

# DBOARD TERMS OF USE

Last Updated: [June 2018 – version 5.2]

## 1. Introduction

Welcome to DBoard (hereinafter referred to as “**DBoard**” or the “**Platform**”) which is a platform comprising several applications and features, accessible via a website which is entirely owned by Deloitte Tax & Consulting, *société à responsabilité limitée* (an affiliate of the Luxembourg member firm of DTTL as defined below) (hereinafter referred to as “**Deloitte Luxembourg**” or “**we**”) and hosted in Luxembourg by an external service provider.

Unless otherwise specifically defined, Deloitte generally refers to one or more affiliate of Deloitte Touche Tohmatsu Limited (hereinafter referred to as “**DTTL**”), a UK private company limited by guarantee, and its network of member firms (hereinafter referred to as “**Deloitte Network**”), each of which is a legally separate and independent entity. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Access to DBoard is granted by Deloitte Luxembourg in support of the performance of the services (the “**Services**”) described in a specific contractual document (the “**Engagement Letter**”) binding an affiliate of the Luxembourg member firm of DTTL (the “**Contracting Affiliate**”) and an entity (the “**Client**”) to which (i) the Services are rendered by such affiliate and (ii) a license of use of DBoard has been granted in accordance with the terms of this Engagement Letter or a separate license agreement (the “**License Terms**”).

DBoard may be used by one or more employees whom fulfilled the eligibility requirements mentioned in below section 2 of (each a/the “**User**” or “**you**”) :

- (i) the Client;
- (ii) another entity belonging to the Client Group (as defined below) who has/have been duly authorised and empowered by the Client to access and use the Platform on behalf of the Client in the framework of the performance of the Services, and/or
- (iii) any third party providing professional services in the context of the performance of the Services who has/have been duly authorised and empowered by the Client to access and use the Platform on behalf of the Client in the framework of the performance of the Services

For the purpose of the Terms of Use, Client Group shall mean any current or future company which directly or indirectly (i) controls the Client, (ii) is controlled by the Client or (iii) is under common control with the Client but only for so long as such Control exists. For the purpose of this definition, “Control” means an interest of at least 50% in the capital or voting rights of the company or the power to direct the management and policies of such company.

Each User is, through the license granted to the Client, allowed to access and use some of the applications and features available of the Platform and their respective content in view of the performance of the relevant Services and in accordance with these Terms of Use and the License Terms.

## 2. The User is requested to read and accept these Terms of Use carefully before using the Platform.

The purpose of these Terms of Use is to govern each User’s access and use of the Platform, including all information, data, forms, templates, files and materials (hereinafter referred to as the “**Data**”) available on the Platform.

Deloitte Luxembourg reserves the right, at its sole discretion, to update portions of these Terms of Use at any time. Any such update shall apply only after such modifications have been communicated to you via a message displayed on the Platform the first time you connect after such modifications and approved by you. If the User does not agree to the content of the Terms of Use as modified, the User should immediately stop using the Platform.

To use the Platform, a User must agree to these Terms of Use on behalf of both him/herself and the Client. Thereafter, these Terms of Use will be a legally binding agreement between each User and the Client, on the one hand, and Deloitte Luxembourg, on the other.

To be eligible to access and use the Platform, a User must (i) have full power and authority to enter into these Terms of Use, accept any change to these Terms of Use when appropriate and use the Platform on behalf of him/herself and of the Client and (ii) cannot be prohibited from entering into these Terms of Use and/or using the Platform by any law, regulation or contractual obligations. The User hereby warrants and represents that he/she

meets all above-mentioned conditions and that he/she shall immediately stop using his/her account to access to the Platform.

It is noted that Deloitte Luxembourg does not provide investment advice or any financial service. Nothing on the Platform shall be interpreted or construed as an offer and/or the solicitation of an offer to buy, sell or hold securities, investment instruments or financial products.

Any investment or any other decisions shall not be based on information available on the Platform. The User and/or the Client should not make any investment decision without having obtained prior advice from a qualified expert.

### **3. Access to and Availability of the Platform**

The access to the Platform is subject to the User acceptance of these Terms of Use.

To obtain an access to and use the Platform, the User will receive his/her own User ID and password from Deloitte Luxembourg.

Notwithstanding anything to the contrary contained herein, the User may access and use the Platform under any form whatsoever only for professional purposes and always in strict conformity with the provisions of these Terms of Use, the Engagement Letter and the License Terms.

