

Privacy Covenant

Digital Educational Resources 3.0

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 digital 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:

- the Primary Education Council [Vereniging PO-Raad]
- the Secondary Education Council [vereniging VO-raad]
- the Higher Vocational Education Council [vereniging MBO Raad]
- the trade organisation of publishers [vereniging GEU]
- the Association of Digital Education Service Providers [Vereniging Digitale Onderwijs Dienstverleners]
- members of the educational department of the Royal Society of Booksellers [Coöperatieve Koninklijke Boekverkopersbond U.A.], who have signed the Privacy Covenant as Initiators;

Whereas:

- a. Educational Institutions in primary and secondary education and higher vocational education are increasingly making use of Digital Educational Resources for the benefit of organising and teaching, including digital products or services for purposes of the educational process, such as learning resources, testing, pupil administration systems, core registration system, student information system, participant administrations, electronic learning environments and student 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 and students - 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. Students in primary and secondary education are a particularly vulnerable group with regard to the protection of Personal Data. It is therefore important that Educational Institutions make proper arrangements about regulating and safeguarding privacy with all parties (suppliers and providers) that Process Personal Data in this context on behalf of Educational Institutions;
- d. for the purpose of this condition, arrangements are established in the Privacy Covenant between the Primary Education Council, Secondary Education Council, Higher Vocational Education Council, and the members of the industry associations of suppliers of learning resources, testing and educational services (GEU), suppliers of ICT services and systems in education (Vereniging Digitale Onderwijs Dienstverleners), and school suppliers/distributors (educational department of the Koninklijke Boekverkopersbond);

- e. the underlying principle for these arrangements is that the Educational Institutions have control and keep control over Personal Data and over the Processing of Personal Data, and that they determine the parties to whom the information may be given. The Educational Institutions are the Controllers for Processing Personal Data within the meaning of the Privacy Covenant;
- f. the 2016 Privacy Covenant Digital Educational Resources 2.0 requires modification in connection with the effectuation of the European General Data Protection Regulation on 25 May 2018, and in connection with the higher vocational education (MBO) sector joining the Privacy Covenant, the modifications of which are included in this *Privacy Covenant Digital Educational Resources 3.0*, which replaces the privacy covenants established previously;
- g. an explanatory note with examples and clarification belongs with the Privacy Covenant;

and wish to record the following arrangements:

Article 1: Definitions

In the Privacy Covenant and the annexes, the following definitions shall apply:

- a. Data Subject, Notification, Processor, Third Party, Personal Data, Processing of Personal Data, Provision and Controller: the terms as defined in the GDPR;
- b. Annex(es): annex(es) to the Privacy Covenant or the Data Processing Agreement;
- c. Privacy Covenant: the Privacy Covenant Digital Educational Resources 3.0;
- d. Party to the Covenant: an Educational Institution or Supplier that has joined the Privacy Covenant;
- e. Data Leak: a breach related to personal data, as referred to in Article 4 sub 12 of the GDPR;
- f. Digital Educational Resource: Learning Resources and Testing and School and Pupil Information Resources;
- g. Initiators: parties that are the initiators of the Privacy Covenant as set out in the preamble to the Privacy Covenant;
- h. Chain ID: a pseudonym from a personal number of an Educational Participant that makes the Educational Participant no longer directly identifiable. Afterwards, this pseudonym is re-encrypted to form a Chain ID that is used for identification purposes for access to and the use of Digital Educational Resources. The Chain ID is also called ECK ID;
- i. Learning Resources and Testing: digital products and/or digital services consisting of course material and/or tests and associated digital services, focused on learning situations for the purpose of teaching by or on behalf of Educational Institutions;
- j. Supplier: suppliers of a Digital Educational Resource, such as a distributor, publisher or supplier of an administration system;
- k. Model Data Processing Agreement: the model for a data processing agreement as attached in the annex to the Privacy Covenant;
- l. Educational Participant: educational participant in primary education, secondary education or secondary vocational education;
- m. Platform: the platform as referred to in Article 8 of the Privacy Covenant, also known as Edu-K;
- n. Privacy Annex: one or more privacy annex(es) as included in Annex 1 to the Model Data Processing Agreement, which apply to the (use of the) Digital Educational Resources offered;
- o. Product and Services Agreement: the agreement between the Educational Institution and the Processor, as described in provision a of the Model Data Processing Agreement, or the

agreement between an Educational Participant and Supplier for the product or service as described in provision a of the Model Data Processing Agreement;

