learning Resources and Testing: digital product and/or digital service consisting of course material and/or tests and associated digital services, focussed on learning situations for the purpose of teaching by or on behalf of Schools;
7. Supplier: a company or institution that is a Supplier of a Digital Educational Resource, or of a product or service as referred to in Clause 2 (3), and that is also a Party to the Covenant;
8. Model Data Processing Agreement the Model Data Processing Agreement as referred to in Clause 4 of the Covenant;
9. School: the competent authority of a primary school or secondary school;
10. Platform: the platform as referred to in Clause 8 of the Covenant;
11. Regulation: the regulations as referred to in Clause 8 (4) of the Covenant;
12. School and Pupil Information Resources: a digital product and/or digital service for the benefit of the education (process), such as a pupil administration system, timetabling system, parent portal, pupil and parent communication system, an electronic learning environment and a pupil tracking system.
13. Wbp: Wet bescherming persoonsgegevens [Data Protection Act of the Netherlands].

Clause 2: Purpose and scope of the Covenant

1. The purpose of the Covenant is to create safeguards for the careful handling of Personal Data by Schools and Suppliers that are processed in the context of using Digital Educational Resources.
2. The scope of the Covenant extends to Processing of Personal Data by or on behalf of Schools in the context of using Digital Educational Resources.

3. The Covenant does not apply to any other Processing for which Suppliers (to the exclusion of Schools) are the Data Controller.

Clause 3: Division of roles

1. For Processing of Personal Data within the meaning of the Covenant, the School is the Data Controller and the Supplier is the Processor. The School has and maintains independent control over the purpose and methods of the Processing of Personal Data.
2. The Supplier shall ensure that the School is informed in advance about the services provided by the Supplier in relation to Processing of Personal Data, and the choices that are available to an School. The School then indicates to the Supplier which method of Processing of Personal Data and associated services it agrees to in the context of using Digital Educational Resources.
3. The Parties to the Covenant and Initiators consider it of great importance, and within that framework encourage Schools and Suppliers to be aware of obligations under the Data Protection Act and to comply with them.
4. The Primary Education Council and the Secondary Education Council will support Schools with questions on the interpretation of the Covenant and the Model Data Processing Agreement.

Clause 4: Data Processing Agreement

1. The Model Data Processing Agreement is appended as an annex to the Covenant.
2. Schools and Suppliers will use the Model Data Processing Agreement when making arrangements on Digital Educational Resources in which Personal Data will be Processed. The contents of the Model Data Processing Agreement between these parties can be waived only in writing and stating reasons.
3. For the purpose of implementing the arrangement in subclause 2, Initiators will promote, by means of information and support etc., the use of the Model Data Processing Agreement when making agreements between Schools and Suppliers.
4. The Model Data Processing Agreement includes arrangements, especially with regard to:
 - the roles agreed between the parties;
 - the return and destruction of Personal Data after the expiry of the agreement;
 - the purposes of the Processing carried out in the framework of the Covenant;
 - the manner of compliance with the confidentiality obligation;
 - the retention periods of the Personal Data to be Processed;
 - the conditions for engaging sub-processors;
 - the conditions for transferring data to countries outside the EEA;
 - the method of handling incidents including data leaks;
 - the procedure in connection with the rights of the Data Subjects;
 - the provision of information to the School for the benefit of the pupils and parents;
 - overview regarding the services provided by the Processor and the categories of Personal Data that are Processed by the Processor on behalf of the Data Controller.
 - overview relating to the security policy and the security measures taken, whereby

- the application of the security standards and guidelines that are in the Platform are/will be agreed.

Clause 5: Purposes of the Processing carried out in the framework of the Covenant

