

Terms and Conditions

Users

This page (together with the documents referred to on it) sets out the terms on which you ("the Customer") may make use of our website warboard.co.uk ("the Site") whether as a guest or as a registered user. Please read these terms of use (hereinafter referred to as the "Agreement") carefully before you use our site. By using our site, you indicate that you accept these terms of use and that you agree to abide by them. If you do not agree to these terms of use, you must stop using our site immediately.

Information about us

Our site is owned by Space Architecture (Europe) Limited ("Space") a company registered in England and Wales with registration number 4674960. Our registered office address is Spaceworks, Benton Park Road, Newcastle upon Tyne, NE7 7LX. Our VAT Number is 848107812

Introduction

Space has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of collaborating about clash result data.

The Customer wishes to use Space's service in its business operations.

Space has agreed to provide and the Customer has agreed to take and pay for Space's service subject to the Agreement set out below.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
"Customer Content"	all content which originates from the Customer including text, images and trade marks provided by the Customer;
"Data"	the data provided to the Customer as a result of the Customer's use of the Services;
"Effective Date"	the date from which the Customer is allowed to access the Services;
"Initial Subscription Term"	4 weeks from the Effective Date;

"Intellectual Property Rights"	all computer software, trade names, right in designs, copyrights, moral rights, trade and service marks, goodwill and rights to prevent passing off, know-how, and any other rights and in all cases whether or not registered and including registrations and applications for registrations of any of these and rights to apply for the same;
"Platform"	the Supplier's infrastructure and cloud computing platform as described on the Site;
"Services"	the subscription services provided by Space to the Customer under this Agreement via the Site or any other website notified to the Customer by Space from time to time;
"Site"	warboard.co.uk;
"Software"	the online software applications and tools provided by Space as part of the Services;
"Subscription Fees"	has the meaning given in clause 10.1 (being the Initial Subscription Term together with any subsequent Renewal Periods);
"Subscription Term"	the subscription fees payable by the Customer to Space, as set out on the Site;
"Virus"	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2. SERVICES

2.1 Space shall, during the Subscription Term, provide the Services and access to the Platform to the Customer on and subject to the terms of this Agreement.

2.2 Subject to the Customer's payment of the Subscription Fees, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, Space hereby grants to

the Customer a non-exclusive, non-transferable licence to use the Services during the Subscription Term solely for the Customer's internal business operations.

2.3 In order to access some features of the Platform or other elements of the Service, the Customer will have to create an account. When creating the account, the Customer must provide accurate and complete information. The Customer warrants that he keeps his account password secure and confidential.

2.4 The Customer must notify Space immediately of any breach of security or unauthorised use of his account that he becomes aware of.

2.5 The Customer agrees that he will be solely responsible for all activity that occurs under his account.

2.6 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

2.6.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

2.6.2 facilitates illegal activity;

2.6.3 depicts sexually explicit images;

2.6.4 promotes unlawful violence;

2.6.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

2.6.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and Space reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.7 The Customer shall not:

2.7.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(a) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or

(b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

2.7.2 access all or any part of the Services in order to build a product or service which competes with the Services; or

2.7.3 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party, or

2.7.4 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2.

2.8 If the Customer is in breach of clause 2, the Supplier may (but shall not be obliged to) disable the Customer's account for so long as the relevant breach remains unremedied, without liability or prejudice to its other rights and without prior notice to the Customer.

3. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Space makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Space. Space recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Space does not endorse or approve any third-party website nor the content of any of the thirdparty website made available via the Services.

4. SPACE'S OBLIGATIONS

4.1 Space undertakes that the Services will be performed with reasonable skill and care.

4.2 The undertaking at clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Space's instructions, or modification or alteration of the Services by any party other than Space or Space's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Space:

4.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

4.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

4.3 This Agreement shall not prevent Space from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

4.4 Space warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

5.1.1 provide Space with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be required by Space;

in order to provide the Services, security access information and configuration services;

5.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;

5.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;

5.1.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for Space, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

5.1.5 ensure that its network and systems comply with the relevant specifications provided by Space from time to time; and

5.1.6 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Space's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

6. CHARGES AND PAYMENT

6.1 The Customer shall pay the Subscription Fees to Space in accordance with this clause 6.

6.2 The Customer shall on the Effective Date provide to Space valid, up-to-date and complete credit card details and the Customer hereby authorises Space to bill such credit card:

6.2.1 on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

6.2.2 on each four week anniversary of the Effective Date.