Deloitte Luxembourg provides the Platform on an as-is basis and in so far as the equipment (including without limitation the hardware, software and operating systems) of the User is and remains suitable for the access and use of the Platform. The User acknowledges and accepts that Deloitte Luxembourg has no control on the underlying technologies of the service provided by third parties (such as a web hosting service or the Service Providers).

Deloitte Luxembourg does not guarantee that the Platform will be available without any interruption or malfunction.

Deloitte Luxembourg reserves the right to develop, modify or suspend any aspect of the Platform including, but not limited to, the content available through the Platform and the User access to it at any time.

Deloitte Luxembourg is not responsible for any adaptation to the User's equipment, including the hardware, software and operating systems needed to allow the User to be able to use the Platform, and shall not bear the costs of any required change or migration.

The User acknowledges that an internet connexion is necessary to operate the Platform, which works best on Internet Explorer 11, Edge, and Chrome.

To the extent permitted by the law, Deloitte Luxembourg does not guarantee the availability, quality, operation or support for data traffic on the networks or lines of Internet service providers or the operation of the web hosting service by the Service Providers.

The Platform is not an archive or storage system. Deloitte Luxembourg is therefore not obliged to store, maintain and/or provide copy of any Deloitte or User Content.

### **4. Acceptable Use of the Platform and the Deloitte Content**

DBoard is aimed for Deloitte Luxembourg to give the User access to the Platform and to use all Data that Deloitte Luxembourg or any affiliate of the Luxembourg member firm of DTTL, makes available in the Platform (hereinafter referred to the "**Deloitte Content**") in accordance with these Terms of Use and in relation with the relevant Engagement Letter.

The Deloitte Content shall be used by the User internally for information purpose only and shall not be used for any other purpose or referred to in any document or made available to any other person than another authorised User for information purposes only without the prior written consent of Deloitte Luxembourg, provided that the User ensures that such third party uses such Deloitte Content internally within the Client Group's entities and for information purposes only.

The User must not use the Platform for any unlawful or fraudulent purposes. The User must not misuse the Platform by introducing viruses, Trojans or other material which is malicious or technologically harmful.

In particular, each User agrees to refrain from performing the following actions:

1. Post, distribute, or otherwise make available, transmit or modify any data, message, text, computer file, or other material that infringes any right of a third party and/or any national or international law, rule, or regulation, including but not limited to:

- a. copyright, trademark, patent, or other proprietary rights;
  - b. right of privacy or publicity, data protection;
  - c. any confidentiality or professional secrecy obligation.
2. Post, distribute, or otherwise make available, transmit or modify any software or other computer files that contain a virus or other harmful component.
  3. Post, distribute, or otherwise make available, transmit or modify any pornographic and illegal material.
  4. Publish or transmit any unlawful, harmful, threatening, abusive, harassing, defamatory, misleading, offensive, indecent or racially or ethnically derogatory content, or any content expressing hate towards any person or groups of persons due to race, religion, colour, creed, national or ethnical origin or sexual orientation.

Using the Platform does not give the User any interest, right or ownership of any intellectual property rights in the Platform, any software, software application or the Deloitte Content the User has access to.

The Deloitte Content in the Platform is up-to-date at the date it is posted in the Platform. Deloitte Luxembourg has no responsibility to nor will consider the impact of any events or circumstances, such as changes in the relevant legislation (including case law and administrative standpoints) or in the interpretation thereof which may occur or come to light after the date at which the Deloitte Content has been posted in the Platform. The Deloitte Content in the Platform shall be updated by Deloitte Luxembourg on a best effort basis and should therefore not be used as a sole basis for any decision or action that may affect the Client's finances or business. Before making any decision or taking any action that may affect the Client's finances or business, the the Client should consult the contact person indicated in the related Engagement Letter.

None of the Deloitte entities belonging to the Deloitte Network (as defined in the Terms of Use) are, by means of the Platform, rendering investment advice or financial services. DBoard is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect the User and/or Client's finances or business. Before making any decision or taking any action that may affect the User and/or Client's finances or business, the User and/or Client should consult a qualified professional adviser.

## **5. Use of the uploaded Data**

The User grants to Deloitte Luxembourg an irrevocable, royalty-free, worldwide license to use and copy the User Content for the purpose of providing the relevant Services described in the relevant Engagement Letter and authorises Deloitte Luxembourg to grant the same rights to its employees and the employees of any affiliate of the Luxembourg member firm of DTTL, as well as to service provider(s).

Deloitte Luxembourg reserves the right to modify, update, add or delete at any time and at its sole discretion all or part of the Data. We reserve the rights to remove or replace any uploaded files of the User Content that are unlawful, that may compromise the security of the servers, that are using excessive bandwidth when they are violating the Terms of Use, or when deemed necessary without prior notice.

