



**SCOPE**  
EUROPE

# Declaration of Adherence Agreement

SCOPE Europe Monitoring Body

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## Legal / Publisher

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## Changelog

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*Last reviewed and signed-off, 03 June 2022, by*

Managing Director

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Legal Affairs

## 1 Parties and Proof of eligibility

- (1) This agreement is being established between the entity as indicated in the declaration of adherence (“**Monitored Company**”) and SCOPE Europe as **Monitoring Body** of the Data Pro Code (“**Monitoring Body**”), of which NLdigital is the Code-Owner.
- (2) As prerequisite of declaring adherence to the **Code**, the **Monitored Company** shall hold appropriate licences on any copyrighted material by NLdigital, to the extent such material is used.

## 2 Incorporated Documents, Current and Future Versions thereof

- (1) This agreement incorporates the **Code**, the rules of procedure of the **Monitoring Body**, the respective price list in its current version and the Data Pro Code Monitoring Framework (the “**Framework**”), altogether referred to as “**Procedures**”, as published at <https://dataprcode.scope-europe.eu><sup>1</sup>.
- (2) The **Monitored Company** acknowledges and agrees to the documents as being provided and that any future version of such documents shall automatically become an effective part of this agreement if the following criteria are met:

- a. any future version of the **Code** or its Annexes shall automatically become an effective part of this agreement, if it has been amended in accordance with the procedures laid down in the **Code**, especially Principle 3 of the **Code**.
- b. Notwithstanding 2 (2) a any future version of **Procedures** shall automatically become an effective part of this agreement if those procedures have been amended to keep aligned with any amendments of the **Code**, to reflect its requirements under GDPR to keep its status as accredited **Monitoring Body**, no matter whether such requirements were directly requested by a supervisory authority or whether the **Monitoring Body** has been addressed indirectly with such requirements, for example by updated Guidelines, any actions taken against other monitoring bodies by supervisory authorities or even respective court decisions.
- c. with each renewal of its declaration of adherence **Monitored Company** will accept any modified version of this agreement, provided that such modified version of the agreement will be properly presented to the Code-Owners and published at

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<sup>1</sup> This is to be set-up.

<https://dataprcode.scope-europe.eu><sup>2</sup>.

- (3) The **Monitored Company** acknowledges and accepts this agreement including its incorporated documents as binding and enforceable.

### 3 Services – General Provisions

- (1) The **Monitoring Body** provides monitoring services to **Monitored Company**.
- (2) Monitoring Services are related to Monitored Companies in regards of their services and products, that have been declared adherent by the Monitored Company (“**Monitored Services**”).
- (3) Monitoring Services entail initial assessments to verify compliance of **Monitored Services** before those are enlisted in the public register of the **Code** for the first time as well as recurring and ad-hoc assessments continuously verifying compliance of **Monitored Services**.
- (4) Monitoring Services entail a Complaints Handling including the power of the **Monitoring Body** to impose sanctions and remedies against the **Monitored Company** where non-compliances may be unfolded.

### 4 Services – Specific Provisions

- (1) Assessments provided by the **Monitoring Body** shall follow the provisions and procedures as laid down in the **Procedures**.
- (2) The **Monitored Company** shall provide sufficient evidence to the **Monitoring Body** to enable the **Monitoring Body** to reasonably conclude compliance of **Monitored Services**. In case of doubts, the **Monitored Company** acknowledges and accepts that any lack of evidence results to the detriment of the **Monitored Company**; especially, if the **Monitored Company** is in the possession of requested information but rejects to unfold it towards the **Monitoring Body**.
- (3) The **Monitored Company** acknowledges and accepts that requested information shall be provided within due time, namely within the periods governed by **Procedures**. Belated responses may result into refusal of a positive decision or reasonable doubts of compliance, which then will require further assessment by the **Monitoring Body**.
- (4) The **Monitored Company** acknowledges and accepts that – irrespectively of the chosen option of adherence – the **Monitoring Body** may request, e.g. in case it has reasonable doubts regarding provided evidence, that **Monitored Company** shall support its provided information by

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<sup>2</sup> This is to be set-up.

independent third-party audits or certifications.

