

Privacy Covenant for Digital Educational Resources 4.0

Covenant¹ on protecting Personal Data and safeguarding the careful handling of Personal Data processed for the purpose of Educational Institutions using Digital Educational Resources in primary and secondary education and senior secondary vocational education, including using digital learning resources, tests, administration and information systems.

The Initiators of the Privacy Covenant, who have signed the Privacy Covenant in that capacity are as follows:

- the Primary Education Council [Vereniging PO-Raad]
- the Secondary Education Council [VO-raad]
- the Association of Vocational Education and Training Colleges [MBO Raad]
- the sector organisation Media and Education for Trade and Science [MEVW]
- the Association of Digital Education Service Providers [Vereniging Digitale Onderwijs Dienstverleners]
- members of the educational department of the Royal Society of Booksellers [Coöperatieve Koninklijke Boekverkoopersbond U.A.]

Whereas:

- a. Educational Institutions in primary and secondary education and senior secondary vocational education – including special education and special secondary education as referred to in the Expertise Centres Act [Wet op de expertisecentra] – are increasingly using Digital Educational Resources for organising education and teaching. This includes digital products or services for the purpose of education and/or the educational process, such as learning resources, tests, pupil administration systems, core registration systems, student information systems, participants' records, electronic learning environments and pupil tracking systems;
- b. there are significant advantages to using these Digital Educational Resources. These resources enable Educational Institutions to provide improved, more efficient, more contemporary and/or more personalised education to pupils and students: an aspiration being ever more broadly shared in the Netherlands;
- c. a condition for using Digital Educational Resources is that clear arrangements must be made for the Processing of Personal Data. Because underage pupils in primary and secondary education and senior secondary vocational education are a particularly vulnerable group in relation to protecting Personal Data, it is essential that Educational Institutions make proper arrangements about regulating and safeguarding privacy with all parties (suppliers and providers) that Process Personal Data on their behalf;
- d. for the purpose of the condition referred to under c., arrangements are recorded in the Privacy Covenant between the Primary Education Council, Secondary Education Council, Association of Vocational Education and Training Colleges and the members of the sector organisations of suppliers of learning resources, tests and educational services (the sector organisation Media and Education for Trade and Science), suppliers of educational ICT services and systems (Association of Digital Education Service Providers), and school suppliers/distributors (educational department of the Royal Society of Booksellers);
- e. these arrangements are based on the principle that the Educational Institutions have and retain control over the Personal Data and their Processing and they determine the parties to whom the data may be disclosed. The Educational Institutions are the Controllers for the Processing of Personal Data as defined in the GDPR;

¹ The Privacy Covenant for Digital Educational Resources 4.0 and the accompanying documents, such as the Model Data Processing Agreement and the Regulations, can be found on www.privacycovenant.nl.

f. The 2018 Privacy Covenant for Digital Educational Resources 3.0 needs to be adapted because of developments that have occurred since the EU General Data Protection Regulation came into effect on 25 May 2018. These adaptations are included in this Privacy Covenant for Digital Educational Resources 4.0, which replaces the previously adopted covenants;

and wish to record these arrangements:

Article 1: Definitions

The terms below are defined as follows in this Privacy Covenant:

- a. Annex(es): annex(es) to the Privacy Covenant;
- b. Attributes Set: a Personal Data set of Educational Participants that Edu-K has determined and published to be used in addition to the ChainID for accessing and using Digital Educational Resources;
- c. ChainID: a pseudonym of an Educational Participant's personal identification number as referred to in the Regulation on the pseudonymisation of Educational Participants [Regeling pseudonimiseren onderwijsdeelnemers]. The ChainID [ketenID] is also called the ECK iD;
- d. Data Subject, Processor, Third Party, Personal Data, Processing of Personal Data, Disclosure, and Controller: the terms as defined in the GDPR;
- e. Digital Educational Resource: a digital product and/or digital service in which Personal Data of Educational Participants are processed for the purpose of providing education, including preparing, implementing, evaluating and supporting education and/or the educational process, and supervising and monitoring Educational Participants (in their learning process);
- f. Educational Institution: the 'competent authority' as referred to in Articles 1 of the Primary Education Act [Wet op het primair onderwijs], Secondary Education Act [Wet op het voortgezet onderwijs] and Expertise Centres Act [Wet op de expertisecentra], and the 'institution' as referred to in Article 1.1.1., subparagraph b of the Adult and Vocational Education Act [Wet educatie en beroepsonderwijs];
- g. Educational Participant: a pupil or student in primary education, secondary education or senior secondary vocational education, as well as a pupil or student in special education or special secondary education as referred to in the Expertise Centres Act [Wet op de expertisecentra];
- h. Edu-K: the platform as referred to in Article 8 of the Privacy Covenant, or its successor;
- i. GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of 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);
- j. Initiators: parties that are the initiators of the Privacy Covenant as specified in the recitals to the Privacy Covenant;
- k. Model Data Processing Agreement: the model data processing agreement that forms an integral part of the Privacy Covenant and is appended as an Annex to the Privacy Covenant;
- l. Party to the Privacy Covenant: an Educational Institution or Supplier that has joined the Privacy Covenant;
- m. Privacy Covenant: the Privacy Covenant for Digital Educational Resources 4.0;
- n. Regulations: the regulations as referred to in Article 8, paragraph 3 of the Privacy Covenant.
- o. Supplier: the Party to the Privacy Covenant that processes Personal Data on the Educational Institution's instructions for the purpose of supplying and using a Digital Educational Resource;

Article 2: Purpose and scope of the Privacy Covenant

1. The purpose of the Privacy Covenant is to create safeguards that ensure Educational Institutions and Suppliers carefully handle the Personal Data they Process during the use of Digital Educational Resources.

2. The scope of the Privacy Covenant extends to the Processing of Personal Data by or on the instructions of Educational Institutions during the use of Digital Educational Resources.

3. The Privacy Covenant does not apply to any Processing for which Suppliers are the Controller themselves.

Article 3: Role allocation

1. For Processing of Personal Data as defined in the Privacy Covenant, the Educational Institution is the Controller and the Supplier is the Processor. The Educational Institution has and retains independent control over the purpose and means of Processing of the Personal Data.

2. The Supplier's role as Processor involves informing the Educational Institution in advance about the Processing of Personal Data for supplying and/or using the products and/or service(s), and the choices available to an Educational Institution. The Educational Institution's role involves giving written instructions to the Supplier about which Personal Data Processing operations are to be performed for the purpose of using the Digital Educational Resources.

3. The Parties to the Privacy Covenant and the Initiators consider it essential and thus encourage Educational Institutions and Suppliers to be aware of and comply with their GDPR obligations.

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

Article 4: Data Processing Agreement

1. The Model Data Processing Agreement, which incorporates the requirements of Article 28 GDPR, among others, is appended as an Annex to this Privacy Covenant.

2. If Educational Institutions and Suppliers make arrangements about Digital Educational Resources that involve the Processing of Personal Data, they must only use the Model Data Processing Agreement. These parties may deviate from the contents of the Model Data Processing Agreement only if they do so in writing and state their reasons.

3. Initiators will provide support in using the Model Data Processing Agreement, including through advice.

Article 5: Purposes of the Processing under the Privacy Covenant

1. Educational Institutions may Process Personal Data for specified, explicit and legitimate purposes only. These purposes are therefore guiding principles for a Supplier that Processes Personal Data on the Educational Institution's behalf.

