

# Model Data Processing Agreement 3.0

*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.*

This Model Data Processing Agreement is an annex to the *Digital Educational Resources and Privacy Covenant* (hereinafter: the Privacy Covenant).

The new Model Data Processing Agreement 3.0 replaces previous model data processing agreements from 2015 and 2016. The underlying principles of this Model Data Processing Agreement 3.0 correspond with the provisions of the Privacy Covenant and substantiate the obligations on the basis of the European General Data Protection Regulation (hereinafter: GDPR); the principles such as those from (inter)national security standards, jurisprudence and guidelines from the regulatory body are indicated.

Data processing agreements that have already been concluded on the basis of models from 2015 and 2016 shall remain in force until such data processing agreements are terminated by the parties. The principle is that, as of 25 May 2018, the time at which the GDPR goes into effect, Educational Institutions and Suppliers shall use the Model Data Processing Agreement 3.0 when entering into a data processing agreement or when renewing an existing data processing agreement.

It is agreed in the Privacy Covenant that Educational Institutions and Suppliers use the current model when making agreements. The current Model Data Processing Agreement can be deviated from only in writing, stating the reasons.

This Model Data Processing Agreement 3.0 contains two annexes:

1. The Privacy Annex (Annex 1) provides a description of the service, product characteristics and which categories of Personal Data are processed and for which purposes.
2. The Security Annex (Annex 2) defines which technical and organisational measures are taken. Security must remain a constant focus of attention and care.

Information about the Privacy Covenant and the Model Data Processing Agreement can be found on the website [www.privacycovenant.nl](http://www.privacycovenant.nl). More information and answers to questions about privacy and legal rights and obligations for Educational Institutions and Suppliers can be found on the websites of the industry councils Primary Education Council (PO-Raad), Secondary Education Council (VO-raad), Senior Secondary Vocational Education Council (MBO Raad) [saMBO-ICT] and Kennisnet.

March 2018

### **Parties:**

1. The competent authority of <name + legal form of educational institution>, registered under BRIN-number <brin> at the Dienst Uitvoering Onderwijs [Dutch Education Service] of the Ministry of Education, having its registered office and principal place of business at <address>, in (<postal code>) <city>, legally represented in this matter by <position + name>, hereinafter referred to as: 'the **Educational Institution**'.

and

2. The private limited company <Name> B.V., having its registered office and principal place of business at <address>, in (<postal code>) <city>, legally represented in this matter by <position + name>, hereinafter referred to as: "**the Processor**"

Hereinafter collectively referred to as "**the Parties**" or, separately, as "**the Party**"

### **Whereas:**

- a. The Educational Institution and the Processor have concluded an agreement whereby **<specific description of products/services to be supplied by the Processor on behalf of the Educational Institution>**, ('the Product and Services Agreement'). This Product and Services Agreement results in the Processor carrying out the processing of Personal Data on behalf of the Educational Institution.
- b. The Parties wish, also in view of the provisions of Section 28, Paragraph 3 of the General Data Protection Regulation, to record their mutual rights and obligations for the Processing of Personal Data in this Data Processing Agreement.

### **agree to the following:**

#### **Article 1: Definitions**

In this Data Processing Agreement, the following definitions apply:

- a. Data Subject, Processor, Third Party, Personal Data, Processing of Personal Data 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 Tests, and School and Pupil Information Resources;

- g. Initiators: parties that are the initiators of the Covenant as set out in the preamble to the Covenant;
- h. Instructions: instructions issued either electronically or in writing by the Controller to the Processor within the framework of their powers as formulated in this Data Processing Agreement or in the Product and Services Agreement: Instructions are provided by and to the contact persons of the Parties as referred to in the Annex(es);
- i. 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;
- j. 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;
- k. Supplier: suppliers of a Digital Educational Resource, such as a distributor, publisher or supplier of an administration system;
- l. Model Data Processing Agreement: the model for a data processing agreement as attached in the annex to the Privacy Covenant;
- m. Educational Participant: an educational participant in primary education, secondary education or secondary vocational education;
- n. Platform: the platform as referred to in Article 8 of the Privacy Covenant, also known as Edu-K;
- o. Product and Services Agreement: the agreement between the Educational Institution and the Processor, as described in consideration of and including an agreement between an Educational Participant and the Supplier for the product or service in question on the basis of this agreement;
- p. Privacy Annex: one or more privacy annex(es) as included in the Annex(es) that apply to the Digital Educational Resources offered;
- q. Regulation: the regulations as referred to in Article 8 (4) of the Privacy Covenant;
- r. 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;
- s. 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);
- t. Sub-processor: the party that is engaged by the Processor as the Processor for the Processing of Personal Data in the context of this Model Data Processing Agreement and the Product and Services Agreement;

- u. 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);
- v. Applicable legislation and regulations relating to the Processing of Personal Data: the applicable legislation and regulations (provided for under European Union law or Member State law) and/or further treaties, regulations, guidelines, decisions, policies, instructions and/or recommendations of a competent government institution with regard to the Processing of Personal Data, also encompassing the future amendment and/or addition thereof, including implementing legislation of the GDPR and the Telecommunications Act provided for under Member State law.