1. Processing of Personal Data by means of Learning Resources and Testing takes place for the purpose of:
 - a. using the Digital education resource for teaching and learning purposes and guiding and tracking of pupils, including:
 - storing learning outcomes and test results;
 - returning the learning outcome and test results to the School;
 - assessing the learning outcomes and test results in order to be able to obtain course and test material that is geared towards the specific learning needs of a pupil;
 - analysis and interpretation of the learning outcomes;
 - ability to exchange learning outcomes and test results between Digital Educational Resources.
 - b. provision of/access to the Digital Educational Resources in accordance with the agreements made between the School and the Supplier;
 - c. obtaining access to the provided Digital Educational Resources and external information systems, including the identification, authentication and authorisation;
 - d. security, monitoring and prevention of misuse and improper use and prevention of inconsistency and unreliability in the Processed Personal Data using the Digital Educational Resource.
 - e. the continuity and proper functioning of the Digital Educational Resource in accordance with the agreements made between the School and the Supplier, including the carrying out of maintenance, making back-ups, making improvements following detected errors or inaccuracies and obtaining support;
 - f. research and analysis based on strict conditions, similar to the 'Code of Conduct for Research and Statistics' based on Section 25 of the Data Protection Act, for the purpose of the learning process, optimising the learning process or the policy of the School;
 - g. ability of the School to provide completely anonymised Personal Data for research and analysis purposes in order to improve the quality of education.
 - h. the provision of Personal Data to the extent necessary in order to comply with the legal requirements of Digital Educational Resources.
 - i. The implementation or application of another law
2. Processing of Personal Data by means of School and Pupil Information Systems takes place for the purpose of:
 - a. the organisation, teaching and receiving education, the guidance and tracking of pupils or the provision of school and study advice, including:
 - the layout and modification of timetables;

- the analysis and interpretation of learning outcomes;
 - keeping personal (including medical) circumstances of a pupil and the consequences thereof for receiving education;
 - guiding and supporting teachers and other employees within the School;
 - communication with pupils and parents and staff of the School;
 - financial management;
 - monitoring and accountability, for the purpose of in particular: (performance) measurements of the School, quality care, satisfaction survey, study of effectiveness of education (type) or the support available for pupils in tailored education;
 - dealing with disputes.
 - the exchange of Personal Data with Third Parties, including:
 - supervisory authorities and healthcare institutions in the context of the execution of their (legal) duty;
 - partnerships in the context of tailored education, regional transfers;
 - parties involved in the realisation of internships or apprenticeships where necessary and legally permissible;
 - schools in the event of transfers between schools and for further education.
- b. provision of/access to the Digital Educational Resources in accordance with the agreements made between the School and the Supplier;
- c. obtaining access to the provided Digital Educational Resources and external information systems, including the identification, authentication and authorisation;
- d. security, monitoring and prevention of misuse and improper use and prevention of inconsistency and unreliability in the Processed Personal Data using the Digital Educational Resource.
- e. the continuity and proper functioning of the Digital Educational Resource in accordance with the agreements made between the School and the Supplier, including the carrying out of maintenance, making back-ups, making improvements following detected errors or inaccuracies and obtaining support;
- f. research and analysis based on strict conditions, similar to the 'Code of Conduct for Research and Statistics' based on Section 25 of the Data Protection Act, for the purpose of the learning process, optimising the learning process or the policy of the School;
- g. the School being able to provide completely anonymous Personal Data for research and analysis purposes in order to improve the quality of education.
- h. the provision of Personal Data to the extent necessary in order to comply with the legal requirements of Digital Educational Resources.
- i. the implementation or application of another law
3. Processing of Personal Data regarding Digital Educational Resources must never take place for advertising purposes or for making unsolicited offers by Suppliers.

4. The Suppliers will not disclose any Personal Data to Third Parties, unless such exchanges are carried out on behalf of and with the consent of the School or if this is necessary in order to comply with a legal obligation.

Clause 6: Pseudonymisation

1. In the exchange of Personal Data between Schools and Suppliers, the Schools and Suppliers will use pseudonymous Personal Data, if reasonably possible.
2. Further consultations may be conducted in the Platform about the way in which, by whom and at what moment pseudonymisation will take place with the aim to reach agreements that will be recorded in an amendment to the Covenant.

Clause 7: Legal information obligation and reporting obligation

1. The School must inform, with or without using information provided by the Processor as referred to in Clause 3 (2), the pupil or parents of pupils whose Personal Data are Processed in a Digital Educational Resource and what measures have been taken to safeguard the privacy in accordance with the arrangements in the Covenant.
2. When provided with this information, the pupils or parents of pupils are informed about how they can make use of the legal rights of the Data Subject, such as the right of access, the right to correct data or the right to object. To exercise these rights, the Data Subject must refer to the School.
3. The School shall examine whether the Processing of Personal Data within the meaning of the Covenant falls under a legal reporting obligation, and is responsible for any reporting.

