

**Amity Web Solutions Terms of Business**  
Version 1.2, 16<sup>th</sup> July 2010

**1. Interpretation**

- 1.1. Unless the context otherwise admits words used in these Terms importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa.
- 1.2. Where the context requires references to a person in these Terms shall include bodies corporate, unincorporated associations and partnerships.
- 1.3. Reference to any statutory provisions in these Terms shall include any statutory provisions, which amends or replaces it.

**2. Outline of Agreement**

- 2.1. These Terms and Conditions are agreed between the Parties for the provision of services by Amity Web Solutions Ltd to the Client relating to any of the following:
  - 2.1.1. the development or construction of a website or sub-elements of a website utilising any form of template, semi-customised functionality or Open Source product ("a Project");
  - 2.1.2. the development of a software, a website or sub-element of a website with functionality and features bespoke to Client requirements ("a Software Solution");
  - 2.1.3. the provision of consultancy and /or marketing services relating to websites ("Consultancy Services"); and
  - 2.1.4. other e-commerce related services including without limitation, e-learning, database applications and intranets ("Other Services") which shall be collectively and severally known as "Website Services".
- 2.2. The Parties have agreed the detailed specifications for the Website Services as set out or more particularly described in the Schedule to this Agreement ("the Agreed Specification") or in accordance with the Service Description
- 2.3. These Terms, the Agreed Specification and the Quotation Document shall be incorporated into this Agreement.

**3. The Agreed Specification or Service Description**

- 3.1. Any amendments proposed to the Agreed Specification or Service Description must be made in writing and delivered to the other party. Either party is entitled to request a meeting to discuss such amendments.
- 3.2. If such proposed amendments incur additional expense Amity Web Solutions Ltd is entitled to require further payment to cover such expense.

**4. Payment**

- 4.1. The Client will pay the Fees as set out on the quotation document (which will take the form of an email and/or quotation document) and in accordance with the provisions of this Agreement. Amity Web Solutions Ltd will invoice the Client and the Client will pay the invoice according to the terms of payment detailed on the invoice.
- 4.2. Amity Web Solutions Ltd may require payment on the completion of development milestones where the Website Services involve considerable development time to implement. Such development milestones and the amount of payment for the completion of each milestone to be included within the Agreed Specification, or if not specified in the Agreed Specification as may be separately agreed in writing by the parties prior to the commencement of the Project.
- 4.3. Certain Website Services provided to the Client may be subject to periodic payments by the Client for a minimum contract period. The Client acknowledges that such minimum contract periods are reasonable due to the nature of the services to which this applies.

**5. Expenses**

- 5.1. Amity Web Solutions Ltd reserves the right to charge the Client for expenses incurred by Amity Web Solutions Ltd in the provision of the Website Services, including but not limited to travel to the offices of the Client where required, the purchase of computer consumables required for Project and such other reasonable expenses directly related to the Project.
- 5.2. Amity Web Solutions Ltd will inform the Client in writing in advance if any expenses are to be incurred during the Project.

**6. Client Undertakings and Warranties**

- 6.1. The Client undertakes to provide Amity Web Solutions Ltd with all information and assistance reasonably required for Amity Web Solutions Ltd to provide the Website Services including website content and materials as set out in the Agreed Specification in the format to be agreed with Amity Web Solutions Ltd.
- 6.2. The Client warrants that he is either the owner of all copyright and any other proprietary rights in any website content or materials provided to Amity Web Solutions Ltd or undertakes to ensure that he has the benefit of an appropriate licence,

clearance or consents where required for such content and materials to be incorporated into the Website Services by Amity Web Solutions Ltd.

- 6.3. The Client confirms that to the best of its knowledge and belief that the content and materials supplied by the Client to Amity Web Solutions Ltd for the provision of the Website Services are not blasphemous, defamatory or obscene and do not breach any applicable law or regulation.

- 6.4. The Client undertakes that whilst Amity Web Solutions Ltd is providing the Website Services he will comply with all relevant statutes, byelaws and other legal requirements and shall obtain and maintain any required registrations or certifications for the proper operation of his website.