2. Educational Institutions Process Personal Data with the help of Digital Educational Resources for the purpose of providing education, including preparing, implementing, evaluating and supporting education and/or the educational process, and supervising and monitoring Educational Participants (in their learning process). More specifically, Educational Institutions Process Personal Data with the help of Digital Educational Resources *mainly* for:

- a. storing learning outcomes and test results;
- b. returning learning outcomes and test results to the Educational Institution;
- c. assessing learning outcomes and test results to be able to obtain course and test materials tailored to an Educational Participant's specific learning needs;
- d. analysing and interpreting learning outcomes and test results;
- e. being able to exchange learning outcomes and test results between Digital Educational Resources;
- f. arranging and adjusting timetables;
- g. tracking an Educational Participant's personal circumstances (including their medical information) and how that affects them receiving education;
- h. guiding and supporting teachers and other employees in the Educational Institution;

- i. communicating with Educational Participants, parents and employees of the Educational Institution;
- j. monitoring and accountability, particularly performance and other measurements of the Educational Institution, quality assurance, satisfaction surveys, research into the effectiveness of education and/or a form of education or the support offered to Educational Participants in appropriate education;
- k. insofar as necessary and permitted by law, exchanging Personal Data with Third Parties, including:
 - o supervisory authorities and healthcare institutions in relation to them performing their statutory and other duties;
 - o partnerships in the context of appropriate education and regional cooperation;
 - o parties involved in filling traineeships, practical training or work experience places;
 - o providing Personal Data to Educational Institutions in the event of transfers between educational institutions and further education;
 - o providing Personal Data to another party on the Educational Institution's instructions;
- l. taking delivery of/being able to use Digital Educational Resources in accordance with the arrangements made between the Educational Institution and the Supplier;
- m. gaining access to the Digital Educational Resources offered and external information systems, including identification, authentication and authorisation;
- n. securing, controlling and preventing misuse and improper use, and avoiding inconsistency and unreliability in the Personal Data Processed with the Digital Educational Resources;
- o. bringing continuity, improvements and proper functioning to the Digital Educational Resource on the Educational Institution's instructions in accordance with the arrangements made between the Educational Institution and the Supplier, including arranging maintenance, making backups, introducing improvements, for example after errors or inaccuracies have been detected, and obtaining support;
- p. making it possible for the Educational Institution to provide anonymised or pseudonymised Personal Data for scientific research or statistical purposes relating to the Educational Institution's learning process, policy or their respective optimisation, which is implemented under strict conditions comparable to existing codes of conduct in the area of research and statistics;
- q. making it possible for the Educational Institution to provide anonymised Personal Data for research and analysis purposes in order to improve the quality of education;
- r. providing Personal Data insofar as necessary to meet the statutory requirements set for Digital Educational Resources;
- s. handling disputes;
- t. financial management;
- u. implementing or applying a provision of a European Union or Member State law or regulation.

Article 6: Data protection by design and by default settings

The principles of data protection by design and by defining default settings are the basis for developing and continuing to develop the Digital Educational Resources used by Educational Institutions. Edu-K establishes principles and guidelines to achieve this in practice.

Article 7: Statutory information requirements

1. The Educational Institution informs the Educational Participants whose Personal Data are being Processed in a Digital Educational Resource. If the Educational Participants are underage, the Educational Institution informs their parents. The Educational Institution can, but need not, use the information provided by the Processor, as referred to in Article 3, paragraph 2, for this purpose.

2. When this information is provided, the Educational Participants – or, if they are underage, their parents – will be informed how they can exercise the statutory rights of a Data Subject. Data Subjects need to contact the Educational Institution to exercise these rights.