## **Article 2: Subject and assignment of Data Processing Agreement**

1. This Data Processing Agreement shall apply to the Processing of Personal Data in the context of the implementation of the Product and Services Agreement.
2. The Educational Institution assigns the Processor and gives the Processor Instructions to process Personal Data on behalf of the Educational Institution. The Instructions from the Educational Institution can, for instance, be described in further detail in this Data Processing Agreement and the Product and Services Agreement.
3. The provisions of the Data Processing Agreement apply to all Processing operations as included in Annex 1, which take place for the implementation of the Product and Services Agreement. The Processor shall immediately inform the Educational Institution in the event that the Processor has reason to assume that the Processor can no longer comply with the Data Processing Agreement.

## **Article 3: Allocation of roles**

1. The Educational Institution is the Controller with regard to the Processing of Personal Data carried out on their instructions. The Processor is a Processor within the meaning of the GDPR. The Educational Institution has control and maintains independent control over (establishing) the purpose and methods of the Processing of Personal Data.
2. The Processor shall ensure that the Educational Institution, prior to the conclusion of this Data Processing Agreement, is sufficiently informed about the service(s) which the Processor provides, and the Processes to be carried out. The information provided enables the Educational Institution to understand which Processes are inextricably linked to a service offered and for which Processes the Educational Institution is able to make a choice for any possible optional services offered.
3. Without prejudice to the other provisions of this Data Processing Agreement, prior to concluding this Data Processing Agreement, the Processor informs the Educational Institution in Annex 1 about the services referred to in Paragraph 2, including possible optional services, and the Processes that take place within that context. The information included in Annex 1 must be described in understandable language, as a result of which the Educational Institution can agree in an informed manner to the receipt of this service/these services and the implementation of the associated Processes.

4. The Educational Institution shall include the Processing of the Personal Data stated in Paragraph 2 of this Article in a register of the processing activities<sup>1</sup> that take place under its responsibility.
5. Insofar as required to do so under Article 30 (5) of the GDPR, the Processor shall keep a register of all categories of processing activities that the Processor carries out for the benefit of an Educational Institution.
6. The Educational Institution and the Processor shall provide each other with all necessary information in order to enable effective compliance with the Applicable legislation and regulations relating to the Processing of Personal Data.

#### **Article 4: Privacy Covenant**

1. Parties endorse the provisions of the Privacy Covenant.

#### **Article 5: Use of Personal Data**

1. The Processor undertakes not to use the Personal Data received from the Educational Institution for other purposes or in any other manner than for the purpose, and in accordance with the manner in which the data have been supplied or have become known. The Processor is therefore prohibited from carrying out any data processing operations aside from those that the Processor has been instructed to carry out (either in writing or electronically) by the Educational Institution within the framework of the implementation of the Product and Services Agreement, with the exclusion of a provision under European Union law or Member State law or a judicial decision, insofar as this is no longer subject to a further appeal. In that case, the Processor informs the Educational Institution of that legal regulation or judicial decision prior to the Processing, unless such notification is prohibited due to compelling reasons of public interest.
2. An overview including the categories of Personal Data together with the purpose for which the Personal Data are processed is set out in the Privacy Annex annexed to this Data Processing Agreement.
3. The Processor must indicate in the Privacy Annex whether the Privacy Annex relates to a Learning Resources and Testing and/or a School and Pupil Information Resource. The Processor specifies in the Privacy Annex for which purposes Personal Data specified by the Controller is processed during the use of their product and/or service, and which categories of Personal Data are thereby processed.
4. In the event that, contrary to the GDPR, the Processor determines the purposes and the means of the Processing of Personal Data, the Processor is deemed to be the Controller with regard to this Processing.

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<sup>1</sup> For an example, see the information security and privacy approach at <https://kn.nu/IBPonderwijs>