- (5) The **Monitored Company** acknowledges and accepts that the **Monitoring Body** via its Complaints Committee may impose remedies and sanctions against the **Monitored Company** in case of any non-compliance, pursuant 8 of **Framework**.
- (6) The **Monitored Company** acknowledges and accepts that it will not take direct or indirect action against any Complaints Committee member, be it the individual or legal entity with which the Complaints Committee member is associated. Consequently, in any case of potential liability related matters, actions of **Monitored Company** shall be limited to those against **Monitoring Body**.
- (7) The **Monitored Company** acknowledges that Complaints Committee members are acting as individuals, thus, they are not acting by any means on behalf of the legal entity with which they are associated.
- (8) The **Monitoring Body** shall conclude on the compliance of **Monitored Company** within due time.

## 5 Payments

- (1) The **Monitored Company** shall pay any fees as laid down in the price list within due time, but no later than fourteen (14) days after being properly invoiced.
- (2) If not agreed otherwise, **Monitored Company** shall pay applicable fees in advance.

- (3) If the due termination of a **Monitored Company** becomes effective before the end of the calendar year, i.e., before midnight December 31<sup>st</sup>, this shall not have any effect on the due fees of respective **Monitored Company** for the concerned calendar year, as the monitoring services will be provided in any case.
- (4) Delayed payments by **Monitored Company** shall entitle the **Monitoring Body** to add a flat charge as indicated in the price list.

## 6 Communication Channels

- (1) The **Monitored Company** acknowledges and accepts to communicate with the **Monitoring Body** via those communication channels provided and / or requested by the **Monitoring Body** and in accordance with the **Procedures**, unless the **Monitored Company** can reasonably argue that any use of such communication channels results into a disproportionate burden; in those cases the **Monitored Company** shall suggest appropriate alternatives meeting the requirements of the **Monitoring Body** regarding confidentiality, security and auditability of its actions.
- (2) Communication between the Parties shall happen via the contact as provided in the declaration of adherence.
- (3) The **Monitored Company** acknowledges and accepts that **Monitoring Body** may especially introduce dedicated online forms to process declarations of

adherences, see 6.2 (5) and 6.2 (9) of **Framework**.

## 7 Independence of the Monitoring Body

### 7.1 General

- (1) **Monitored Company** and **Monitoring Body** may sign any additional Non-Disclosure Agreement (NDA) provided that such NDA does not conflict the duties and powers of the **Monitoring Body** as laid down in the **Code**, the Procedures or Art. 41 GDPR. Such NDA explicitly must not prevent the **Monitoring Body** to grant access to any information, that is subject to such NDA, to those performing monitoring services as per 3 (3) and (4) of this agreement on the **Monitoring Body's** behalf, as well as its Complaints Committee and any supervisory authority. Related to supervisory authorities granting access covers both scenarios in which a supervisory authority requests access or in which the **Monitoring Body** is obliged to actively provide respective information to such supervisory authority. At all times, the **Monitoring Body** shall respect the provisions as laid down in 8 and 9 of **Framework**.
- (2) **Monitored Company** must not take any adverse influence on the decisions of the **Monitoring Body** that conflict with the **Monitoring Body's** independence. Where deemed appropriate by the **Monitoring Body** to defend its independent position it

may unfold any inappropriate attempt by **Monitored Company** to the Code-Owner and seek appropriate action.

- (3) In cases of 7 (2), and where deemed necessary by the **Monitoring Body**, the **Monitoring Body** shall also be entitled to inform the competent supervisory authorities about any such attempt.

### 7.2 Term

- (1) Termination of this agreement shall be aligned and in accordance with the **Framework** and **Code-Specific Procedures; Monitored Services** shall be subject to monitoring services unless terminated by the **Monitored Company** with prior notification of eighteen (18) months or in cases where the **Monitoring Body** is grossly negligent in its responsibilities. Otherwise, annual fees as provided by the price list will be due – e.g. fees for any renewal of a declaration of adherence. For the avoidance of doubt: fees are due no matter whether **Monitored Company** explicitly triggers the renewal of its declaration of adherence, e.g. by using any of the templates provided by the **Monitoring Body** to ease the following processing of such renewals.
- (2) **Monitored Company** is aware of 5 (5) of **Framework** that says *“Not submitting the compulsory annual renewal of a declaration of adherence shall be considered as infringement of the Code if to the extent the Monitored Company has*

*not terminated its adherence consistent with the provisions of the Code and the procedures established by the Monitoring Body”.*