**7. Termination for a cause**

- 7.1. This Agreement may be terminated on written notice to the other in the event that:
  - 7.1.1. either party commits a serious, grave or material breach or persistent breaches of this Agreement including non-performance, default or neglect of its duties, responsibilities and obligations under this Agreement and such breach remains un-remedied for a period of 30 days from written notice given by the other party specifying the breach and the remedy required;
  - 7.1.2. either party is unable to pay or has no reasonable prospects of paying their debts the amount or aggregate amount of which equals or exceeds the bankruptcy level within the meaning of the Insolvency Act 1986;
  - 7.1.3. either being a company becomes subject to an administration order or goes into liquidation, (other than for the purpose of amalgamation or reconstruction), or has a receiver appointed to administer any of its property or assets, or ceases or threatens to cease to carry on business, or makes any voluntary agreement or enters into a compromise for the benefit of its creditors;
  - 7.1.4. in Amity Web Solutions Ltd's sole opinion, the Client is using the Website Services in a way likely to damage or bring Amity Web Solutions Ltd into disrepute and the Client does not immediately cease such use upon Amity Web Solutions Ltd giving written notice to this effect.

- 7.2. On the termination of this agreement in accordance with the terms of this Agreement the Client shall only be entitled to retain the benefit of any Website Services already paid for and shall return to Amity Web Solutions Ltd any test examples or materials not already paid for and the Client shall not retain any copies of the returned website materials or parts thereof.

- 7.3. Any termination of this Agreement shall be without prejudice to any rights accrued in favour of either party in respect of any breach committed prior to the date of (or giving rise to) such termination and to those provisions of this Agreement which are by their construction intended to survive such termination.

**8. Cancellation**

- 8.1. Should the Client cancel any Website Service after the quotation document has been accepted the Client, then:
  - 8.1.1. where the Website Services are not subject to any minimum contract period, Amity Web Solutions Ltd shall be permitted to retain any payments made by the Client prior to cancellation and shall be entitled to recover from the Client a cancellation charge of 50% of any outstanding balance of the agreed Fee; or
  - 8.1.2. where the Website Services are subject to a minimum contract period, the Client shall pay the sum equivalent to the balance of the total fees payable for the minimum contract period before this Agreement may be treated as cancelled.

**9. Intellectual Property Rights ("IPRs")**

- 9.1. All IPRs, including without limitation copyright, in any content or materials provided by the Client to Amity Web Solutions Ltd which are re-produced in the course of providing the Website Services shall belong, so far as the law allows, to the Client.
- 9.2. The Client grants to Amity Web Solutions Ltd a non-exclusive, revocable, royalty-free licence to use and reproduce and publish as necessary, its name, logos, trademarks or devices for the purposes of providing the Website Services.
- 9.3. Subject to Term 9.1 above and excluding Open Source software, all IPRs in the design, layout, non-Client supplied content or materials as well as underlying code providing website functionality in any website or component part of a website produced under this Agreement shall remain the property of Amity Web Solutions Ltd.
- 9.4. All Open Source software provided by Amity Web Solutions Ltd. are licensed by their respective licenses
- 9.5. On condition that the Fees provided for in this Agreement are paid by the Client and subject to Term 23.2 below, Amity Web Solutions Ltd grants to the Client, a non-exclusive, royalty free

- licence to use those IPRs reserved in Term 9.3 above. Such licence shall not permit the Client to alter the underlying coding within the Website Services or any other coding carried out as part of the Website Services with a view to creating a separate web site or licensing the Project web site to a third party without the prior written consent of Amity Web Solutions Ltd.
- 9.6. In the case of a Software Solution Project such licence provided for in Term 9.4 shall not expire in time nor be subject to any website hosting requirements.
  - 9.7. In the case of any other Project, unless specifically agreed to the contrary, the licence in Term 9.4 shall be subject to Amity Web Solutions hosting terms set out below and payment by the Client of any fees associated with such hosting.
  - 9.8. The Client undertakes not to materially alter or diminish the design and function of the Software Solution or Project web site without the prior written consent of Amity Web Solutions Ltd.
  - 9.9. Neither party shall make any claim to the other party's trademarks or register or cause to be registered or apply for a materially similar trademark or imitation of a trademark during or after the expiry of this Agreement.
  - 9.10. Neither party shall register or cause to be registered any company name materially similar to that of the other party.
  - 9.11. Neither party shall register or cause to be registered any domain name materially similar to that of the other party except where the Client specifically requests that Amity Web Solutions Ltd register domain names similar to that of the Client's on behalf of the Client in order to prevent their registration and use by third parties. In this case all reasonable fees and expenses incurred in registration of such domain names shall be payable by the Client as part of the Fees. On payment of the Fees and by the Client Amity Web Solutions Ltd undertakes to transfer all registration details, include but not limited to technical and administrative details and title to the registered domain names to the Client.