5. SPECIFIC PROVISION IN THE EVENT OF EXCHANGE OF THE EDUCATIONAL REPORT: *In addition to the provisions of Paragraph 4, the Processor is exclusively permitted to provide the Personal Data to another educational institution appointed and selected by the Educational Institution, following a specific request from that educational institution to provide this Personal Data and provided that this other educational institution has informed the Processor of its administrative education identity (e.g. BRIN or OiN). In the event that the other educational institution does not have an administrative education identity, the Processor shall provide Personal Data to the other educational institution by express instruction from the Educational Institution.*
6. SPECIFIC PROVISION FOR DATA PROCESSING AGREEMENTS BETWEEN EDUCATIONAL INSTITUTIONS AND DISTRIBUTORS:
  - a. *Every year, when drawing up the learning resources lists for the next school year (whereby the learning resources lists are drawn up for the purpose of performing the Product and Services Agreement), Covenant Parties that develop and offer Learning Resources and Testing (hereinafter referred to as: **Learning Resource Supplier**) shall supplement and/or change the Privacy Annex by including the categories of Personal Data and the use of such Personal Data (with regard to the Learning Resources and Tests that are included on the relevant learning resources lists.).*
  - b. *At the request of the Educational Institution, the Processor (the distributor) shall exchange data with these Learning Resource Suppliers.*
  - c. *The Educational Institution is responsible for making and establishing agreements with each Learning Resource Supplier in a Data Processing Agreement.*
  - d. *The Educational Institution indemnifies the Processor (distributor) against any claims by third parties as a result of failing to make Data Processing Agreements with the Learning Resource Supplier (on time), and the Educational Institution indemnifies the Learning Resource Supplier against any claims by third parties as a result of failing to make Data Processing Agreements with the Processor (distributor).*
  - e. *The responsibility of the Processor (distributor) for the management of the Personal Data ceases to exist the moment that the Learning Resource Supplier has received this data from the Supplier (distributor).*

## **Article 6: Confidentiality**

1. The Processor guarantees that they shall treat all Personal Data strictly confidentially with regard to third parties, including government institutions. The Processor ensures that anyone else they involve in the Processing of Personal Data, including their employees, representatives and/or Sub-processors, treat this data confidentially. The Processor guarantees that the persons authorised to Process the Personal Data have entered into a confidentiality agreement or clause with them, or that they are bound to confidentiality by means of a legal obligation.
2. The confidentiality obligation referred to in Paragraph 1 does not apply in the following cases:
  - a. insofar as the Educational Institution has explicitly given permission to provide the Personal Data to a Third Party;

- b. in the event that it is necessary to provide the Personal Data to a Third Party due to the nature of the services to be provided by the Processor to the Educational Institution; or
  - c. in the event that the Processor is obliged to provide the Personal Data on the basis of a provision under European Union law or Member State law or a judicial decision, insofar as this is no longer subject to a further appeal.
3. The Processor shall refrain from providing or disclosing Personal Data to a Third Party unless this provision or disclosure takes place upon the instruction of the Educational Institution or when this is necessary in order to comply with a judicial decision, insofar as this is no longer subject to a further appeal, or a legal obligation resting with the Processor. Legal obligations include provisions under European Union law or Member State law, on the basis of which the Processor is obliged to provide data. In the event of a legal obligation, the Processor shall verify the legal basis and the identity of the party that claims this prior to the provision of Personal Data. In addition, unless the legislation prohibits this notification for important grounds of public interest, the Processor shall inform the Educational Institution of this immediately, if possible prior to the provision of the information relevant to the Educational Institution with regard to this provision.
4. The Processor shall ensure that the employees working under their authority have access to Personal Data exclusively insofar as necessary for the performance of their duties.

#### **Article 7: Security and control**

1. In accordance with the provisions of Article 32 of the GDPR, the Processor, as the Educational Institution, shall ensure that appropriate technical and organisation measures are taken to secure Personal Data and to protect it against fraudulent or unlawful processing or against accidental loss, destruction or damage.
2. In addition to the measures stated in Article 32 (1) of the GDPR, the following measures shall be taken, where appropriate:
  - a. an appropriate policy for the security of the Processing of Personal Data.
  - b. measures to ensure that only authorised personnel have access to the Personal Data that is processed in the context of the Data Processing Agreement;
  - c. controlling procedures related to the granting of access to Personal Data (including a registration and de-registration procedure for the allocation of access rights), and recording events related to user activities, exceptions and information security events (comparable with the applicable ISO standards, and/or comparable with the applicable Certification Scheme information safety and privacy ROSA) in the log book. The Educational Institution is given the opportunity to periodically check these log files.
3. The Parties shall periodically evaluate, tighten up, supplement or improve the safety measures they have taken to the extent warranted by the requirements or (technological) developments.
4. In Annex 2, the agreements between the Parties are established about the suitable technical and organisational security measures, as well as the contents, form and method of the statements that the Processor provides about the agreed security measures.