- p. Regulation: the regulation referred to in Article 8 (4) of the Privacy Covenant;
- q. School and Pupil Information Resources: a digital product and/or digital service for the benefit of the educational (process), such as a pupil administration system, core registration system, student information system, participant administration system, timetabling system, parent portal, pupil and parent communication system, dashboards and quality management systems insofar as they contain Personal Data of Educational Participants, an electronic learning environment and a pupil tracking system;
- r. Standard attributes set: the additional standardised Personal Data of the Educational Participants established by the Platform, which can be used in addition to the Chain ID in order to access and use Digital Educational Resources (as published on the website of the Platform);
- s. Sub-processor: the party that is engaged by the Processor as Processor for Processing of Personal Data in the context of this Model Data Processing Agreement and the Product and Services Agreement;
- t. GDPR: the General Data Protection Regulation (Regulation 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC);

Article 2: Purpose and scope of the Privacy Covenant

1. The purpose of the Privacy Covenant is to create safeguards for the careful handling of Personal Data by Educational Institutions and Suppliers that are processed in the context of using Digital Educational Resources.
2. The scope of the Privacy Covenant extends to the Processing of Personal Data by or on behalf of Educational Institutions in the context of using Digital Educational Resources.
3. The Privacy Covenant does not apply to any possible Processing, for which the Suppliers themselves are Controllers.

Article 3: Allocation of roles

1. For the Processing of Personal Data within the meaning of the Privacy Covenant, the Educational Institution is the Controller and the Supplier is the Processor. The Educational Institution has and maintains independent control over the purpose and methods of the Processing of Personal Data.
2. The Supplier shall ensure that the Educational Institution is informed (in advance) about the services provided by the Supplier in relation to the Processing of Personal Data, and the choices that are available to an Educational Institution. The Educational Institution 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 encourage Educational Institutions and Suppliers within that framework, to be aware of obligations under the GDPR and to comply with them.

4. The Primary Education Council, the Secondary Education Council and the Higher Vocational Education Council will support Educational Institutions with questions on the interpretation of the Privacy Covenant and the Model Data Processing Agreement.

Article 4: Data Processing Agreement

1. The Model Data Processing Agreement is appended as an annex to the Covenant.
2. Educational Institutions 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 the second paragraph of this Article, Initiators will promote, by means of information and support etc., the use of the Model Data Processing Agreement when making agreements between Educational Institutions and Suppliers.
4. In the Data Processing Agreement that is concluded between the Educational Institution and Suppliers, as a minimum agreements are made such as those in Article 28 of the GDPR, as well as about the following subjects:
 - the nature and purposes of the Processing of Personal Data as permitted in Article 5 of the Privacy Covenant;
 - the roles agreed between the parties;
 - the engagement of Sub-processors;
 - the conditions for transferring data to countries and international organisations 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 with reference to the Processing of Personal Data in the context of the use of Digital Educational Resources to the Educational Institution, also to the benefit of the Educational Participants and parents;
 - overview with reference to the security policy and the security measures to be taken, including the application of the security standards and guidelines that are/will be discussed in the Platform.