Clause 8: The Platform

1. Further definition of the collaboration between the Initiators, Schools and Suppliers and securing the arrangements based on this Covenant will take place within a Platform in which the Initiators have a seat.
2. In the context of the Platform, the Initiators are jointly responsible for further definition, consultations and implementation of arrangements on:
 - the periodic evaluation of the arrangements and the topics of the Covenant;
 - the progress of the implementation of the Covenant;
 - sharing information with regard to the topics that are covered in the Covenant;
 - the impact of new legislation, technological or other developments on the Covenant and the scope of the Covenant in practice and the need for support or instruments thereto, all this based on risk analyses and best practices;
 - the level of information security to be achieved, including the security standards, the security audits, the access to Personal Data and the handling of incidents;
 - the manner in which to give shape to the issue of *privacy by design* and *privacy by default* in the development of Digital Educational Resources.
3. The Initiators are jointly responsible for the continuity and the facilitation of the Platform in so far as it relates to arrangements as defined in this Covenant.
4. The Initiators will jointly and in mutual agreement make further arrangements on the procedure in connection with the amendment of the Covenant as well as on *governance*, decision-making process, responsibilities, the cost and the complaints procedure. These arrangements are laid down in the Regulations.

5. Insofar as the decision-making procedure, including the option to implement changes, has not yet been regulated by means of the Regulations, decision-making and amendments of the Covenant are only carried out with the consent of all the initiators.
6. To the extent applicable, the Initiators represent their members within the Platform and report on the results of the consultations in the Platform. In principle, the Schools in the Platform are represented by the Primary Education Council and the Secondary Education Council.

Clause 9: Observing arrangements

1. The Platform established a structure for monitoring and control of compliance with the arrangements within the Covenant.
2. On behalf of the Initiators, Schools and Suppliers the Platform is authorised to act against detected misuse or improper use of the Covenant or the Model Data Processing Agreement. The powers granted to the platform to this end and working methods are included in the Regulations.
3. Schools and Suppliers, to the extent possible, will include agreements with regard to compliance with the Covenant in mutual agreements, contracts - including in the context of procurements - and will mutually address each other.

Clause 10: Financing

1. Within the Platform, arrangements are made about the financing of the costs associated with the Covenant and for participation in and maintenance of the Platform.

Clause 11: Entry into force, accession and withdrawal

1. The Trade Organization of Educational Publishers, the Association of Digital Education Service Providers, the members of the educational department of the Royal Society of Booksellers and the Primary Education Council and Secondary Education Council who represent the school boards affiliated to them, endorse the principles and arrangements of the Covenant by signing.
2. The Covenant shall enter into force upon signature by the Initiators.
3. Suppliers not yet connected to the Covenant and Schools not represented by the Primary Education Council and Secondary Education Council can join the Covenant by means of a signature of a declaration to be drawn up by the Platform and by sending it to the secretariat of the Platform.
4. The Platform will provide a logo for Suppliers affiliated to the Covenant. The Platform may impose further conditions to the use of this logo.
5. The Primary Education Council and Secondary Education Council are responsible for the management of the activities arising from the Covenant, including the secretariat of the Platform and a register of Parties to the Covenant.
6. The Covenant is concluded for an indefinite period of time.

7. An Initiator and a Party to the Covenant may withdraw from the Covenant. Such withdrawal shall be carried out in writing and must be addressed to the secretariat of the Platform.

Clause 12: Enforceability, complaints and disputes

1. Any complaints about and disputes between Parties to the Covenant concerning the interpretation or application of the provisions in the Covenant are resolved in the Platform or in a manner to be specified in the Regulations.
2. The provisions of the Covenant are not legally enforceable.
3. Notwithstanding paragraph 2, the Data Processing Agreement between Schools and Suppliers may include arrangements about the applicability and enforceability of the Covenant.

By signing, the Initiators of the Covenant endorse the principles and arrangements of the Covenant:

de Vereniging PO-Raad [Primary Education Council]

de vereniging VO-raad [Secondary Education Council]

de vereniging GEU [Trade Organization of Educational Publishers]

de Vereniging Digitale Onderwijs Dienstverleners [Association of Digital Education Service Providers]

members of the educational department of the vereniging Koninklijke Boekverkopersbond [Royal Society of Booksellers], namely:

Van Dijk Educatie B.V., Iddink Voortgezet Onderwijs B.V., de Rolf groep B.V., Heutink Primair Onderwijs B.V., Odin Onderwijs B.V. (h.o.d.n. Heutink ICT), and Reinders Oisterwijk B.V.

Explanatory Memorandum

Representatives of Schools and Suppliers have jointly taken the initiative to make arrangements on regulating and safeguarding the privacy of individuals whose Personal Data are Processed in the context of using Digital Educational Resources by Schools, including the use of learning resources, tests, administration and information systems. The necessity of doing this is partly due to developments related to personalised learning.