- (3) To the extent **Monitored Company** declares several, individually listed services or products adherent, 7 (1) of this Agreement applies mutatis mutandis for each product or service, provided that such product or services has not generally ceased to be provided or has not been integrated into any other service or product of the **Monitored Company** concerned.
- (4) Notwithstanding and without prejudice to the provisions of this agreement, the **Monitored Company** may terminate the agreement extraordinarily for good cause in accordance with the statutory provisions. Good cause shall be deemed to exist in particular if
  - the **Code’s** approval will be withdrawn or otherwise voided,
  - the **Monitoring Body’s** accreditation will be revoked pursuant to Art. 41 (5) GDPR,
  - in the event of the **Monitoring Body’s** insolvency.
- (5) Prior to termination for good cause, notice of intention to terminate shall be given and the Parties shall discuss possible alternatives or interim solutions.
- (6) The Parties acknowledge, that besides the accreditation, the **Monitoring Body** is appointed by the Code-Owners subject to

a framework agreement. Once such framework agreement will be terminated or become void by other means, this agreement concluded between the **Monitoring Body** and the **Monitored Company** shall terminate automatically, if not provided differently. The **Monitoring Body** shall, at the earliest possible, notify the **Monitored Company** about an expected termination of the framework agreement.

## 8 Power of the Monitoring Body

- (1) **Monitored Company** acknowledges and accepts the powers of the **Monitoring Body** as set-out by Art. 41 GDPR and as particularized by the **Procedures**, especially but not limited to 7 of **Framework**.
- (2) If and to the extent **Monitored Company** is part of a group of companies and **Monitored Company** falls apart from the provider of the actual **Monitored Services** within the group of companies – e.g. for billing purposes – the following shall apply:
  - a. If and to the extent the **Monitored Company** and indicated company in the declaration of adherence – be it for invoicing purposes – falls apart, **Monitored Company** shall – the latest upon request by the **Monitoring Body** – provide binding confirmation, that **Monitored Company** acts with approval of the company being indicated in the declaration of adherence.



b. If and to the extent **Monitored Company** and (effective) provider of **Monitored Services** falls apart, **Monitored Company** acknowledges and accepts that it will be liable for the compliance of any **Monitored Services** and lack of sufficient power and influence on the actual provision of each declared **Monitored Services** shall not be a valid exculpation. **Monitored Company** guarantees to being able to provide all information legitimately requested by the **Monitoring Body** during its provision of monitoring services under this agreement. **Monitored Company** guarantees also that any action, including the imposition of sanctions, or requests – regardless related to the monitoring or to any action taken against the **Monitored Company** due to non-compliance with the **Code**, e.g. being a request for remedy – will be ultimately binding to the **Monitored Company** and **Monitored Company** owes observance. Lack of compliance with requests or observance of any action taken against the **Monitored Company**, due to any determined non-compliance of **Monitored Services**, may accumulate to a non-compliance with the **Code** by itself. **Monitored Company** must not exculpate itself by claiming it lacks relevant influence or power to adequately

respond to any request or action taken.

c. If **Monitored Company** decides to transfer the provisioning of **Monitored Services** to a to-be-established new legal entity, e.g., a subsidiary or spin-off, of which **Monitored Company** remains in control of the new legal entity, the **Monitored Services** shall be continued adherent under the new entities name, unless orderly terminated. The **Monitored Company** without undue delay notify the **Monitoring Body** of any such situation, and it shall be the obligation of the **Monitored Company** to indicate to the **Monitoring Body** any updated information regarding the invoicing of fees; the **Monitored Company** remains liable for the payment unless otherwise agreed with the **Monitoring Body** after notification by the **Monitored Company**.

## 9 Names, Brands, Trademarks, and any other protected Intellectual Properties

- (1) **Monitored Company** must not use any corporate names, brands, trademarks, or other common identifier of the **Monitoring Body** or the **Code**, without due consent.
- (2) Consent shall be deemed granted, where the use is in performance of this

agreement or in consequence of a **Monitored Company's** obligation stipulated by law or by the agreement or the **Procedures**. In these cases, the **Monitored Company** shall still informally notify the **Monitoring Body** and/or Code-Owner, where feasible.