Article 5: Purposes of the Processing in the context of the Privacy Covenant

1. The 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 Educational Participants, including:
 - storing learning outcomes and test results;
 - returning the learning outcome and test results to the Educational Institution;
 - 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 an Educational Participant;
 - 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 Educational Institution and the Supplier;
 - c. obtaining access to the provided Digital Educational Resources and external information systems, including 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 Educational Institution and the Supplier, including the performance of maintenance, making back-ups, making improvements following any errors or inaccuracies detected and obtaining support;
 - f. research and analysis based on strict conditions, similar to existing codes of conduct in the field of research and statistics, for the purpose of the learning process, optimising the learning process or the policy of the Educational Institution;
 - g. the Educational Institution 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.
2. The Processing of Personal Data by means of School and Pupil Information Systems takes place for the purpose of:
- a. organising, teaching and receiving education, guiding and tracking Educational Participants or the provision of school and study advice, including:
 - the layout and modification of timetables;
 - analysing and interpreting learning outcomes;
 - tracking the personal (including medical) circumstances of an Educational Participant and the consequences thereof for receiving education;
 - guiding and supporting teachers and other employees within the Educational Institution;
 - communicating with Educational Participants and parents and staff of the Educational Institution;
 - financial management;
 - monitoring and accountability, particularly for purposes of: (performance) measurements of the Educational Institution, quality care, satisfaction survey, study of effectiveness of education (type) or of the support available for Educational Participants in tailored education;
 - dealing with disputes.
 - exchanging 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 substantiation of internships or apprenticeships wherever necessary and legally permissible;
 - Educational Institutions in the event of transfers between Educational Institutions and for further education.
- b. provision of/ability to use Digital Educational Resources in accordance with the agreements made between the Educational Institution and the Supplier;
 - c. obtaining access to the provided Digital Educational Resources and external information systems, including 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 Educational Institution and the Supplier, including the performance of maintenance, making back-ups, making improvements following any errors or inaccuracies detected and obtaining support;
 - f. research and analysis based on strict conditions, similar to existing codes of conduct in the field of research and statistics, for the purpose of the learning process, optimising the learning process or the policy of the Educational Institution;
 - g. the Educational Institution 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. Suppliers must not provide Personal Data to Third Parties, unless this exchange takes place by order of and with the consent of the Educational Institution, or if this is necessary in order to comply with a potential deviating provision under European Union law or Member State law, on the basis of which the Supplier is obliged to provide Personal Data, including but not limited to compliance with a judicial decision.

Article 6: Data protection by design and by means of default settings

1. The principles of data protection by design and data protection by default settings are the underlying principles for the (further) development of the Digital Educational Resources used by the Educational Institutions. Within the Platform, principles and guidelines are drawn up as to how this can be achieved, including the possibility of applying pseudonyms.

2. Within the context of access to and the use of Digital Educational Resources, Educational Institutions and Suppliers make use, in principle, of the Chain ID and the associated Standard Attributes Set. In the event that one of the parties in question indicates that this cannot reasonably be demanded of them, this must be established with sufficient reasoning.
3. In the event that a general administrative measure requires that a new pseudonym be used for cases other than those stated in Paragraph 2, the Parties within the Platform shall make arrangements about the use of this.
4. The Parties are obliged to take suitable technical and organisational measures in order to ensure that only Personal Data is processed that is necessary for each specifically agreed purpose of the processing.

Article 7: Legal information obligations

1. Possibly by using information provided by the Processor as referred to in Article 3 (2), the Educational Institution must inform the (parents of) Educational Participants whose Personal Data are Processed in a Digital Educational Resource and must indicate which measures have been taken to safeguard the privacy in accordance with the arrangements in the Privacy Covenant.
2. When this information is provided, the (parents of) Educational Participants are informed about how they can exercise the legal rights of the Data Subject. To exercise these rights, the Data Subject must refer to the Educational Institution.

Article 8: The Platform

1. Further definition of the collaboration between the Initiators, Educational Institutions and Suppliers and securing the arrangements based on this Privacy 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 Privacy Covenant;
 - the supervision of compliance and maintenance of the Privacy Covenant;
 - the progress of the implementation of the Privacy Covenant;
 - sharing information related to the subjects laid down in the Privacy Covenant;
 - the impact of new legislation, technological or other developments on the Privacy Covenant and the scope of the Privacy 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.
3. The Initiators are jointly responsible for the continuity and the facilitation of the Platform insofar as it relates to arrangements as defined in this Privacy Covenant.
4. The Initiators will jointly and in mutual agreement make further arrangements on the procedure in connection with the amendment of the Privacy Covenant as well as on the

governance, decision-making process and the responsibilities. 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 Privacy Covenant are carried out only with the consent of all the Initiators that are affiliated to the Privacy Covenant at the time of the decision-making.
6. The Platform will provide a logo for Suppliers affiliated to the Privacy Covenant. The Platform may impose further conditions on the use of this logo.
7. 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 Educational Institutions in the Platform are represented by the Primary Education Council, the Secondary Education Council and the Higher Vocational Education Council.
8. The Primary Education Council, Secondary Education Council and Higher Vocational Education Council are responsible for the management of the activities arising from the Privacy Covenant, including the secretariat of the Platform and a register of Parties to the Covenant.