Starting point for these arrangements is that the Schools have and keep the control over Processing the Personal Data and decide what the information is used for and to whom the information may be given. The Schools are the Data Controller for Processing of Personal Data, the Suppliers are the Processors.

The arrangements are laid down in the *Privacy Covenant Digital Educational Resources 2.0*. This Covenant shall replace the *Privacy Covenant Digital Educational Resources, Learning Resources and Testing*, from 2015.

The main change in the updated Covenant 2.0 is that in addition to the arrangements in the old Covenant, it now also covers School and Pupil Information Resources, such as a pupil administration system, timetabling systems, parent portal, pupil and parent communications system, an electronic learning environment, or a pupil tracking system.

The Covenant is largely a realisation of obligations arising from the Dutch Data Protection Act. As such it can be seen as an elaborated scheme using commonly accepted arrangements to support the Schools and Suppliers in their compliance with statutory regulations. In addition to the distribution of roles between the parties, the Covenant indicates the starting points for arrangements between the School and the Supplier to be specified in legally required written agreements.

The Model Data Processing Agreement is included as an annex to the Covenant. The starting points of this model are not only in line with the provisions of the Covenant, but also with the regulations of the Dutch Data Protection Act and the premises as the supervisory authority has outlined in guidelines and statements. In addition to the new *Privacy Covenant Digital Educational Resources 2.0*, the Model Data Processing Agreement has also been adjusted in accordance with the adjusted components of the Covenant, and updated with regard to the new legislation concerning the reporting obligation of data leaks.

The new Model Data Processing Agreement 2.0 replaces the Model Data Processing Agreement from 2015. Data Processing Agreements, already concluded based on the old model from 2015 remain in effect, in principle, until these Data Processing Agreement are terminated by the parties and are then followed by a new Data Processing Agreement based on the new Model Data Processing Agreement 2.0.

The Covenant sets out the purposes of Processing Personal Data by the School in the context of the Covenant. In addition to purposes for Processing of Personal Data by means of Learning Resources and Testing, the Covenant 2.0 also contains objectives for Processing of Personal Data by means of School and Pupil Information Systems. The objectives relating to School and Pupil Information Systems are broadly formulated. This is mainly because of the variety of products and services of Suppliers of School and Pupil Information Systems. A Supplier of School and Pupil Information Systems must state in the annex to the Model Data Processing Agreement agreement which objectives are applicable to the offered product or service. The specific objectives set for School and Pupil Information Systems do not apply to products and services related to Learning

Resources and Testing. On this point the Covenant has not changed for Suppliers of Learning Resources and Testing.

The Covenant also regulates the organisation of a Platform where the Initiators of the Covenant and the Suppliers have a seat. The purpose of this Platform is to monitor the arrangements and, if necessary, to adapt to changes in legislation, technical developments or insights.

Although with the help of the Covenant and the accompanying Model Data Processing Agreement, a number of important issues have been worked out, it needs to be explicitly stated that the Covenant *is not* intended to give shape to all legal obligations that rest on an School. In the role of Data Controller, an School must also make other considerations with regard to Data Processing and to take measures. Kennisnet has developed multiple tools and has explanations available for Schools.

Explanation of the Clauses

Clause 1

Digital Educational Resource:

Digital Educational Resources in the Covenant include: i) Learning Resources and Testing, and (ii) School and Pupil Information Resources. 'Learning Resources and Testing' include digital products or services consisting of course material or tests and the related digital services focused on or related to learning situations, intended to provide education by or on behalf of the School. This also includes tests, evaluations and advice, aimed at learning situations and/or educational support. School and Pupil Information Resources include digital products or services for the purposes of education or the education process, such as a pupil administration system, timetabling system, parent portal, pupil and parent communications system, an electronic learning environment and a pupil tracking system.

Suppliers

When using Digital Educational Resources, Personal Data is being Processed. This not only relates to storage, but also to access, transfer, sending and analysis of the data. the Processing of data takes place through, for instance, pupil administration systems, pupil tracking systems, learning environments and the systems that make learning tools and tests available. Together they form the 'data processing process' around Learning Resources.

School

Where School is mentioned in this Covenant, it is understood to mean the competent authority of a primary school or secondary school.

Parties to the Covenant

Suppliers and Schools that are not represented by the Primary Education Council or the Secondary Education Council are able to join the Covenant and become a Party to the Covenant. Clause 11 of the Covenant set out the conditions for joining.