## **6. User' and Client's warranties and obligations**

The User hereby acknowledges and agrees that:

1. The User (or the entity employing him/her) has all necessary rights in and to the Data it provides, as amended by the User from time to time ("**User Content**"), to the extent that the Platform provides the User with an opportunity to store, exchange and modify any User Content available in the Platform.
2. The User remains exclusively responsible for all User Content and all materials uploaded, transmitted or modified through its account.
3. The entity by which the User is employed will retain all ownership rights in any User Content it provides, unless otherwise agreed between such entity and the Client.
4. The User is aware of and accepts the related risks of the Internet, and agrees to protect itself against the effect of computer piracy by adopting a suitable and secure computer configuration, including without limitation, a firewall and regularly updated antivirus software.

5. The User may not authorize any third party to access or use the Platform on its behalf.
6. The User may not assign its license to the Platform, in any format to any third party without the prior and formal consent of Deloitte Luxembourg.
7. The User shall use the Platform in accordance with any applicable laws.
8. In case the User receives an electronic message or information automatically generated by the Platform for which he User is not the intended recipient, the User must delete this message or information. The User is hereby notified that any disclosure, copying, or distribution of such message or information, or the taking of any action based on it, is strictly prohibited.
9. The User shall immediately stop using his/her account if he/she is no longer authorised to access and use the Platform on behalf of the Client.
10. The User shall hold harmless and unconditionally indemnify Deloitte Luxembourg, its directors, officers, agents, employees and its business partners to the full extent of liability, loss, cost, claim, damage or expense including – but not limited to – reasonable attorney’s fees for the defence of all liabilities, costs, claims, damages and expenses claimed by any third parties arising out of, as a result of, or in connection with a breach by the User of these Terms of Use.

Notwithstanding the above, the Client is liable for:

1. any act which may adversely affect or impede the ability of the Platform to function properly, including without limitation, overloading the bandwidth or transmitting on, or through, the Platform any element that could contain a bug, a virus, Trojan horse, logic bomb or any element liable to damage, intercept or interfere with all or part of the Platform;
2. ensuring that each User uses the Platform in accordance with the Terms of Use;
3. promptly notifying Deloitte Luxembourg of any change relating to a User and requesting the deactivation of the account of the concerned User;
4. maintaining the confidentiality of the User ID and password, and is fully responsible for all activities that occur under a User ID or password exclusively attributed to a User. Any connections or communications established using the identification data and password of the User shall be deemed to have been executed by the User. The concerned User and the Client undertake to assume responsibility for any consequences of a non-compliant or unauthorized use of the Platform;

In addition, the Client shall hold harmless and unconditionally indemnify Deloitte Luxembourg, its directors, officers, agents, employees and its business partners to the full extent of liability, loss, cost, claim, damage or expense including – but not limited to – reasonable attorney’s fees for the defence of all liabilities, costs, claims, damages and expenses claimed by any third parties arising out of, as a result of, or in connection with an action, omission or breach by any User of these Terms of Use and/or any claimed infringement on Intellectual Property Rights of a third party introduced against Deloitte Luxembourg regarding the User Content;

We reserve the right to claim for damages in the event of any unauthorised access to the Platform occurs due to any fault of any of the Users.

## **7. Deactivation of a User account**

The Client agrees to immediately notify Deloitte Luxembourg of:

- i. any unauthorized, fraudulent use, accidental disclosure that it is aware of, of a User ID or password by any person, whether such person is a User or not, or any other breach of security or confidentiality, or
- ii. any change relating to a User.

In such event, Deloitte Luxembourg shall suspend the access of the User(s) to the Platform until the deactivation and/or cancellation of the User’s registration information and the attribution of new registration information to the User(s) when applicable.

Deloitte Luxembourg shall not be liable for any direct or indirect damages arising from the use of the deactivated and/or cancelled User's registration information prior to the expiry of 16 hours (occurring during business hours, meaning between 8:00 and 17:00 Monday to Friday, Luxembourg time) from the date and hours of receipt of the Client's notification in this respect.

Deloitte Luxembourg will not be held liable for any loss or damage arising from any unauthorized use of the Client / User account. No compensation may be claimed from Deloitte Luxembourg further to the suspension of the access to the Platform as per this paragraph or further to the direct or indirect consequences (such as a loss of opportunity, of business, of revenue or profit).