Article 9: Financing

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

Article 10: Compliance

1. The Platform establishes a structure for monitoring and auditing compliance with the arrangements within the Privacy Covenant.
2. On behalf of the Initiators, Educational Institutions and Suppliers, the Platform is authorised to act against detected misuse or improper use of the Privacy 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. Educational Institutions and Suppliers, to the extent possible, will include agreements with regard to compliance with the Privacy Covenant in mutual agreements, contracts - including in the context of procurements - and will mutually address each other in this regard.
4. Issues or disputes concerning the interpretation or application of the provisions in the Privacy Covenant shall be resolved in mutual consultation in the Platform or in a manner to be specified in the Regulations.
5. The provisions of the Privacy Covenant are not legally enforceable unless the Parties have made arrangements about this in the Data Processing Agreement.

Article 11: Effectuation, accession and withdrawal

1. The trade organisation of publishers [Vereniging GEU], the Association of Digital Education Service Providers [de Vereniging Digitale Onderwijs Dienstverleners], members of the educational department of the Royal Society of Booksellers [Coöperatieve Koninklijke Boekverkopersbond U.A.], the Primary Education Council [Vereniging PO-Raad], the Secondary Education Council [vereniging VO-raad] and the Higher Vocational Education Council [Vereniging MBO Raad] who represent the boards of Educational Institutions affiliated to them, have endorsed the principles and arrangements of the Privacy Covenant by signing.
2. The Platform establishes new versions of the Privacy Covenant and the Model Data Processing Agreement and makes the Participants of the Privacy Covenant aware of this.
3. The date of effectuation of the Privacy Covenant and the subsequent versions is determined by the Platform. The new version of the Privacy Covenant replaces the previous versions, which are hereby deemed to have lapsed.
4. Suppliers not yet affiliated with the Privacy Covenant and Educational Institutions not represented by the Primary Education Council, Secondary Education Council and Higher Vocational Education Council can join the Privacy Covenant by means of signing a declaration to be drawn up by the Platform and by sending it to the secretariat of the Platform.
5. The Privacy Covenant has been concluded for an indefinite duration or until a subsequent version goes into effect.
6. An Initiator or 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.

This Privacy Covenant was established on 14 March 2018 by Edu-K and goes into effect on 1 April 2018.

Explanatory Memorandum

Representatives of Educational Institutions 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 Educational Institutions, including the use of learning resources, tests, administration and information systems.

The underlying principle for these arrangements is that the Educational Institutions have control and maintain control over Processing the Personal Data and decide what the data is used for and to whom the data may be given. The Educational Institutions are the Controller for the Processing of Personal Data, the Suppliers are the Processors.

The arrangements are laid down in the *Privacy Covenant Digital Educational Resources 3.0*. This Covenant shall replace the *Privacy Covenant Digital Educational Resources, Learning Resources and Testing 2.0*, from 2016.

Changes to Privacy Covenant 3.0 in relation to Privacy Covenant 2.0

- General Data Protection Regulation (GDPR)
The Dutch Data Protection Act was/will be replaced by the GDPR on 25 May 2018; this will impact the Privacy Covenant. First and foremost, this is textual. For example, the Dutch term 'verantwoordelijke' is replaced with 'verwerkingsverantwoordelijke' (controller) 'bewerker' is replaced with 'verwerker' (data processor), and 'bewerkersovereenkomst' becomes 'verwerkersovereenkomst' (data processing agreement). Aside from this, no 'major' changes are made in the Privacy Covenant as a result of the GDPR. However, a number of amendments have been implemented in the Model Data Processing Agreement in line with the GDPR, such as provisions about providing assistance and about liability. See also the explanation to Article 4 for this.
- Addition of higher vocational education (MBO)
Version 3.0 of the Privacy Covenant now also applies to higher vocational education (MBO). For this purpose, the Higher Vocational Education Council (MBO Raad) is affiliated to the Privacy Covenant as an Initiator. Besides a number of textual amendments (such as 'onderwijsnemer' [educational participant] instead of 'leerling' [pupil]), this has not resulted in any changes to the contents. However, Article 2(3) requires more detailed interpretation. For the situations in which the Educational Institution buys the Educational Resources (such as tests or administration systems), the situation is the same in all regards as the practice in primary and secondary education. See also the explanation to Article 2(3).