#### **10. Confidentiality**

- 10.1. Both parties shall keep confidential the specific terms of this Agreement and the Website Services and not disclose them save to such employees or contractors as need to know the relevant information for the purposes of performing their duties in accordance with this Agreement. The parties agree that all information marked "Confidential", or where not marked it is reasonable to judge such information as confidential, shall not be disclosed at any time during the provision of the Website Services or for a period of 12 months following their completion, except where such disclosure is required by law or by order of a court in the jurisdiction of England. The parties further agree that all information marked as a "Trade Secret" and reasonably judged to constitute a trade secret shall not be disclosed at any time during or after the expiry of this Agreement, except where such disclosure is required by law or by order of a court of a court of competent jurisdiction. Confidential information and Trade Secrets shall consist of, but not necessarily be limited to: technical, commercial, financial, operational, marketing or promotional information or data.

#### **11. Technical Support**

- 11.1. The Client shall have the benefit of, via the systems utilised by Amity Web Solutions Ltd for the provision of the Website Services the following technical support during the course of this Agreement:
  - 11.1.1. data back-up
  - 11.1.2. appropriate hardware and bandwidth to ensure acceptable page regeneration times; and;
  - 11.1.3. a telephone and support system help-desk service between 9.00am and 5.00pm, Monday to Friday, excluding holidays.

#### **12. Limitation of Liability and Indemnity**

- 12.1. Amity Web Solutions Ltd shall not be liable to the Client under this Agreement in contract, tort, or otherwise (including negligence), pre-contract or by way of other representations (other than fraudulent misrepresentations) or otherwise for any loss of business, contracts, profits or anticipated savings or for any indirect or consequential loss whatsoever.
- 12.2. Subject to the Term 12.1, Amity Web Solutions Ltd's liability to the Client under any indemnity provided in this Agreement or in damages together with any costs shall be limited to the amount actually paid by the Client in respect of the particular Website Service in respect of which it is claimed there is a breach by Amity Web Solutions Ltd.
- 12.3. The Client agrees to indemnify Amity Web Solutions Ltd against any claims, damages, losses, costs and expenses which Amity Web Solutions Ltd may sustain or incur in relation to any claim by a third party that the content and materials which the Client has provided to Amity Web Solutions Ltd constitutes a breach of any applicable law or regulation

including without limitation such laws relating to sale of goods, obscenity, state security or defamation in any jurisdiction where such content or material may be reproduced or is an infringement of any intellectual property rights. The Client acknowledges that it is his responsibility to ensure that the website in connection with which the Website Services are provided does not infringe the laws of any jurisdiction within which it is actively promoted.

- 12.4. Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.

#### **13. Assignment**

- 13.1. Neither party may assign or otherwise transfer this Agreement or any rights, duties and obligations hereunder without the prior consent in writing of the other party.

#### **14. Force Majeure**

- 14.1. Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstances beyond its reasonable control, including but not limited to acts of god, war, civil disorder or industrial dispute. If such delay or failure continues for a period of at least fourteen days, the party not subject to the force majeure shall be entitled to terminate this Agreement by notice in writing to the other.

#### **15. Joint Venture or Partnership**

- 15.1. Nothing in this Agreement shall be construed as creating a partnership, joint venture or an agency relationship between the parties and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party.