## **8. Disclaimer**

We disclaim all warranties, whether express or implied, including the warranties that the Platform, Deloitte Content and Data are free of defects, virus free, and able to operate on an uninterrupted basis, that they will meet the User/ Client requirements, or that errors will be corrected, and the implied warranties that the Platform, Deloitte Content and Content are of satisfactory quality, accurate, fit for a particular purpose or need, or non-infringing, as well as warranties of merchantability, title, compatibility and security unless such implied warranties are legally incapable of exclusion.

## **9. Limitation of Liability**

Only the User is responsible for the content, completeness and assurance of any User Content sent through the Platform. Deloitte Luxembourg declines any responsibility and liability for the Data or Deloitte Content stored or modified by the Users on the Platform.

Deloitte Luxembourg, its directors, managers, its employees, subcontractors and agents shall not incur any liability whatsoever in connection with the access to and the use of the Platform under these Terms of Use, including any liability for direct or indirect damages, loss of profits, loss of revenue, loss of goodwill, loss of any software or data, loss of opportunity, loss of use of computer equipment or for any consequential or special loss.

In particular, we take no responsibility for damages and non-performance caused by unforeseeable, insurmountable, or unavoidable events including without limitation: case of *force majeure*, strike or labour dispute, war or other violence, fire or other casualty, or any law, order or requirement of any governmental agency or authority.

The use of the Platform is made at each User own risk. Accordingly, Deloitte Luxembourg will not be liable for any loss or damage caused by viruses or any other technologically harmful material that may infect the User's computer equipment, computer programs, data or other proprietary materials due to its use of the Platform or to its downloading of any material posted on the Platform, or on any website linked to them.

Deloitte Luxembourg does not guarantee and is not liable for the completeness or accuracy of any Deloitte Content stored on the Platform after the date the Deloitte Content has been posted in the Platform, or of any Deloitte Content that is computer-generated by the Platform, including without limitation Deloitte Content which may include errors and transmission or transcription mistakes. Deloitte Luxembourg is not liable in case User Content or Deloitte Content is not properly uploaded on the Platform due to a technical issue. In case of any doubt, Client shall contact the engagement team for review and validation of the Deloitte Content.

Deloitte Luxembourg does not have the obligation to systematically verify the User Content but reserves the right, at its discretion, to review any materials that are suspected to be in breach of the present Terms of Use, remove such Content, disable or remove the accounts of a User who infringes the intellectual property rights of third parties and/or may expose Deloitte Luxembourg to civil or criminal liability.

To the maximum extent permitted by applicable law, Deloitte Luxembourg specifically disclaims liability for any errors, inaccuracies and omissions on the Platform and for any loss or damage resulting from its use, whether caused by negligence or otherwise.

Deloitte Luxembourg does not exclude or limit its liability resulting from gross negligence or wilful misconduct; or for death or personal injury resulting from its negligence, fraud or any other liability which may not be excluded or limited under applicable law.

The above disclaimers and limitations of liability shall be applicable not only to Deloitte Luxembourg but also to each other entity within the Deloitte Network.

The Client expressly acknowledges and agrees that Deloitte Luxembourg will be its exclusive contact for any question pertaining to the Terms of Use. The Client shall refrain from communicating instructions or soliciting Deloitte Luxembourg's service provider(s).

## **10. No professional relationship**

No professional relationship of any nature is created solely by the use of the Platform between any User and/or the company for which he/she works on the one hand and Deloitte Luxembourg and any affiliate of DTTL on the other hand.

## **11. Amendments and Temporary Suspension**

We reserve the right to change all or part of the Platform such as its format, content as well as the conditions for supply of the Platform at our sole discretion at any time without notice, to the extent that such changes do not jeopardize the access to the Platform. The User should refresh its browser at each visit of the Platform to ensure that the User accesses the most up-to-date version and any information contained therein.

We may *inter alia* change the technical conditions of access to the Platform in order to allow the User to benefit from technological advances or for security purposes. Such changes may result in the obligation for the User to update its equipment such as the software, hardware and operating systems. Such updates shall be made by the User at its own cost.

Access to the Platform may be suspended with prior reasonable notice, in case of:

- a request of a competent authoritative legal, supervisory or administrative body;
- definitive condemnation of a User by a competent court as a result of access to or use of the Platform;
- force majeure;
- Suspension, rupture of the access to the Platform due to the reasons imputable to Service Provider;
- Reasonable suspicion of Deloitte Luxembourg that a User is acting in an illicit manner or any manner that could harm Deloitte Luxembourg, its employees or a third party;
- This action is necessary for the purposes of preserving the security of the Data or the maintenance of the Platform.