Clause 2

The Covenant covers all Processing of Personal Data by or on behalf of Schools which take place in the context of using Digital Educational Resources. This may also include the Processing of so-called 'special data' within the meaning of Clause 16 of the Dutch Data Protection Act, such as health-related data (e.g. dyslexia).

Processing carried out in the context of using Digital Educational Resources does not only include the Processing of data with Digital Educational Resources, but also Processing carried out in the framework of the provision of access, use, supply, distribution and maintenance, and the support of these Digital Educational Resources. In addition, it also covers exchanges of Personal Data which take place in that context between Schools and Suppliers and between Suppliers themselves.

Therefore, the aforementioned Processing also covers sharing and storage via a pupil administration system, timetabling system, parent portal, pupil and parent communications system, an electronic learning environment or a pupil tracking system and the systems that provide learning resources and tests.

In drafting the Privacy Covenant Digital Educational Resources, it was decided to establish more arrangements on privacy issues that arise within Schools. In the future,

the present Covenant become part of a system of Covenants that cover information processing by Schools within other substantive areas such as in the context of care responsibilities or funding of the School. Because in that case, it relates to Processing other than the present Covenant, and partly will also involve other parties from specific legal roles, separate agreements must be made for this in a separate Covenant. The purpose of the system of covenants is mainly to provide insight into the coherence and to define the arrangements as uniformly as possible.

Clause 2 (3) indicates that certain types of the Processing of data, for example, relating to payment of invoices or the relationship between Education institution and Supplier do not have to fall within the scope of the Covenant. The reason for this is that such Processing does not relate to the Processing of data on behalf of the school. The same applies for educational Learning Resources, purchased by users for private use.

Likewise, the use of Digital Educational Resources whereby Personal Data is not Processed, falls outside the scope of the Covenant.

Clause 3

The distribution of roles as described here sets explicit requirements for both parties. The School must take the responsibility for Processing, and act accordingly.

However, in practice, this will not always be easy. The School, before making choices and decisions arising from the legal obligations imposed on the Data Controller for data processing, must have sufficient information at its disposal to make these choices and decisions. However, in many cases the School will not have enough experience about specific Processing. This is often in contrast to the Supplier who is usually very well informed of Processing carried out using its own products and services. The Supplier must therefore - as a Processor - realise that the School - as a Data Controller - must be timely and sufficiently informed about Processing using its services or products. For example, think of information about the functioning of the product, the data which are Processed, the security or the data generated by the product. In practice, such information will be provided via the uniform Privacy Leaflet, which is an annex to the Model Data Processing Agreement.

Unintended shift in roles

The School must be well informed, in particular when making agreements about products, services and related Personal Data processing, about the choices that are available to the School (Clause 3 (2) of the Covenant). Based on this information, the School must indicate which products, services and associated data processing it actually wants to purchase. If the School cannot adequately make this assessment and choice, the possibility exists that it is not the School but the Supplier that is unintentionally considered as the Data Controller within the meaning of Dutch Data Protection Act. This must be avoided.

Clause 4

Section 14 of the Data Protection Act prescribes that cooperation with the Processor must be based on an agreement. The Covenant contains an annex Model Data Processing Agreement, which Schools and Suppliers have agreed to use when making agreements on the Processing of Personal Data in the context of the Covenant.

If, due to specific circumstances, (parts of) the Model Data Processing Agreement cannot be used, only a substantiated written derogation is permitted. Given the number of provisions that are either required by law, or of which the supervisory authority (De

Autoriteit Persoonsgegevens) [Dutch Data Protection Authority], indicates that it must be included in the Data Processing Agreement, the scope for derogation from the provisions of the Model is limited.

Clause 4 (4) is a non-exhaustive overview of topics that are included in the Data Processing Agreement. These topics are largely either from the law or from the conditions laid down by the Dutch Data Protection Authority for a Data Processing Agreement. In drafting the agreement, use was made of the 'Guidelines on protection of personal data' from 2013 and the 'Policy Rules Relating to the Obligation to Reporting Data Leaks' from 2015 of the Dutch Data Protection Authority.

Important topics in the Model Data Processing Agreement are the division of roles and the prevention of and unintended shift in those roles (see Clause 3). Another topic is the conditions for engaging so-called 'sub-processors'. There is a 'sub-processor', for example, if an School allows a Supplier to Process Personal Data in the context of using a learning resource, whereby this Supplier outsources all or some of the data processing to another party. In that case, the School is the Data Controller within the meaning of the Dutch Data Protection Act, the Supplier is the Processor, who in turn engages one or more sub-processors, depending on the way in which the Digital Educational Resource is set up.