#### **16. Non-Solicitation**

- 16.1. The Client undertakes that for the duration that Amity Web Solutions Ltd is providing Website Services to the Client and for a period of six months thereafter that he shall not directly or indirectly solicit or induce any of Amity Web Solutions Ltd's employees to leave the employment of Amity Web Solutions Ltd whether to work on a freelance or consultancy basis or to be directly employed by the Client.

#### **17. Notices**

- 17.1. Any notice given by either of the parties under this Agreement shall be served on the other party and addressed to that party's signatory by email, personal delivery, pre-paid recorded delivery, first-class post, or facsimile transmission to the receiving party as set out on the quotation document
- 17.2. Any such notice shall be deemed to be effectively served as follows:
  - 17.2.1. in the case of service by pre-paid recorded delivery or first-class post 48 hours after posting.
  - 17.2.2. in the case of service by email, or facsimile transmission on the next working day.

#### **18. General**

- 18.1. Failure by either party to enforce any accrued rights under this Agreement is not to be taken as or deemed to be a waiver of those rights unless the waiving party acknowledges the waiver in writing.
- 18.2. This Agreement and these Conditions shall be read and construed independently of each other. Should any part of this Agreement or these Terms or their paragraphs, sub-paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub-paragraphs and Terms.
- 18.3. No addition to or modification of any of these Terms or any other part of this Agreement shall be binding on the parties unless made by a written instrument and signed by the signatories to this Agreement or their duly authorised representatives.
- 18.4. This Agreement sets out the entire agreement and understanding of the parties and is in substitution of any previous written or oral agreements between the parties.

#### **19. Jurisdiction**

- 19.1. This Agreement shall be interpreted, construed and enforced in accordance with English law. Any dispute arising shall be referred to a single arbitrator for determination in accordance with the Arbitration Act 1996.

### **Website Projects & Software Solutions**

#### **20. Delivery by Client of Content & Materials**

- 20.1. The Client shall deliver all the content and materials required for the Software Solution or Project and in the format requested to Amity Web Solutions Ltd before commencement or according to the provisions of the Agreed Specification.
- 20.2. The Client will notify Amity Web Solutions Ltd in writing (as soon as possible) of any delays to that set out in the Agreed

- Specification in delivering content and materials required for the Software Solution or Project and provide Amity Web Solutions Ltd with a revised timetable for supplying such content and materials.
- 20.3. Amity Web Solutions Ltd will not be responsible for any delays, missed milestones (where specified in the Agreed Specification) or additional expenses incurred due to the late delivery or non-delivery of content and materials by the Client where required by Amity Web Solutions Ltd for the Software Solution or Project.
- 20.4. The Client shall be responsible for retaining its own copies of the Content as provided to Amity Web Solutions Ltd and for insurance against any accidental loss of the Content. Amity Web Solutions Ltd shall in no circumstances be liable for any loss or damage to the Content howsoever caused.
- 21. Credits and Publicity**
- 21.1. The completed Software Solution or Project website produced for the Client will contain a link from it to either:
- 21.1.1. Amity Web Solutions Ltd's homepage by way of a logo or graphic image as supplied by Amity Web Solutions Ltd or alternatively by way of a text hyperlink in the form, "designed by (Consultant's name)"; or
- 21.1.2. a similar link to the homepage of Amity Web Solutions Ltd which if in text hyperlink form shall read "powered by Amity Web Solutions". Such link shall appear at the foot of the Project web site homepage.
- 21.2. Subject to confidentiality provisions above, each party shall be permitted to refer to their working relationship with the other party for press and publicity purposes after receiving the written approval of that other party regarding the content of any such material.
- 22. Delivery**
- 22.1. Amity Web Solutions Ltd may deliver the files containing the Software Solution or Project website to the Client by way of Compact Disc (CD) or such other data storage method as selected by Amity Web Solutions Ltd. Alternatively, Amity Web Solutions Ltd may arrange for temporary hosting of the Software Solution or Project website and facilitate delivery by way of a transfer protocol.
- 22.2. If the Agreed Specification includes hosting of the website or where the client has requested Amity Web Solutions Ltd arrange hosting for the web site, on completion of the project Amity Web Solutions Ltd will arrange for the site to be published and hosted on the fileservers operated on behalf of Amity Web Solutions Ltd. Such hosting shall be provided in accordance with Amity Web Solutions Ltd Hosting Terms, which are set below.
- 23. Project and Software Solution Milestone and Release**
- 23.1. On attaining a milestone as provided for in the Agreed Specification or upon delivery of the completed Project or Software Solution the Client will complete, sign, date and return to Amity Web Solutions Ltd Amity Web Solutions Ltd's standard Project Release form. This shall indicate the Client's acceptance that the milestone has been achieved or, in the case of a final release that the Project or Software Solution, the functionality and design elements are in accordance with the Agreed specification. The Client shall not unreasonably his signature on the Project Release form where the Agreed Specification has been complied with.
- 23.2. The licence granted in Term 9.4 by Amity Web Solutions Ltd to the Client for use of the completed web site is only granted once the Project Release form has been correctly completed and returned to Amity Web Solutions Ltd.
- 23.3. The Client may only use or publish the completed Project or Software Solution web site once full payment of the Fees set out on the quotation document has been made to Amity Web Solutions Ltd and the client confirms project completion to Amity Web Solutions Ltd by way of email, letter or faxmile.
- 23.4. The project completion confirmation will release Amity Web Solutions Ltd from undertaking any further work, save in respect of any limited warranty, under this Agreement unless the quotation document stipulates that further Website Services are to be provided. Such further Website Services shall be supplied in accordance with these Terms.
- 24. General Limited Warranty**
- 24.1. Amity Web Solutions Ltd warrants to the Client that upon delivery the website Project will achieve the level of functionality described in the Agreed Specification. Amity Web Solutions Ltd gives no warranty that the Client's use of the delivered website will be uninterrupted or that its operation will be error free after delivery.