5. The Processor, in good consultation, enables the Educational Institution to comply effectively with its legal obligation to monitor the Processor's compliance with the technical and organisational security measures as well as compliance with the obligations with regard to Data Leaks stated in Article 8.
6. In addition to the preceding paragraphs, the Educational Institution shall always, in consultation with the Processor and with due observance of a reasonable period, be entitled to monitor or have monitored compliance with the Applicable legislation and regulations relating to the Processing of Personal Data, the Product and Services Agreement and this Data Processing Agreement, including the technical and organisational measures taken by the Processor, by means of an audit carried out by an independent certified external expert:
  - a. The Parties can arrange in mutual consultation for the audit to be carried out by an external expert, to be engaged by the Processor in consultation with the Educational Institution. This external expert issues a third-party declaration (TPM).
  - b. The auditor only issues the audit report to the Parties.
  - c. The Parties make mutual arrangements about how to handle the results of the audit.
  - d. The Parties can mutually agree that, on the basis of an applicable (inter)nationally recognised certificate or an equivalent monitoring tool or means of proof, an audit that has already been carried out and a third party declaration that has been issued can be used. In that case, the Educational Institution is informed about the results of the audit.
  - e. The Parties agree that the costs of this audit shall be borne by the Educational Institution, unless (major) shortcomings are established that can be attributed to the Processor. In that case, the Parties consult about the division of the costs of the audit.

#### **Article 8: Data Leaks**

1. The Parties have an appropriate policy for dealing with Data Leaks.
2. In the event that the Educational Institution or the Processor establish a Data Leak, the respective Party shall inform the other Party about this *without unreasonable delay* as soon as they learn about that Data Leak. In the event of a Data Leak, the Processor shall provide all relevant information with regard to the Data Leak to the Educational Institution, including information on any developments related to the Data Leak and measures taken by the Processor to limit the effects of the Data Leak and to prevent recurrence.
3. The Processor informs the Educational Institution *immediately* in the event that it suspects that a Data Leak probably entails a high level of risk for the rights and freedoms of natural persons as referred to in Article 34 (1) of the GDPR.
4. In the event of a Data Leak, the Processor enables the Educational Institution to take appropriate subsequent steps or ensure that these are taken with regard to the Data Leak. The Processor must try to link this up with the existing processes that the Educational Institution has set up for this purpose. The Parties will take all reasonably required measures as soon as possible to prevent or limit (further) breaches or infringements concerning the Processing of Personal Data, and more particularly (further) breaches of the Applicable legislation and regulations concerning the Processing of Personal Data.



5. In the event of a Data Leak, the Educational Institution shall comply with any possible legal reporting options. In the event that a Data Leak affects multiple Educational Institutions to the same extent, the Processor can, after consulting one or more Controllers, notify the Dutch Data Protection Authority [Autoriteit Persoonsgegevens] about the Data Leak on behalf of the Educational Institution. The Processor shall inform the Educational Institution of their intention to do this without delay (and prior to the notification if possible).
6. In the event that the Data Leak potentially entails a high level of risk for the rights and freedoms of natural persons, the Educational Institution shall inform the Involved Parties about the Data Leak.
7. The Parties will, in good faith and in mutual consultation, make arrangements about the reasonable allocation of any costs associated with complying with the reporting obligations.
8. The Parties shall document all Data Leaks in an (incident) register, including the facts relating to the infringement relating to personal data, the consequences of this and the corrective measures taken.
9. The Processor will inform the Educational Institution in accordance with the arrangements laid down in Annex 2 about security-related incidents, other than a Data Leak, which fall outside the scope of Article 1 (e) of this Data Processing Agreement.

#### **Article 9 Assistance**

1. The Processor provides assistance to the Educational Institution in observing the obligations resting on the Educational Institution on the basis of the GDPR and other Applicable legislation and regulations relating to the Processing of Personal Data, such as with those relating - but not limited - to:
  - a. compliance insofar as reasonably possible with the obligations of the Educational Institution to meet requests of the rights of the involved party laid down in Chapter III of the GDPR within the statutory periods, such as a request for access, correction, addition, removal or blocking of Personal Data;
  - b. carrying out monitoring and auditing as referred to in Article 7 of this Data Processing Agreement;
  - c. carrying out a data protection impact assessment (DPIA) and potential consultation with the Dutch Data Protection Authority arising from this;
  - d. complying with requests of the Dutch Data Protection Authority or another government institution;
  - e. the preparation, assessment and reporting of Data Leaks as referred to in Article 8 of this Data Processing Agreement.
2. A complaint or request of a Data Subject or a request or examination of the Dutch Data Protection Authority with regard to the Processing of Personal Data will be forwarded immediately by the Processor, insofar as permitted by law, to the Educational Institution with responsibility for handling the request.

3. The Parties shall not charge each other any costs for reasonable assistance provided. In the event that one of the Parties wishes to charge the other Party, this Party shall inform the other Party of its wish to do so in advance.

#### **Article 10: Transfer to third countries outside the European Economic Area**

1. The Processor is exclusively authorised to transfer Personal Data to a third country or international organisation in the event that the Educational Institution has given specific Written consent to do so, unless a provision applicable to the Processor under European Union law or Member State law requires the Processor to Process the Personal Data. In that case, the Processor shall inform the Educational Institution about this obligation in writing prior to the Processing, unless this legislation prohibits this notification for important grounds of public interest.
2. If, following the consent of the Educational Institution, Personal Data are transferred to third countries outside the European Economic Area or to an international organisation as referred to in Article 4 (26) of the GDPR, the Parties shall ensure that this takes place only in accordance with legal requirements and any obligations that rest on the Educational Institution in this connection. In the event that data are transferred to a third country or an international organisation, this is indicated in Annex 1 of this Data Processing Agreement, including a statement of the countries where, or international organisations through which, the Personal Data are processed. In doing so, the way in which the conditions on the basis of the GDPR for the transferring of Personal Data to third countries or international organisations are complied with is also indicated.