Clause 5

Clause 5 lists the objectives of the School when Processing Personal Data in the context of the Covenant. These are the objectives of the School in its capacity as Data Controller for the processing of data.

Clause 5 (1), section a

Subclause (1), section a specifically provides for the Processing of Personal Data by means of Learning Resources and Testing. This section describes the main objective of the Processing of data for the purposes of teaching and receiving education and guiding and tracking of pupils in using Learning Resources and Testing.

Regarding Clause 5 (1) *'assessing the learning outcomes and test results in order to be able to obtain course and test material that is geared towards the specific learning needs of a pupil'* it is important to note that these results do not necessarily have to be assessed on the basis of the learning outcomes and test results. Other data available within the Learning Resource or Test can also be involved in the assessment, such as usage, gender or age.

Clause 5 (2), section a

Subclause (2), section a specifically provides for the Processing of Personal Data by means of School and Pupil Information Systems, regarding the organisation, provision and tracking of education, guiding and tracking of pupils or the provision of school and study advice.

By means of School and Pupil Information Systems, it is possible for a highly diverse range of Processing to take place, extending from financial administration to the storage of test results. For Schools it is of great importance that they have a clear picture of the purposes for which the data are processed if they make use of the product or service, and what type of data is to be processed. These purposes, and therefore the job assignment placed by the School, must be clearly and specifically stated and explained in the Privacy Leaflet accompanying the Data Processing Agreement. In the Privacy Leaflet of the respective product, it is therefore advisable that the Supplier specifies as much as

possible based on the list included here for which of these purposes Personal Data are processed when using the Supplier's product .

The '*school and study advice*' mentioned in Clause 5 (2) include (the administration of) study advice for further education. That does not rule out that also in Learning Resources and Testing the feedback of learning outcomes and test results to the School is accompanied by guidance or (study) advice.

The section '*the analysis and interpretation of learning outcomes*' in Clause 5 (2) under a, could include evaluating data on one pupil in relation to the results of a reference group in order to understand how a pupil is performing in relation to this group, but also following one pupil at the time based on results obtained in the context of learning growth and developmental perspective. In addition, this section can also relate to the diagnosis of the data of one pupil based on the results achieved or the assessment of a group of pupils in relation to the results of a reference group in order to understand how the group performs compared to a reference group.

Moreover, the text of this section in Clause 5 (2) under a, in connection with, where possible, formulating objectives in identical terms has also been used under Clause 5 (1) under a.

The analysis and interpretation of learning outcomes with regard to Clause 5 (1) under a, always take place for the benefit of the organisation, teaching and receiving education, in support of personalised learning, the guidance and tracking of pupils or the provision of school and study advice by the School. Arrangements on other forms of research and analysis are regulated in Clause 5 (1) and Clause 5 (2) under f and g and are outside the scope of Clause 5 (1) under a.

Clause 5 (2) (a) includes examples of processing that relate to '*updating personal circumstances*', '*guiding and supporting teachers and other employees*', '*communication with pupils, parents and employees of the School*' and '*monitoring and accountability*'. These examples are not included in the text under Clause 5 (1). The reason for including this type of processing as an example under Clause 5 (2) is the fact that specific School and Pupil Administration Systems are primarily focused on this type of processing. Learning Resources and Testing can also include functionalities and processing which may constitute for example communication with parents, keeping track of circumstances, monitoring or guiding employees, because there are functions intended for teaching and learning purposes and guidance and tracking of pupils. However, Learning Resources and Testing are usually not primarily focused on the abovementioned functionalities.

The '*communication with pupils, parents and employees of the School*' relates to a functionality of the School and pupil information system whereby the School shares information about the School, available resources and timetables, pupils, and the activities of the School.

'Financial management' includes calculating, setting and collecting registration fees, school and tuition fees and contributions for learning resources and extra-curricular activities (including outsourcing debt collection to third parties). It also covers gaining an insight into financial developments and (source) funding and the settlement thereof, and exercising auditing.

'Monitoring and accountability', includes in particular the performance measurement of the School and reporting to, for instance, the Inspectorate of Education and parents, the measurement of satisfaction of pupils, parents and employees, the measurement of the

effectiveness of the type of education, and benefit of the support offered to pupils in tailored education.