No compensation may be claimed from Deloitte Luxembourg further to the suspension of access to the Platform as per this paragraph or further to the direct or indirect consequences (such as a loss of opportunity, of business, of revenue or profit).

## **12. Privacy Statement**

Deloitte Luxembourg has established a Privacy Statement to explain to the User how his/her information is collected and used which shall form an integral part of these Terms of Use. Each User shall have to accept the Privacy Statement to be allowed to access and use the Platform (available on [www.dboard.lu](http://www.dboard.lu)).

## **13. Consent to electronic communications and solicitation**

By registering with the Platform, each User agrees that Deloitte Luxembourg and its service provider(s) may send communications or data regarding their services, including but not limited to (i) notices about its use of the Platform, including any notices concerning violations of use, (ii) updates, and (iii) promotional information and materials regarding Deloitte Luxembourg's products and services, via electronic mail. We give the User the opportunity to opt-out of receiving electronic mail from us by following the opt-out instructions provided in the message.

## **14. Trademark**

"Deloitte", "Touche", "Tohmatsu", "Deloitte Touche Tohmatsu", "Deloitte & Touche" names, the Deloitte logo, "DBoard" and certain product names mentioned in the Platform are registered or unregistered trademarks of one or more entities of the Deloitte Network and these Terms of Use do not grant the User any right to use any such trademarks.

The Platform (all its elements including the layout) is protected by intellectual property laws, in particular the law of 18 April 2001 on copyright, related rights and databases, as amended from time to time, as well as the Benelux convention on intellectual property. All rights of reproduction in whatever form and by whatever means, are reserved.

The User may consult, download and print (when feasible) the documents and information available on the Platform only for the purpose for which the Platform has been subscribed to by the Client in the related Engagement Letter(s) and only provided that no documents and information are modified, mention the name of Deloitte, or are disseminated by the User outside the scope of the Engagement Letter(s) to third parties (other than another entity belonging to the Client Group), except if otherwise provided for in the Engagement Letter.

## **15. Termination**

Each User may terminate its account upon notice to Deloitte Luxembourg at any time. However, without prejudice of the above provisions as well as the provisions of Luxembourg law, in the event of breach of these Terms of Use, Deloitte Luxembourg may terminate without notice the use of the Platform by deactivating the Users' passwords and accounts without incurring any liability.

In the case of termination for any reason of the right of the User to access and use the Platform, Deloitte Luxembourg shall have no obligation to maintain any Data stored in the User account or to forward any Data to the User and/or to the Client. Deloitte Luxembourg shall have the right to destroy any Data that belong or pertain to the User(s) and/or the Client which are still held on the Platform two (2) months after the effective termination date of the User account. Deloitte shall not accept any liability resulting from the direct or indirect consequences of the destruction of the Data in accordance with the present article.

If the case of an event of "force majeure" which lasts for more than three months, Deloitte Luxembourg may terminate accounts or the use of the Platform and any Data or Content may be deleted.

Deloitte Luxembourg shall be entitled to retain a copy of User Content required to be retained so that Deloitte Luxembourg is in compliance with its statutory, regulatory or professional conduct obligations or for record keeping purposes.

## **16. General provisions**

If any part of these Terms of Use is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid enforceable provision that most closely matches the intent of the original provision, and the remainder of the Terms of Use shall continue in full effect.

A printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. All rights not expressly granted herein are reserved.

Certain links on the Platform lead to resources maintained by third parties over whom Deloitte Luxembourg has no control, including, without limitation, websites or hosting services maintained by other entities within the Deloitte Network. We strongly recommend that the User should consult the terms of use of those resources when accessing them, as they may substantially differ from the present Terms of Use. Without limiting any of the foregoing, Deloitte Luxembourg makes no express or implied representations or warranties whatsoever regarding such resources, websites and hosting services.

The failure of Deloitte Luxembourg to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision. The section titles in these Terms of Use are for convenience only and have no legal or contractual effect.

## **17. Governing Law and Submission to Jurisdiction**

These Terms of Use shall be governed by and construed in accordance with the laws of Grand Duchy of Luxembourg and shall be subject to the exclusive jurisdiction of the Courts of Luxembourg-City. Any claim related to the Platform must be brought within one year after the cause of action has accrued under applicable law.

## **18. Contacts**

If you have any questions regarding these Terms of Use or do not feel that your concerns have been addressed, please direct your questions to webmaster services using [ludboardsupport@deloitte.lu](mailto:ludboardsupport@deloitte.lu)