#### **Article 11: Engaging Sub-processors**

1. By signing this Data Processing Agreement, the Educational Institution gives the Processor permission to engage Sub-processors, whose identity and location details are included in the Privacy Annex.
2. For the duration of the Data Processing Agreement, the Processor shall inform the Educational Institution about any proposed additions of a new Sub-processor or changes to the composition of the existing Sub-processors, whereby the Educational Institution is offered the option of objecting to these changes.
3. The Processor shall be obliged, by means of an agreement or other legal action, to impose at least the same obligations in relation to data protection on each Sub-processor as those imposed on the Processor in this Data Processing Agreement. This includes the obligation not to further Process the Personal Data other than agreed within the framework of this Data Processing Agreement, and the obligation to comply with confidentiality regulations, reporting obligations, obligations to cooperate and security measures with regard to the Processing of Personal Data as laid down in this Data Processing Agreement. At the request of the Educational Institution, the Processor shall provide copies of this Data Processing Agreement or of the relevant passages from the Data Processing Agreement or another agreement or another binding legal action between the Processor and the Sub-processor engaged by them in accordance with Article 11 (1) of this Agreement.

## **Article 12: Retention periods and destruction of Personal Data**

1. The Educational Institution shall inform the Processor adequately about (statutory) retention periods that apply to the Processing of Personal Data by the Processor. The Processor will not process the Personal Data for longer than these retention periods.
2. The Educational Institution obliges the Processor to destroy or have destroyed all Personal Data Processed under the instruction of the Educational Institution upon termination of the Data Processing Agreement unless the Personal Data need to be retained for any longer within the framework of (statutory) obligations, or upon the request of the Educational Institution. The Educational Institution can have an audit carried out at its own expense to see whether destruction has taken place.
3. The Processor shall give the Educational Institution (written or electronic) confirmation that the destruction of the Processed Personal Data has taken place.
4. The Processor shall inform all Sub-processors involved in the Processing of Personal Data of a termination of the Data Processing Agreement and shall ensure that all Sub-processors will destroy the Personal Data or will ensure that the Personal Data are destroyed.

## **Article 13: Liability**

1. A Party cannot invoke a liability limitation which is included in the Product or Service Agreement or another agreement or regulation existing between the Parties with regard to the following established by the other Party:
  - a. a redress action on the basis of Article 82 of the GDPR; or
  - b. a compensation action based on this Data Processing Agreement, if and insofar as the action consists of redress of a penalty paid to the Supervisory Authority that is attributable to the other Party, either in full or in part.

The provisions in this Article shall not affect the remedies available to the defendant in claims on the basis of applicable legislation and regulations.

2. The provisions in Paragraph 1(b) shall not affect the provisions in Article 14 (2).
3. Each Party shall be obliged to inform the other Party without unnecessary delay of a (potential) liability claim or the (potential) imposition of a penalty by the Supervisory Authority, both in connection with this Data Processing Agreement. Each Party is reasonably obliged to provide the other Party with information and/or support for the purpose of putting forward a defence against a (potential) liability claim or penalty, as referred to in the previous sentence. The Party that provides information and/or support shall be entitled to charge the other Party any potential reasonable costs in this respect; the Parties shall inform each other about these costs in advance as much as possible.

#### **Article 14: Contradiction and amending the Data Processing Agreement**

1. In case of conflict between the provisions of this Data Processing Agreement and the provisions of the Product and Services Agreement, the provisions of this Data Processing Agreement take precedence.
2. If the Parties have to deviate from the articles in the Model Data Processing Agreement due to circumstances, or want to make additions to it, these changes and/ or additions will be defined and substantiated by the Parties in an overview that shall be attached as Annex 3 to this Data Processing Agreement. The provisions of this paragraph shall not apply to additions and/or amendments of Annexes 1 and 2.
3. In the event of significant changes to the product and/or the (additional) services that impact the Processing of Personal Data, the Educational Institution will be informed in plain language about the implications of these changes before the Educational Institution chooses to accept them. Important changes will mean in any case: the addition or amendment of a functionality that results in an extension with regard to the Personal Data to be Processed and the purposes under which the Personal Data are Processed. The amendments shall be included in Annex 1.
4. Amendments to the Articles of the Data Processing Agreement can be effected only by joint agreement.
5. In the event that any provision of this Data Processing Agreement is or becomes invalid, voidable or otherwise unenforceable, the remaining provisions of this Data Processing Agreement shall remain in full force and effect. In that case, the Parties will enter into consultations to replace the invalid, voidable or otherwise unenforceable provision by an enforceable alternative provision. The Parties will take the utmost account of the purpose and intent of the invalid, void or otherwise unenforceable provision.