The new Model Data Processing Agreement 3.0 replaces the Model Data Processing Agreement from 2016. Data processing agreements that have already been concluded based on the old model from 2016 shall remain in effect, in principle, until these data processing agreements are terminated by the parties and are then followed by a new data processing agreement based on the new Model Data Processing Agreement 3.0. Version 3.0 is aligned with the additional requirements in the GDPR. In order to ensure that the Parties are compliant with the GDPR, the recommendation is to use only version 3.0 of the Data Processing Agreement and to replace older versions.

The Privacy Covenant is largely a realisation of obligations arising from the General Data Protection Regulation. As such, it can be seen as an elaborated scheme using commonly accepted arrangements to support the Educational Institutions and Suppliers in their compliance

with statutory regulations. In addition to the allocation of roles among the parties, the Privacy Covenant indicates the principles for arrangements between the Educational Institution and the Supplier that must be specified in the legally required written agreements.

The Model Data Processing Agreement is included as an annex to the Privacy Covenant. The principles of this model are not only in line with the provisions of the Privacy Covenant, but also with the regulations of the GDPR and the premises as the Supervisory Authority has indicated in guidelines and statements.

The Covenant sets out the purposes of Processing Personal Data by the Educational Institution in the context of the Privacy Covenant. In addition to purposes related to the Processing of Personal Data by means of Learning Resources and Testing, the Privacy Covenant also contains purposes for the Processing of Personal Data by means of School and Pupil Information Systems. The purposes 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 the purposes that are applicable to the offered product or service in the annex to the Model Data Processing Agreement.

The Privacy Covenant also regulates the organisation of a Platform in which the Initiators of the Privacy 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.

In order to comply with legislation and regulations in the field of information security and privacy, an Educational Institution must also take other measures in addition to concluding good Data Processing Agreements with Suppliers. In order to support Educational Institutions with this, Kennisnet and saMBO-ICT, in collaboration with the Primary Education Council [PO-Raad], Secondary Education Council [VO-raad] and Higher Vocational Education Council [MBO Raad] have developed information, step-by-step plans and sample documents. These have been combined for Educational Institutions and made available in the 'Information Security and Privacy Strategy' for primary and secondary education, and in the 'Information Security and Privacy Framework' for higher vocational education.

Explanation of the Articles

Article 1

Digital Educational Resource:

Digital Educational Resources in the Privacy 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 Educational Institution. 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 Processed. This relates not only to storage, but also to the 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' related to Learning Resources.

Educational Institution

Where an Educational Institution is mentioned in this Privacy Covenant, it is understood to mean the competent authority of a primary school, secondary school or further vocational education school.

Parties to the Covenant

Suppliers and Educational Institutions that are not represented by the Primary Education Council, the Secondary Education Council or the Further Vocational Education Council are able to join the Covenant and become a Party to the Covenant. Article 11 of the Privacy Covenant sets out the conditions for joining.

Article 2

The Covenant covers all Processing of Personal Data by or on behalf of Educational Institutions 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 Article 9 of the GDPR, such as health-related data (e.g. dyslexia).

Processing carried out in the context of using Digital Educational Resources includes not only 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 Educational Institutions 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.

Article 2 (3) of the Privacy Covenant makes clear that Suppliers themselves can be controllers. In these situations, the Privacy Covenant does not apply. With respect to further vocational education, if, for example, a person other than the Educational Institution orders a Digital Educational Resource (e.g., the student or parent but not limited to this example), the Supplier from whom the Educational Resource is ordered is also the Controller. An exception to this rule is the situation in which the ECK route¹ is used and associated personal data are exchanged by the Educational Institution with the Supplier; in that case, the Educational Institution is the Controller for the Processing of this Personal Data.