6.3 If Space has not received payment on the due date, and without prejudice to any other rights and remedies of Space:

6.3.1 Space may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Space shall be under no obligation to provide any or all of the Services while the Subscription Fees concerned remain unpaid; and

6.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to [3]% over the then current base lending rate of Lloyds Bank plc from time to

time, commencing on the due date and continuing until fully paid, whether before or after judgment.

6.4 All amounts and fees stated or referred to in this Agreement:

6.4.1 shall be payable in [pounds sterling];

6.4.2 are non-cancellable and non-refundable;

6.4.3 are exclusive of value added tax, which shall be added to Space's invoice(s) at the appropriate rate.

6.5 Space shall be entitled to increase the Subscription Fees and/or the excess storage fees payable pursuant to clause 6.5 at any time upon [30] days' prior notice to the Customer.

7. PROPRIETARY RIGHTS

7.1 The Customer acknowledges and agrees that Space and/or its licensors own all Intellectual Property Rights in the Services. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.

7.2 Space shall own all right, title and interest in and to all of the Data and shall grant to the Customer a non-exclusive, non-transferable licence to use the Data during the Subscription Term solely for the Customer's internal business operations.

7.3 The Customer shall own all Intellectual Property Rights in and to all of the Customer Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Content.

7.4 The Customer hereby grants to the Supplier a non-exclusive, non-transferable right during the Subscription Term to carry out any acts that would otherwise be restricted by any of the Customer's Intellectual Property Rights in the Customer Content for the sole purpose of enabling the Supplier to provide the Services to the Customer in accordance with this Agreement.

8. INDEMNITY

8.1 The Customer shall defend, indemnify and hold harmless Space against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services or any claim that the Customer Content infringes the Intellectual Property Rights of any third party.

8.2 Space shall defend the Customer against any claim that the Services infringe any copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

8.2.1 Space is given prompt notice of any such claim;

8.2.2 the Customer provides reasonable co-operation to Space in the defence and settlement of such claim, at Space's expense; and

8.2.3 Space is given sole authority to defend or settle the claim.

8.3 In the defence or settlement of any claim, Space may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on [2] Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

8.4 In no event shall Space, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

8.4.1 a modification of the Services by anyone other than Space; or

8.4.2 the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Space; or

8.4.3 the Customer's use of the Services after notice of the alleged or actual infringement from Space or any appropriate authority.

8.5 The foregoing and clause 9.4.2 states the Customer's sole and exclusive rights and remedies, and Space's (including Space's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

9. LIMITATION OF LIABILITY

9.1 This clause 9 sets out the entire financial liability of Space (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

9.1.1 arising under or in connection with this Agreement;

9.1.2 in respect of any use made by the Customer of the Services or any part of them; and

9.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

9.2 Except as expressly and specifically provided in this Agreement:

9.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. Space shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Space by the Customer in connection with the Services, or any actions taken by Space at the Customer's direction;

9.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

9.2.3 the Services are provided to the Customer on an "as is" basis.

9.3 Nothing in this Agreement excludes the liability of Space:

9.3.1 for death or personal injury caused by Space's negligence; or

9.3.2 for fraud or fraudulent misrepresentation.

9.4 Subject to clause 9.29.2 and clause 9.3:

9.4.1 Space shall not be liable whether in tort (including for [negligence or] breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any

special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

9.4.2 Space's total aggregate liability in contract (including in respect of the indemnity at clause 8.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid by the Customer during the [12] months immediately preceding the date on which the claim arose, or if the duration of the Agreement has been less than 12 months, such shorter period, as applicable.

10. TERM AND TERMINATION

10.1 This Agreement shall, unless otherwise terminated as provided in this clause 10, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 4 weeks (each a "**Renewal Period**"), unless:

10.1.1 either party notifies the other party of termination, in writing, at least [7 days] before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

10.1.2 otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**".

10.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

10.2.1 [the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than [28] days after being notified in writing to make such payment;]

10.2.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [3] days after being notified in writing to do so;

10.2.3 [the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;]

- 10.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
- 10.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 10.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 10.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 10.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 10.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 10.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;
- 10.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2.4 to clause 10.2.10 (inclusive);
- 10.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; [or]

10.3 On termination of this Agreement for any reason:

- 10.3.1 all licences granted under this Agreement shall immediately terminate;
- 10.3.2 Space may destroy or otherwise dispose of any of the Data in its possession; and
- 10.3.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

11. FORCE MAJEURE

Space shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control,

including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Space or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

12. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. SEVERANCE

15.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

16. ENTIRE AGREEMENT

16.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

16.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

17. ASSIGNMENT

17.1 The Customer shall not, without the prior written consent of Space, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

17.2 Space may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

18. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19. THIRD PARTY RIGHTS

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

20. NOTICES

20.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.

20.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

21. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

22. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).