Clause 5 (1) and (5) section b to l

The sections b to l of Clause 5 (1) and (2) relate to objectives which are identical for both the Processing of Personal Data by means of Learning Resources and Testing and the Processing of Personal Data by means of School and Pupil Information Systems.

- Section b relates to the Processing of data which is necessary for the delivery of a Digital Educational Resource for example via a distributor and the collection of related payment.
- Section c relates to the Processing of data which is necessary for the person concerned - such as the pupil - to gain access to a Digital Educational Resource or an external information system, for example, via Basispoort, Stichting Edu-iX, or the Kennisnet Federatie.
- Section d relates to Processing of Personal Data in order to be able to monitor whether any abuse has or is made of the Digital Educational Resource, and also relates to, for example, a Processor being able to make a backup of the data.
- Section e relates to Processing of Personal Data by a service desk of the Processor, which needs access to Personal Data for the execution of work, for example, for troubleshooting purposes or for providing support if a pupil is unable to access the Digital Educational Resource. This objective expressly does not include the Processing of data for the purpose of improving the product of the Suppliers.
- Section f: This objective covers the provision of learning outcomes on behalf of the School to external parties for research purposes. One example of this is a university carrying out a study into learning outcomes.

The provision of data for a study is only allowed if the study is conducted under strict conditions which are similar to the Dutch Data Protection Act's code of conduct: 'Code of conduct for Research & Statistics approved by the Dutch Data Protection Authority (NOTE: in case the approval of the code of conduct has expired, the previously approved code of conduct shall apply. After approval of a new code of conduct, the new code of conduct will be used).

The exact terms and obligations which the study and researcher must comply with are specified and finalised within the Platform. When establishing these conditions and obligations, the Dutch Data Protection Act 'Code of Conduct for Research & Statistics' shall prevail.

Incidentally, section f does not cover qualitative and quantitative studies via questionnaires or interviews without Personal Data from learning resources are used. These types of study are used, for example, in order to gain insight in the preferences of teachers or product satisfaction.

- Section g: This objective relates to anonymising Personal Data, so that this anonymous data can be used for research to improve the quality of education and to optimize the learning experience of a pupil.

Anonymous data is data relating to a natural person who was identified earlier, but after anonymising can not, or only with disproportionate time and effort, be identified either by the Data Controller to Processing nor or by any other party or person. There are several options and techniques for anonymising data so that the data cannot be traced back to a natural person. However, anonymising does not mean that data can no longer be individualised, only that it is no longer possible with the data to establish the identity of the natural person.

Because the data is no longer Personal Data after being anonymised, this data falls outside the scope of the arrangements which are subject to the Covenant. The research covered by section (g) differs from the kind of research as referred to in section (f) because in research as referred to in section (f), working with Personal Data is not ruled out.

- Section h: in certain cases it may be necessary for a Supplier to use Personal Data for which the School is the Data Controller, for example to obtain of a COTAN certification. In some cases, Schools may not make use of these Educational Resources if this certification is missing. The Inspectorate of Education Inspection shall ensure that Schools will abide by this.

Explanation: From 2014, there are legal requirements relating to pupil and education tracking system. On 1 August 2014, Section 11, subsections (7) and (8) of the Expertise Centres Act came into force. These provisions stipulate that schools for (secondary) special education, for all learning areas as referred to in Clause 11, must have a pupil and educational tracking system. Measuring the learning progress concerning knowledge and skills in the Dutch language, Arithmetic and Mathematics, should be lesson-independent tests which comply with the quality assessment of the COTAN (Commissie Testaangelegenheden Nederland) [Dutch Committee on Testing].

- *Section i: the implementation or application of another law.*

Clause 5 (2)

Clause 5 (2) provides that Suppliers will never make an offer or advertise to a Data Subject based on the learning outcomes from Learning Resources for this pupil or parent who are covered by this Covenant. General newsletters that are sent to the parents when they themselves have registered with a Supplier etc. fall outside the scope of this provision. This section likewise does not apply if the School explicitly requests further information about products and services.

Clause 6

Within the Platform as referred to in Clause 8, it will be examined to what extent it is possible to pseudonimise the Personal Data used within the education. The elaboration of this takes place outside the Covenant. Therefore, the Covenant does not contain specific arrangements, but does state the intention that if it is reasonably possible, then pseudonimised Personal Data should be used when exchanging Personal Data between Schools and Suppliers.

Clause 7

Legal information obligation

Clause 7 is in line with the rights of the Data Subjects, in particular the information obligation imposed on the Data Controller. Therefore, an School has to actively inform in particular pupils and parents ('Data Subjects') about Processing any Personal Data of which they have not already been informed. The School needs information in order to meet the information obligation under the Data Protection Act. The School must actively gather this information.