Data that a Student (or someone other than the Educational Institution) provides to a Supplier themselves (such as address or bank details) are not covered by the Privacy Covenant. This can also relate to data that is exchanged by an Educational Institution with the Supplier and which is used by this Supplier for the performance of the order instruction. Likewise, the use of Digital Educational Resources whereby Personal Data is not Processed falls outside the scope of the Privacy Covenant.

For the sake of clarity: in the event that the higher vocational education institution orders Digital Educational Resources itself, the higher vocational education institution is always the Controller, meaning that the Privacy Covenant applies.

Article 3

The allocation of roles described here sets explicit requirements for both Parties. The Educational Institution must take the responsibility for Processing and must act accordingly.

However, in practice, this will not always be easy. Before making choices and decisions arising from the legal obligations imposed on the Controller for personal data, the Educational Institution must have sufficient information at its disposal to make these choices and decisions. However, in many cases the Educational Institution 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 Educational Institution - as a Controller - must be informed in a timely and sufficient manner about Processing using its services or products. For example, consider 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 Annex, which is an annex to the Model Data Processing Agreement to this Privacy Covenant.

Unintended shift in roles

The Educational Institution 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 Educational Institution (Article 3(2) of the Privacy Covenant). Based on this information, the Educational Institution must indicate which products, services and associated data processing it actually wants to purchase. If the Educational Institution cannot adequately make this assessment and choice, the possibility then exists that not the Educational Institution but the Supplier is unintentionally considered to be the Controller within the meaning of the GDPR. This must be avoided.

¹ The ECK route refers to the situation in which school and Suppliers in secondary education and higher vocational education make use of the ECK standard Distribution and access so that they are able to order, have delivered and use digital learning resources in a reliable and user-friendly manner. With the introduction of the ECK ID (a unique number for each pupil or student), this enables Parties in the learning resources chain to apply further data minimisation.

Article 4

Article 28 of the GDPR prescribes that cooperation with the Processor must be based on an agreement. The Privacy Covenant contains an annex Model Data Processing Agreement, which Educational Institutions and Suppliers have agreed to use when making agreements on the Processing of Personal Data in the context of the Privacy 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 which the supervisory authority (Dutch Data Protection Authority) indicates must be included in the Data Processing Agreement, the scope for derogation from the provisions of the Model is limited.

Article 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 Report Data Leaks' from 2015 of the Dutch Data Protection Authority.

Important topics in the Model Data Processing Agreement are the allocation of roles and the prevention of an unintended shift in those roles (see Article 3). Another topic is the conditions for engaging so-called 'sub-processors'. There is a 'sub-processor', for example, if an Educational Institution 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 Educational Institution is the Controller within the meaning of the GDPR, 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.

In version 3 of the Model Data Processing Agreement, the provision about the opportunity for Educational Institutions to have an audit carried out with the Supplier is developed (Article 7). The scope of this audit, as referred to in the provisions about it included in the Model Data Processing Agreement, is limited to that which is described in the Data Processing Agreement. Therefore, the Educational Institution cannot decide to have an audit carried out in situations in which someone other than the Educational Institution is the Controller, for example.

On the basis of practical experiences, a procedural agreement has been included in Article 8 of the Model Data Processing Agreement for reporting Data Leaks. It may be the case that multiple Educational Institutions are affected by the Data Leak and communication with all Educational Institutions is difficult - due to a holiday, for example. In such cases, the Processor can, after consulting one or more school boards affected, notify the Dutch Data Protection Authority. In this way, it can be ensured in a practical way that the deadlines in the GDPR are respected. The Educational Institution is and remains responsible for the legal reporting obligation of a Data Leak. In this, the Processor does not change its role and remains the Processor; the Educational Institution remains the Controller. It also remains the Supplier's responsibility to inform all affected Educational Institutions about the notification.

Version 3.0 of the Model Data Processing Agreement also contains a provision about liability (Article 13). In the model, the allocation of liability from Article 82 of the GDPR is followed. This Article rules that both Parties can be severally liable. On the basis of this Article, Parties can claim damage from the other Party. Due to the character of Article 82 of the GDPR being subject to

legal stipulations, an exclusion or limitation of the liability that the Parties have previously agreed upon need not be taken into account.