#### **Article 15: Duration and termination**

1. The duration of this Data Processing Agreement is equal to the duration of the Product and Services Agreement concluded between the Parties, including any extensions thereof.
2. This Data Processing Agreement will end automatically upon termination of the Product and Services Agreement. The termination of this Data Processing Agreement will not exempt the Parties from their obligations arising from this Data Processing Agreement which by their nature are expected to continue after termination, in any case including Article 5 (1), and Articles 6, 9 and 12.

**Agreed upon, drawn up in duplicate and signed,**

Educational Institution,

Processor,

Name:

Name:

Position:

Position:

Date:

Date:

Annex 1: Privacy Annex

Annex 2: Security Annex

## ANNEX 1: PRIVACY ANNEX [name of product/service]

[The title of this Privacy Annex must make clear whether it relates to the **distribution** or **use** of digital educational resources]

*Educational Institutions are increasingly using digital applications within education. The use and provision of these products and services requires data that can be traced back to individuals (such as educational participants). Educational Institutions must make arrangements with Processors on the use of such Personal Data. This annex provides educational institutions with information about the service the Processor provides and what personal data the Processor processes. In short, about the question "who, what, where, why and how" deals with the privacy of the persons concerned whose data are processed.*

*Using this Privacy Annex helps Educational Institutions to better understand the function of the product and/or service and which types of data are to be exchanged. The Privacy Annex is an annex to the Model Data Processing Agreement and comprises Instructions for the Processing of Personal Data from the Educational Institution for the Processor.*

*In the context of the recognisability, it is desirable that Processors use the Privacy Annex as much as possible in a uniform manner. Deviations from this are possible, but should ideally be limited. If the space in this Annex is insufficient to describe the required information, is it possible to include the information in a separate annex or annexes, which shall be numbered as follows: "Annex 1A", "Annex 1B", etc. These Annexes will be attached to the Data Processing Agreement.*

*For specific sectors such as publishers, distributors and suppliers of student and pupil -administration systems, specific privacy annexes can be created that are based on this model. These specific models shall be adapted by the Initiators of the Privacy Covenant. The models can be found on the website of the Platform: [www.edu-k.nl/ibp](http://www.edu-k.nl/ibp).*

### **A. General information**

|  |   |  |
|--|---|--|
| Name of product and/or service                           | : |  |
| Name of Processor and location information               | : |  |
| Link to <u>supplier</u> and/or product page              | : |  |
| Brief explanation and functioning of product and service | : |  |
| Target group ( such as PE/SE lower/upper)                | : |  |
| Users  |   | educational participants/parents/<br>carers/teachers/... |

### **B. Description of specific services**

Description of the specific services provided and associated Processing of Personal Data:

1. Processing that forms an integral part of the service offered.
  - a. [...]

- b. [....]
- [....]
- 2. Description of the optional Processing offered by the Processor
  - a. [....]
  - b. [....]

*Higher vocational education (MBO)*

*Explanation: This relates to additional services and associated Processing that does not form an integral part of the service offered. This includes, for example, optional services for the Educational Institution that may be helpful to the Educational Institution for the purposes of the primary (learning) process and administrative work.*

*The Educational Institution must choose and thereby issue the instruction to process personal data for the purchase of these services. This can be achieved by indicating this choice in writing in this Annex (for example, by ticking a tick box ).*

*The contract can also be awarded by means of the Educational Institution activating the service in practice, for example, by switching a product or service on or off. The Educational Institution that makes the choice in this way must do so on the basis of previously provided information (such as, for instance, listed in this annex).*

**C. purposes for the processing of data**

The Processor should explicitly state in this Annex whether this is:

- I. a supplier of a digital product and/or digital service consisting of course material and/or tests, or
- II. (also) a supplier of School and Pupil Information Resources.

Ad I. In the event that the Processor is a supplier of a digital product and/or digital service consisting of Learning Resources and Tests, the following possible purposes of data processing in the context of these products and services apply:

- a. using the Digital Educational 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;
  - analysing and interpreting the learning outcomes;
  - the 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 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 Educational Institution and the Supplier, including the performance 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 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.