Article 8: Edu-K

1. Edu-K facilitates consultation on the Privacy Covenant between the Initiators, Educational Institutions and Suppliers.
2. Edu-K has various responsibilities, including:
 - implementing the arrangements and principles as detailed in the Privacy Covenant;
 - periodically evaluating the arrangements and principles as detailed in the Privacy Covenant, including because of changing legislation and technological or other developments;
 - adapting and supplementing the existing arrangements and principles based on the evaluation;
 - appointing an advisory group in Edu-K whose duties include managing, continuing to develop, advising and consulting on, and implementing the arrangements and principles as detailed in the Privacy Covenant;
 - monitoring and enforcing compliance with the Privacy Covenant;
 - making information security arrangements, including on security standards, the options for conducting security audits, handling incidents and their implementation.
3. Procedural arrangements for amending the Privacy Covenant, and on governance, decision-making and powers, are laid down in regulations.
4. Insofar as the Regulations do not cover the decision-making procedure, including the possibility of implementing amendments, decisions and amendments to the Privacy Covenant that involve Edu-K will be made only with the consent of all the Initiators who are parties to the Privacy Covenant when the decision is made.
5. Insofar as applicable, the Initiators represent their members in Edu-K and report to their members on the results of the consultations in Edu-K. In principle, Educational Institutions are represented in Edu-K by the Primary Education Council, Secondary Education Council and Association of Vocational Education and Training Colleges.
6. The Primary Education Council, Secondary Education Council and Association of Vocational Education and Training Colleges manage the activities arising from the Privacy Covenant, including the Edu-K's secretariat and a register of the Parties to the Privacy Covenant.

Article 9: Compliance, complaints and mediation

1. Edu-K has established a scheme in the Regulations for handling complaints and mediation if a party fails to comply with the arrangements under the Privacy Covenant.
2. Edu-K is authorised on behalf of the Initiators, Educational Institutions and Suppliers to take action against any established misuse or improper use of the Privacy Covenant or the Model Data Processing Agreement.
3. Educational Institutions and Suppliers incorporate the principles of the Privacy Covenant and compliance with them in their mutual arrangements – including in the context of tenders – and hold each other to account.
4. Questions about interpreting or implementing the provisions of the Privacy Covenant are discussed in joint consultation in Edu-K as specified in the Regulations.

Article 10: Entry into effect, joining and withdrawing

1. By signing the Privacy Covenant, the sector organisation Media and Education for Trade and Science, the Association of Digital Education Service Providers, members of the educational department of the Royal Society of Booksellers and the Primary Education Council, Secondary Education Council and Association of Vocational Education and Training Colleges representing the respective boards of their member Educational Institutions, endorse the principles and arrangements of the Privacy Covenant.
2. Edu-K adopts new versions of the Privacy Covenant and the Model Data Processing Agreement and communicates them to the Parties to the Privacy Covenant.
3. Edu-K determines the effective date of the Privacy Covenant and subsequent versions. A new version of the Privacy Covenant always replaces a previous version. Data Processing Agreements concluded under the previous version of the Privacy Covenant are applied and interpreted based on the provisions of the previous version for the remaining term.
4. Suppliers that have not yet joined the Privacy Covenant and Educational Institutions that are not represented by the Primary Education Council, Secondary Education Council or Association of Vocational Education and Training Colleges can join the Privacy Covenant by truthfully completing, signing and submitting the declaration, as prepared by Edu-K as Annex 2 to the Privacy Covenant, to Edu-K's secretariat or by arranging for this to be done on their behalf.
5. Subject to paragraph 3, the Privacy Covenant applies for an indefinite period.
6. An Initiator or a Party to the Privacy Covenant may give notice to withdraw from their participation in the Privacy Covenant. This notice of withdrawal must be given in writing and addressed to Edu-K's secretariat.²

Article 11: Enforceability of the Privacy Covenant

1. The provisions of the Privacy Covenant are not legally enforceable between the Parties to the Privacy Covenant. However, the provisions of the Privacy Covenant can be legally enforced between the parties to a data processing agreement insofar as this has been agreed in that agreement.
2. After joining the Privacy Covenant under Article 10, paragraph 1 or 4, a Party to the Privacy Covenant is bound by the provisions of the Regulations.

Edu-K adopted this Privacy Covenant on 31 March 2022 and it entered into effect on 1 August 2022.

Annex 1 Model Data Processing Agreement

[Annex is included in a separate document]

Annex 2 Review Framework Statement for Monitoring Compliance with the Privacy Covenant

[Annex is included in a separate document]

² The secretariat's contact details are available at www.edu-k.nl.