Article 13 of the Model Data Processing Agreement also states that a fine imposed by the supervisory authority (Dutch Data Protection Authority) arising from the Data Processing Agreement can be recovered from the other Party in the event and insofar as the fine paid to the supervisory authority is attributable to this party. The normal legal regulations with regard to compensation apply to this.

The Model Data Processing Agreement has two annexes: the Privacy Annex and the Security Annex. These form an integral part of the Data Processing Agreement.

The Security Annex to the Model Data Processing Agreement must include a definition of the security measures that are being taken. Pursuant to Article 32 of the GDPR, security must remain a continual point of care and attention. In Annex 2 of the Model Data Processing Agreement, the Certification Scheme for Information Security and Privacy ROSA² is introduced as a way in which the organisation and demonstration of the security measures taken can be substantiated. Use of the Certification Scheme is not an obligation; instead, it is an invitation to all Parties in the chain (Suppliers and Schools) to make use of a simple report and set of measures in order to assess and guarantee the security measures to be taken. The Certification Scheme is put together jointly by public and private parties³ and is updated on an annual basis. For the interpretation of both Annex 1 and Annex 2, the industry organisations offer industry and/or product-specific annexes on the basis of these Annexes.

Article 5

Article 5 contains purposes for the Processing of Personal Data within the framework of the Privacy Covenant by the Educational Institution in the capacity of Controller for the Processing of Data.

Article 5 (1), section a

Section a of the first paragraph specifically provides for the Processing of Personal Data by means of Learning Resources and Testing. This section describes the main purpose of the Processing of data for the purposes of teaching and receiving education and for guiding and tracking of pupils or students in using Learning Resources and Testing.

Regarding Article 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.

This Article does not relate to Data Processing with regard to test and teacher copies.

Article 5 (2), section a

Section a of the second paragraph specifically provides for the Processing of Personal Data by means of School and Pupil Information Systems, regarding the organisation, provision and

² www.edustandaard.nl/standaard_afspraken/certificeringsschema-informatiebeveiliging-en-privacy-rosa/certificeringsschema-informatiebeveiliging-en-privacy-rosa/

³ www.edustandaard.nl

tracking of education, guiding and tracking of pupils or the provision of school and study recommendations.

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 Educational Institutions, 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 Educational Institution, must be clearly and specifically stated and explained in the Privacy Annex accompanying the Data Processing Agreement. In the Privacy Annex 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 recommendation*' mentioned under a of Article 5 (2) includes (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 Educational Institution is accompanied by guidance or (study) advice.

The section '*the analysis and interpretation of learning outcomes*' in Article 5 (2) under a could include evaluating data on one pupil or student in relation to the results of a reference group in order to understand how a pupil or student is performing in relation to this group, but also following one pupil or student at a 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 or student based on the results achieved or the assessment of a group of pupils or students in relation to the results of a reference group in order to understand how the group performs compared to a reference group.

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

Article 5 (2) under 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 Educational Institution*' and '*monitoring and accountability*'. These examples are not included in the text under Article 5 (1). The reason for including this type of processing as an example under Article 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, for example, constitute communication with parents, keeping track of circumstances, monitoring or guiding employees, because there are functions intended for teaching and learning purposes and for the guidance and tracking of pupils. However, Learning Resources and Testing are usually not primarily focused on the aforementioned functionalities.

The '*communication with pupils, parents and employees of the Educational Institution*' relates to a functionality of the School and Pupil Information System whereby the Educational Institution shares information about the Educational Institution, available resources and timetables, pupils, and the activities of the Educational Institution.

'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 insight into financial developments and (source) funding and its settlement, and the performance of accountants' audits.

'Monitoring and accountability' includes, in particular, the performance measurement of the Educational Institution and reporting to the Inspectorate of Education and parents, e.g.; the measurement of satisfaction of pupils, parents and employees, the measurement of the effectiveness of the type of education, and the benefit of the support offered to pupils or students in tailored education.