- (3) In any case, the **Monitored Company** agrees to not use any corporate names, brands, trademarks, or other common identifier of the **Monitoring Body** or the **Code** in a manner that may adversely affect the **Monitoring Body's** or the **Code's** reputation.
- (4) **Monitored Company** acknowledges and agrees that the **Monitoring Body** may, already subject to this agreement, use the **Monitored Company's** brand name and company logo, as well as any associated trademarks, to the extent necessary to perform its monitoring services, i.e., namely but not exhaustively, the maintenance of the Public Register.

## 10 Liability

- (1) The Parties' total liability due to an attributable failure in the performance of the agreement or on any legal basis whatsoever, expressly including each and every failure to fulfil a warranty obligation agreed among the Parties, shall be limited to compensation for direct loss up to total annual fees (excluding VAT) to be paid by the **Monitored Company** to the

**Monitoring Body** in the year in which the damage occurred.

- (2) Direct damage is exclusively understood as: a) the reasonable costs made in determining the cause and extent of the damage; b) the reasonable costs incurred in prevention or limitation of damage, to the degree that the respective Party can demonstrate that these costs have led to the limitation of the damage.
- (3) Both Parties' liability for indirect loss, consequential loss, loss of profits, lost savings, loss due to business interruption, mutilated and/or lost data, delays, losses, and/or claims from third parties, is excluded.
- (4) Except as expressly provided above, the aggregate liability of the **Monitoring Body** and of its respective directors, officers, employees shall not exceed the maximum as also determined in 10 (1).
- (5) Nothing in this agreement excludes or is intended to exclude either Party's liability for fraud caused by the actions or omissions of such party, or for personal injury or death.

## 11 Final Provisions

- (1) Legally binding communication shall be in English as well as in Dutch and in text-form, including by electronic means. If there are contradictions between the Dutch and English communication, the English communication will prevail.

- (2) The **Monitoring Body** shall provide non-binding Dutch translations of the **Procedures**. Generally, the Parties acknowledge and accept 6 **Code-Specific Procedures**.
- (3) Obligations of each party that are provided either by the **Code** or by the **Procedures** and which are not explicitly referenced in this agreement remain effective and binding to the parties. To the extent they are not explicitly referenced this is only to prevent unnecessary repetition and to keep this agreement short.
- (4) Both Parties hereby agree and acknowledge that either Party shall not be held responsible or liable for any delay or failure to comply with any of the provisions of this framework agreement due to the occurrence commonly known as force majeure, including but not limited to war, riots, embargoes, strikes, natural disasters or epidemics.
- (5) If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.
- (6) In the event of any dispute, claim, question, or difference arising out of or relating to the framework agreement or the breach thereof, the Parties hereto shall use commercially reasonable efforts to settle such disputes, claims, questions or differences. Except where a Party seeks urgent interim relief, a Party may not commence court proceedings unless it has first complied with this section. The Parties will use all reasonable endeavours in good faith to resolve any dispute between them by negotiation between a senior manager of each Party.
- (7) This agreement and any agreements or ancillary documentation executed pursuant thereto shall be governed by, and construed in accordance with the laws of Belgium.
- (8) Any dispute arising out or relating to the agreement and such ancillary agreements and documentation, including but not limited to any dispute concerning the validity, breach, interpretation, performance, or termination of the agreement shall be submitted to the competent courts of Belgium. The Parties agree that they may agree on a case-by-case basis to consult the Code-Owners or the competent supervisory authority of the **Monitoring Body** first.
- (9) If any term or other provision of this agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, provisions and conditions of this agreement remain nevertheless in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto negotiate in good faith to modify this agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by

applicable Law in an acceptable manner to the end that the purpose of this agreement may be reached and this agreement may be fulfilled to the extent possible. 11 (8) last sentence shall apply mutatis mutandis.



### **About SCOPE Europe**

SCOPE Europe sprl / bvba (SCOPE Europe) is a subsidiary of SRIW. Located in Brussels, it continues and complement the portfolio of SRIW in Europe and is an accredited monitoring body under the European General Data Protection Regulation since May 2021, pursuant to Article 41 GDPR. SCOPE Europe gathered expertise in levelling industry and data subject needs and interests to credible but also rigorous provisions and controls. SCOPE Europe also acts as monitoring body for the EU Data Protection Code of Conduct for Cloud Service Providers and is engaged in other GDPR code of conduct initiatives.