**25. Software Solution Further Warranty**

- 25.1. Amity Web Solutions Ltd warrants to the Client that in the case only of a Software Solution that any errors relating to proper operation or functionality as described in the Agreed Specification discovered within 30 days after delivery will be rectified.

**Consultancy Services**

**26. Third Party Services**

- 26.1. Notwithstanding anything set out in the Agreed Specification regarding the services of any third party such as search engine and web directory providers, Amity Web Solutions Ltd gives no warranty that such third parties will accept a listing of the Client's website or in relation to the performance or operation of such third party's services.
- 26.2. Amity Web Solutions Ltd reserves the right to utilise other third party services in addition to or in substitution of those set out in the Agreed Specification. Where the use of other such alternative services would be of a significant effect to the Consultancy Services being provided to the Client, Amity Web Solutions Ltd shall advise the Client in writing before such alternative services are utilised.

**27. Links**

- 27.1. Amity Web Solutions Ltd gives no warranty in relation to the technical performance or commercial worth of a link to the Client's website from any other website. Amity Web Solutions Ltd does not accept responsibility for the content of any third party website from which there may be a link to the Client website.

**28. "Pay-per-Click" Campaigns**

- 28.1. In addition to the set-up and monthly Fee set out in the quotation document, the Client shall be responsible for paying "click-through" traffic charges direct to the relevant search engine.

**29. Metatags**

- 29.1. In the course of providing the Consultancy Services, Amity Web Solutions Ltd may recommend the use of certain metatag keywords and descriptions ("Metatags") for the purpose of marketing and promoting the Client's website. The Client shall be responsible for approving the relevance of such Metatags and satisfy himself that these Metatags are appropriate to his website and business.
- 29.2. Amity Web Solutions Ltd may refuse to employ a Metatag which in Amity Web Solutions Ltd's opinion may constitute the infringement of any third party's trademark or other IPR.