Article 5 (1) and (2) sections b to i

Sections b to i of Article 5 (1) and (2) relate to purposes 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 or student - to gain access to a Digital Educational Resource or an external information system, for example, via Basispoort, Stichting Edu-iX, or the Entree Federatie.
- Section d relates to Processing of Personal Data in order to be able to monitor whether any abuse has been or is being 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 or student is unable to access the Digital Educational Resource. This purpose expressly does not include the Processing of data for the purpose of improving the product of the Suppliers.
- Section f: This purpose covers the provision of learning outcomes on behalf of the Educational Institution 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 allowed only if the study is conducted under strict conditions comparable with the Dutch Data Protection Act's code of conduct: 'Code of conduct for Research & Statistics' approved by the Dutch Data Protection Authority. (Please 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 with which the study and researcher must comply 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. As long as no sector-wide arrangement has been made about this, the Educational Institution's own policy is the starting point for these processing operations.

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

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

Anonymous data is data relating to a natural person who was identified earlier but who, after anonymising cannot be identified, or who can be identified only with disproportionate time and effort by either the Controller responsible for Processing 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 to establish the identity of the natural person by using the data.

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 Privacy Covenant. The research covered by section (g) differs from the kind of research 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 Educational Institution is the Controller - to obtain a COTAN certification, for example. In some cases, Educational Institutions may not make use of these Educational Resources if this certification is missing. The Education Inspectorate shall ensure that Educational Institutions abide by this.

Article 5 (3)

Article 5 (2) provides that Suppliers will never make an offer or advertise to a Data Subject based on the results from Learning Resources for this pupil/student or parent who are covered by this Privacy 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 Educational Institution explicitly requests further information about products and services.

Article 6

Within the Platform as referred to in Article 8, the opportunity to pseudonimise the Personal Data used within education is being worked on. The starting point is that the Chain ID (ECK ID)⁴ is used in cases for which this is reasonably possible and that a Party that does not do this can depart from this only if reasons are given. By doing so, a signatory to the Privacy Covenant that is active in the learning resources chain commits to the (long-term) use of the Chain ID (ECK ID). The standard set of attributes agreed by Edu-K is also covered by this provision: a Party can depart from the standard attributes set only if reasons are given, in accordance with the attribute policy as established by Edu-K.

Article 7

Legal information obligation

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

⁴ www.eck-id.nl

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 Educational Institution. For example, based on Article 3 of the Privacy Covenant or based on the Model Data Processing Agreement. Part of the Model Data Processing Agreement is a 'Privacy Annex' 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 Educational Institution can use this annex to inform parents adequately.

Legal reporting obligation

The General Data Protection Regulation (GDPR) goes into effect on 25 May 2018. The legal reporting obligation shall lapse with the introduction of the GDPR. A reporting obligation will remain only in the event that the processing of data with a specific risk is involved. The Educational Institution 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, then the Primary Education Council, Secondary Education Council and the Higher Vocational Education Council will provide a model of a report to the Dutch Data Protection Authority.

Article 8

The Platform, housed within Edu-K⁵, is the carrier of the arrangements and intentions set out in the Privacy Covenant. In the context of the Platform, the Initiators are jointly responsible for further definition, consultations and implementation of agreements.

The Initiators are jointly responsible for the continuity and the facilitation of the Platform insofar as it relates to arrangements as defined in this Privacy Covenant. This means that, in the event that 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 Privacy Covenant will be invested elsewhere. Article 8 (3), does not concern (an obligation concerning) financing the Platform or a future Platform, by Initiators. Separate arrangements for financing the Platform are made based on Article 9.

Article 10

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 Privacy Covenant. And despite the fact that the arrangements in the Privacy Covenant are not legally enforceable, using the Model Data Processing Agreement will cause many arrangements to become enforceable nevertheless. The Parties are bound by arrangements in the Privacy Covenant in this way as well.

Based on Article 10 (2), the Platform is authorised on behalf of the Initiators, Educational Institutions and Suppliers to act against detected misuse or improper use of the Privacy 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 Educational Institutions and Suppliers adhere to the law. It is expected that the Dutch Data Protection Authority will also include the arrangements in the Privacy Covenant and the Model Data Processing Agreement in a consideration.

⁵ www.edu-k.nl

Article 11

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

Parties and institutions that are not yet affiliated can join the Privacy 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. Educational Institutions that are not affiliated to the Primary Education Council, Secondary Education Council or Higher Vocational Education Council can register, after which they are considered a Party to the Covenant. In principle, these Educational Institutions are also represented by the Primary Education Council, Secondary Education Council and Higher Vocational Education Council in the Platform.