Ad II. (Exclusively) in the event that the Processor is (also) the Supplier of a digital product and/or digital service consisting of School and Pupil Information Resources, the following possible purposes of data processing shall apply in the context of these products and services:

- a. the organisation, teaching and receiving education, the guidance and tracking of Educational Participants or the provision of school and study advice, including:
  - the layout and modification of timetables;
  - analysing and interpreting learning outcomes;
  - keeping 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;
  - communication with Educational Participants and parents and staff of the Educational Institution;
  - financial management;
  - monitoring and accountability, for the purpose of in particular: (performance) measurements of the Educational Institution, quality care, satisfaction survey, study of effectiveness of education (type) or the support available for Educational Participants 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;
  - Educational Institutions in the event of transfers between Educational Institutions and for further education.
- 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 Digital Educational Resources and external information systems provided, 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 Educational Institution 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 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

#### **D. Categories and types of personal data**

1. Description of the categories of Data Subjects whose Personal Data are exchanged, and the categories of personal data of the Data Subjects:

| <b>Applicable</b> | <b>Category</b>        | <b>Explanation</b>   |
|-------------------|------------------------|--|
|                   | <b>1. Contact data</b> | <p>Surname, first name, initials, titles, gender, date of birth, address, postcode, place of residence, telephone number and similar details required for communication;</p> <p>Limited set = name, email, education;</p> <p>Personal set = date of birth, gender;</p> |

|  |   |  |
|--|---|--|
|  | <b>2. Educational participant number</b>                                | an administration number used to identify educational participants   |
|  | <b>3. Nationality and place of birth</b>                                |  |
|  | <b>4. Parents, guardian</b>   | data as referred to under 1 relating to the parents/guardians of educational participants  |
|  | <b>5. Medical data</b>  | data that are necessary in the interests of the health or well-being of the data subject or at their own request, insofar as necessary for the education;  |
|  | <b>6. Religion</b>  | data relating to the religion or belief of the data subject, insofar as necessary for the education, or at their own request, insofar as necessary for the education;  |
|  | <b>7. Study progress</b>  | data relating to the nature and course of education, including the study results obtained;<br>namely: <ul style="list-style-type: none"> <li>• class / study year / ILT code</li> <li>• Examination</li> <li>• Study progress and/or Study programme</li> <li>• Supervision of educational participants, including action plan</li> <li>• Attendance record</li> </ul> |
|  | <b>8. Educational organisation</b>                                      | data in the interests of the <b>organisation of education</b> and the provision of learning tools or making such tools available;  |
|  | <b>9. Finances</b>  | data in the interests of calculating, setting and collecting registration fees, school and tuition fees and contributions for learning resources and extra-curricular activities, as well as the bank account number of the data subject;  |
|  | <b>10. Visual material</b>  | photos and videos ( <b>visual material</b> ) with or without sound of activities of the organisation or institution;   |
|  | <b>11. Teacher, care coordinator, internal supervisor, dean, mentor</b> | data of <b>teachers and supervisors</b> , insofar as these data are important for the organisation of the institute or institution and the provision of education, courses and training sessions;  |
|  | <b>12 Other data, namely ....</b>                                       | data other than those intended under 1 up to and including 11, of which the processing is required as a result or is necessary in the interest of the application of another law. <b>It is important to state which data are involved.</b>   |

|  |  |  |
|--|--|--|
|  | <b>13. Citizen service number (BSN)/national identification number (PGN)</b> |  |
|  | <b>14. Chain ID (ECK ID)</b>   | Unique ID for the educational content chain. With this, educational institutions can share details without these being directly traceable to educational participants or teachers. |

3. Specific retention terms for Personal Data to be applied by the Processor (or testing criteria to establish this):

[...]

**E. Storage of the Processing of Personal Data:**

City/Country of storage and Processing of Personal Data:

**F. Sub-processors**

By signing the Data Processing Agreement, the Educational Institution gives the Processor general written permission to engage a Sub-processor. The Processor is entitled to make use of other Sub-processors, provided it informs the Educational Institution in advance, and the Educational Institution is able to object to this within a reasonable period.

At the time of concluding the Data Processing Agreement, the Processor makes use of the following Sub-processors:

[party name and location, brief description of task/service showing what data are processed by this Sub-processor], location/country of storage and Processing of Personal Data]

*NB: If the Personal Data are processed outside the EEA, a separate report must be made of the countries in which the Personal Data are processed and the way in which it is ensured that the data can be lawfully passed on.*

**G. Contact details**

For questions or comments about this annex or the operation of this product or service, please contact: [contact information].

**G. Version**

[version number and date of the most recent amendment]

*This Privacy Annex is part of the arrangements made in the Privacy Covenant Digital Educational Resources 3.0, an initiative of the Primary Education Council (PO-Raad), the Secondary Education Council (VO-raad), the Higher Vocational Education Council (MBO Raad), the various involved chain parties (GEU, KBb-E and VDOD) and the Ministry of Education, Culture and Science. You can find more information at: <http://www.privacyconvenant.nl>.*

## ANNEX 2: SECURITY ANNEX

In accordance with the GDPR and Articles 7 and 8 of the Model Data Processing Agreement, the Processor is obliged to take suitable technical and organisational measures to secure the Processing of Personal Data, and to demonstrate these measures. This Annex provides a brief description and summary of these measures.