**30. Web Hosting Terms**

- 30.1. The Client hereby authorises Amity Web Solutions Ltd to provide website hosting services ("Hosting Services") to the client and agrees to pay the Fees for the same.
- 30.2. Amity Web Solutions Ltd shall use all reasonable endeavours to provide the Hosting Services to the Client in accordance with these terms and the service description set out at [www.amitywebsolutions.co.uk/acceptable-use-policy.html](http://www.amitywebsolutions.co.uk/acceptable-use-policy.html).
- 30.3. Amity Web Solutions Ltd reserves the right to make operational changes to the Hosting Services and URLs and to control, direct and establish technical procedures for the use of the Hosting Services and the Client agrees to follow the reasonable instructions and procedures of Amity Web Solutions Ltd with respect to the use of the Hosting Services.
- 30.4. Amity Web Solutions Ltd shall use reasonable endeavours to maintain a 24-hour Internet presence for the Client's website but cannot guarantee continuous, uninterrupted use, especially where Amity Web Solutions Ltd's server providers must carry out routine maintenance, repairs, reconfigurations or upgrades or in circumstances beyond its control, including force majeure. In the event of network downtime, Amity Web Solutions Ltd shall only be liable for up to one month's Hosting fees for the website affected but shall not otherwise be liable for failing to provide the Hosting Services.
- 30.5. The Client shall be responsible for obtaining and maintaining their own compatible computer system, being all such equipment, software and communications lines, including any public lines required by the Client properly to access the Client's website. Amity Web Solutions Ltd has no responsibility for or liability with respect to any equipment belonging to the Client.

**31. Acceptable Use Policy**

- 31.1. The Client agrees to follow and comply with the Amity Web Solutions Ltd Acceptable Use Policy as set out at [www.amitywebsolutions.co.uk/acceptable-use-](http://www.amitywebsolutions.co.uk/acceptable-use-)

[policy.html](#) and that in entering into this Agreement the Client has read the current version of the Acceptable Use Policy. Amity Web Solutions Ltd may amend the Acceptable Use Policy at 10 days notice with such amendments being advised by e-mail.

- 31.2. The benefit of the Service Levels will not apply where the Customer is in breach of any of the terms of this Agreement, including, but not limited to, the payment terms, or if the Client fails to follow the Amity Web Solutions Ltd Acceptable Use Policy.

### **32. Hosting Technology**

- 32.1. The parties hereby agree that this Agreement shall not transfer any proprietary technology utilised in the Hosting Services to the Client and all such rights, title and interest in and to such technology will remain solely with Amity Web Solutions Ltd or its server providers. The Client agrees and acknowledges that it will not at any time directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from Amity Web Solutions Ltd or its server providers.
- 32.2. The Parties hereby agree that Amity Web Solutions Ltd does not monitor or exercise control over the content of the information transmitted over its facilities. Use of the Hosting Services or any information that may be obtained from the Hosting Services is specifically at the Client's own risk. Amity Web Solutions Ltd reserves the right but does not assume the obligation to monitor, intercept and delete any content belonging to the Client or user's of the Client's website for the purposes of ensuring that the Hosting Service's are at all times used for lawful purposes.

- 32.3. The Parties hereby further agree that Amity Web Solutions Ltd and its server providers do not and cannot control the flow of information to or from Amity Web Solutions Ltd's server network and other portions of the Internet. Such flow depends on the performance of Internet services provided or controlled by third parties outside the control of Amity Web Solutions Ltd whose actions or failures may impair or disrupt the Client's connections to the Internet or parts thereof.

- 32.4. The Client agrees that the disclaimers in clauses 32.2 and 32.3 are fair and reasonable and accepts to be bound by the same.

### **33. Content and Use of the Hosting Services**

- 33.1. The Client acknowledges that in the course of providing the Services, Amity Web Solutions Ltd and its server providers will be required to electronically reproduce the Client's Content.

- 33.2. The Hosting Services are provided subject to the condition that the website does not:

- 33.2.1. breach any applicable laws, codes or regulations (including without limitation infringement of copyright and other intellectual property rights);

- 33.2.2. cause defamation;

- 33.2.3. involve theft, fraud, drug-trafficking, money-laundering and/or terrorism;

- 33.2.4. incite violence, sadism, cruelty or racial hatred;

- 33.2.5. facilitate prostitution or paedophilia;

- 33.2.6. contain pornographic, obscene, indecent, abusive, offensive or menacing Content; and

- 33.2.7. create or introduce intentionally or knowingly into the Service any virus, worm, trojan horse, cancelbolt or other destructive or contaminating program or advise any other party how to do so.