In many cases, the Supplier will often have to provide some of this information - to the extent that this refers to the offered services and products - to the School. For example, based on Clause 3 of the Covenant or based on the Model Data Processing Agreement. Part of the Model Data Processing Agreement is a 'Privacy Leaflet' to be completed by the Supplier, which must indicate which Personal Data are processed and which safeguards

are in place to protect the privacy of the Data Subjects. The School can use this leaflet to inform parents adequately.

Legal reporting obligation

Schools, in principle, must report data processing for which they are the Data Controller within the meaning of the Act, to the Dutch Data Protection Authority. This obligation shall lapse if the Processing falls under one of the exempted Processing of Personal Data as set out in the Exemption Regulation of the Data Protection Act. Previously, Processing within Schools usually fell under these exemptions. However, different rules may apply to the use of Digital Educational Resources.

The School needs to examine whether or not the Processing needs to be reported to the Dutch Data Protection Authority. If it appears that this needs to be done, the Primary Education Council and Secondary Education Council will provide a model of a report to the Dutch Data Protection Authority.

Clause 8

The Platform, housed within Edu-K, is the carrier of the arrangements and intentions set out in the Covenant. In the context of the Platform, the Initiators are jointly responsible for further definition, consultations and implementation of agreements. With the forthcoming legislative changes that are expected - also in a European context - the role of the Platform must be such that it can lead these developments in the right direction. This requires the commitment of all Initiators and other Parties to the Covenant who can address each other on this.

The annex to the Model Data Processing Agreement will include a definition of the security measures that are being taken. Since Section 13 of the Data Protection Act includes an optimisation requirement, security must remain a continuous focus of attention and care. Security will therefore be a fixed part of consultation in the Platform, which will jointly seek the best possible security standard, which will also be appropriate in to the interests of the Data Subjects and the costs associated with security. Where possible, the Platform will seek a direct connection with other existing initiatives concerning information security in the education.

The Initiators are jointly responsible for the continuity and the facilitation of the Platform in so far as it relates to arrangements as defined in this Covenant. This means that in the event the current Platform ceases to exist, the Initiators will ensure that the tasks and responsibilities of the Platform insofar as they relate to the arrangements set out in this Covenant, will be invested elsewhere. Clause 8 (3), does not concern (an obligation to) financing the Platform or a future Platform, by Initiators. Separate arrangements for financing the Platform are made based on Clause 10.

To the extent applicable, the Initiators represent their members within the Platform and report on the results of the consultations in the Platform through the available communication channels.

Clause 9 and Clause 12

Although a covenant is mainly a declaration of intent, the Initiators and Suppliers will establish a structure in the Platform for monitoring and checking compliance with the arrangements within the Covenant. And despite the fact that the arrangements in the Covenant are not legally enforceable, using the Model Data Processing Agreement will cause many arrangements will nevertheless become enforceable. Also in this way, the parties are bound by arrangements in the Covenant.

Based on Clause 9 (2), the Platform is authorised on behalf of the Initiators, Schools and Suppliers to act against detected misuse or improper use of the Covenant or the Model Data Processing Agreement. The powers granted to the Platform to this end and working methods are included in separate Regulations.

From within their own framework, the Dutch Data Protection Authority will also be able to monitor and judge the extent to which Schools and Suppliers adhere to the law. It is expected that the Dutch Data Protection Authority will also include the arrangements in the Covenant and the Model Data Processing Agreement in a consideration.

Clause 11

Signing of the Covenant by the Initiators.

The Covenant is signed in the first instance by the Initiators of the Covenant. The Covenant shall enter into force on being signed by the Initiators.

Signing by other parties.

Signing the Covenant is expressly open to parties and institutions which are not yet affiliated. The Platform will actively work towards encouraging the parties who are not affiliated to sign. Incidentally, by signing the Model Data Processing Agreement the parties which have not yet signed are indirectly bound to the arrangements as laid down in the Covenant.

Parties and institutions which are not yet affiliated can join the Covenant by means of signing a declaration drawn up by the Platform and sending it to the secretariat of the Platform. More information can be found on the website www.privacycovenant.nl. Schools which are not affiliated to the Primary Education Council or Secondary Education Council can register, after which they are considered a Party to the Covenant. In principle, these Schools are also represented by the Primary Education Council and Secondary Education Council in the Platform.