### Information security standards

The Processor is obliged to demonstrate to the Educational Institution how and in which way suitable technical and organisational measures have been taken in order to guarantee and to be able to demonstrate that the processing is carried out in accordance with the GDPR and the Model Data Processing Agreement.

For the application and demonstration of the technical measures, the Processor can make use of (as soon as reasonably possible the most recent version of) the '*Certification scheme information security and privacy ROSA*'<sup>2</sup>. This scheme provides a baseline of (security) measures with which organisations are able to demonstrate this.

If the Processor uses the Certification scheme stated above, use can be made of a standard security annex that is tailored by the Initiators of the Privacy Covenant. This tailored Annex 2 can be found on the website of the Platform and replaces this model Annex 2: [www.edu-k.nl/ibp](http://www.edu-k.nl/ibp).

The Processor can also make use of other certification mechanisms and/or (inter)nationally recognised norms and standards for information security, provided these offer an equivalent or higher level of security and the measures taken by the Processor are made clear to the Educational Institution.

### Minimum security measures and demonstrability

At this point in the annex, the Processor includes a declaration that proves that suitable technical measures for the safety of the Processing of Personal Data are taken. This declaration includes at least the following points:

- a. A classification of the product or the service in the field of availability, integrity and confidentiality;
- b. A description of the extent to which the minimum security measures stated below are fulfilled in the context of Article 32 of the GDPR;
  - i. The Processor has an appropriate policy for the security of the Processing of Personal Data, whereby the policy is periodically evaluated and – if necessary – amended;

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<sup>2</sup> [https://www.edustandaard.nl/standaard\\_afspraken/certificeringsschema-informatiebeveiliging-en-privacy-rosa/certificeringsschema-informatiebeveiliging-en-privacy-rosa/](https://www.edustandaard.nl/standaard_afspraken/certificeringsschema-informatiebeveiliging-en-privacy-rosa/certificeringsschema-informatiebeveiliging-en-privacy-rosa/)

- ii. The Processor has classified the Personal Data that are Processed in the field of availability, integrity and confidentiality and has, on the basis of this classification, taken security measures to limit the risks for the Processing of Personal Data;
  - iii. The Processor takes measures so that via a system of authorisation only authorised employees are able to gain access to the Processing of Personal Data in the context of the Data Processing Agreement. Hereby, the Processor has determined procedures and shared these with the Educational Institution for the identification, authorisation and authentication of employees as well as related to the recording, registration and de-registration of the employees;
  - iv. The Processor ensures that access to the product or the service is secured by means of a suitable policy for passwords that is in line with the state of the art;
  - v. The Processor has procedures related to the granting of access to Personal Data (including a registration and de-registration procedure for the allocation of access rights), and recording events related to user activities, exceptions and information security events (comparable with the applicable ISO standards, and/or comparable with the applicable Certification Scheme information safety and privacy ROSA) in the log book. The Educational Institution is given the opportunity to monitor these log files periodically.
  - vi. The Processor has taken measures to protect the Personal Data against processing risks, above all as a result of the destruction, loss, amendment or unauthorised provision of or unauthorised access to data that have been forwarded, stored or otherwise processed, unless accidentally or unlawfully.
  - vii. The Processor makes use of an (inter)national security standard when securing the Processing of Personal Data;
  - viii. The Processor has taken measures to identify weaknesses in respect of the Processing of Personal Data in the systems used for the provision of services to the Educational Institution.
- c. An assessment of measures taken with regard to (inter)nationally recognised norms and standards for information security.

### **Security incidents and/or data leaks:**

In the event of a (suspicion of) security incident and/or data leak, the Educational Institution can contact: [contact details helpdesk/ service desk for security incidents]

The contact person for the Processor is: [contact details of Educational Institution for security incidents]

### **Informing about Data Leaks and/or security related incidents**

There is a procedure about informing in the case of data leaks and/or incidents with reference to Security, and it comprises at least the following points:

- The way in which monitoring and identification of incidents takes place,



- The way in which information is shared:
  - In which way (via e-mail, telephone);
  - To whom it should be addressed (contact person and contact details);
  - Whom should be contacted (for follow-up actions).
- Information that must be shared in any case about an incident
  - The characteristics of the incident, such as: date and time of discovery, summary of the incident, attribute and type of incident (what part of security does it relate to, how has it occurred, does it relate to reading, copying, modifying, deleting/destroying and/or theft of personal data);
  - The cause of the security incident;
  - The measures taken to prevent any damage or further damage;
  - Naming Data Subjects who may be affected by the incident and the extent;
  - The size of the group of Data Subjects;
  - The type of data affected by the incident (in particular special data, or data of a sensitive nature, including access or identification data, financial data or learning performance).
- Any arrangements if, and if so how, the Processor can make a notification to the Dutch Data Protection Authority.

**Version** [version number and date of the most recent amendment]

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