- 33.3. At all times the Client shall use the Hosting Services in accordance with all applicable data protection and other laws, licences, international conventions, codes or regulations applicable to the Internet.

- 33.4. The Client shall use an up-to-date virus-scanning program on all material downloaded from the Hosting Services and Amity Web Solutions Ltd shall have no liability whatsoever to the Client for any loss or damage caused by the failure of the Client to maintain and apply up-to-date virus scanning software.

- 33.5. The Client shall not interfere with or breach the privacy of other users of the Hosting Services or the Internet in general, including sending unsolicited e-mails ("spamming") nor to collect or transfer personal data on individuals without their consent.

- 33.6. The client shall maintain the confidentiality of its login names, passwords and other confidential information relating to the Client's access to the Services (for the avoidance of doubt Amity Web Solutions Ltd shall not be responsible for maintaining such confidentiality).

- 33.7. The Client shall not tamper with routing and domain name services in order to "spoof" other computer networks and users.

- 33.8. The Client shall not use the Hosting Services so as to cause a breach of any agreements between Amity Web Solutions Ltd

and any third parties or unreasonably interfere with other Amity Web Solutions Ltd clients' use of the Hosting Services.

### **34. Limitation of Liability for Hosting**

- 34.1. Amity Web Solutions Ltd shall have no responsibility for and shall accept no liability in respect of the selection use and suitability of the Hosting Services by the Client which shall be at the Client's sole discretion.

- 34.2. Amity Web Solutions Ltd shall not be liable for any loss of data resulting from delays, corruption of data, non-deliveries, mis-deliveries or service interruptions. Neither Amity Web Solutions Ltd nor its network services supplier (as used by Amity Web Solutions Ltd from time to time) shall be liable for any unauthorised access to Amity Web Solutions Ltd's or the Client's transmission facilities or premise equipment or for any unauthorised access to or alteration theft or destruction of a Client's data files programmes procedures or information through accident fraudulent means or devices or any other method provided that such damage does not occur as a result of Amity Web Solutions Ltd's or its Network Service Suppliers' default or negligence.

- 34.3. Amity Web Solutions Ltd shall in no circumstances be liable in contract tort (including negligence or breach of statutory duty) or otherwise howsoever caused for:

- 34.3.1. any increased costs or expenses;

- 34.3.2. any loss of profit business contracts revenues or anticipated savings; or

- 34.3.3. any special indirect or consequential damage of any nature whatsoever; arising directly or indirectly out of the provision by Amity Web Solutions Ltd of the Hosting Services or of any error or defect therein or of the performance non-performance or delayed performance by Amity Web Solutions Ltd of this Agreement;

- 34.4. Amity Web Solutions Ltd's total aggregate liability (under contract, by negligence or any other way) for any direct loss or damage arising out of, or in connection with, the Hosting Services will not exceed one month's Hosting Fees.

- 34.5. Nothing in this Agreement excludes or limits the liability of Amity Web Solutions Ltd for death or personal injury caused by its negligence or fraudulent misrepresentation.

- 34.6. The Client agrees to indemnify and hold harmless Amity Web Solutions Ltd and all individuals or entities controlling controlled by or under common control with Amity Web Solutions Ltd and their respective officers directors professional advisers agents and employees against any losses costs expenses claims damages liabilities penalties actions proceedings or judgments which they may become subject to relating to or arising from:

- 34.6.1. the infringement or misappropriation or alleged infringement or misappropriation of any intellectual property right including without limitation copyrights trade secrets patents trademarks or other proprietary rights related to any hardware or software utilised by the Client or otherwise in connection with any of the Hosting Services;

- 34.6.2. any breach or violation of or failure to comply with this Agreement or the Amity Web Solutions Ltd Acceptable Use Policy or any other policies of Amity Web Solutions Ltd of which the Customer has been given notice;

- 34.6.3. any violation of any applicable law rule or regulation; and

- 34.6.4. any third party claims related to any content provided by the Client or customers or clients of the Client.