ARM Digital Marketing Solutions Customer Agreement – General Terms

APN Newspapers Pty Ltd ARM (ARM) provides various digital marketing solution services, details of which are set out in the following Schedules (Services). The Customer has ordered particular Services on the basis of the Specific Terms which reference these General Terms and the Schedules. Together the Specific Terms, these General Terms and the Schedules form the agreement between ARM and the Customer in relation to the provision of the Services.

1) **Interpretation:** Terms set out in the Specific Terms or any Schedule and not otherwise defined in these General Terms will have the meaning given to them in the Specific Terms or Schedules, as applicable. To the extent of any inconsistency between the Specific Terms, these General Terms and the Schedules, the Schedules prevail over the Specific Terms which prevail over these General Terms. Unless the context requires otherwise:

    a) **Agreement** means the Specific Terms, the General Terms and any Schedules signed by the parties;

    b) **Customer Content** means all information and materials provided by the Customer to ARM or uploaded by the Customer directly to any Service or which are publicly available about the Customer;

    c) **Services** has the meaning given to that term in the Specific Terms;

    d) **Severity 1** incident means an incident which occurs when the entire platform on which the hosted Services operates is completely down or inoperable for more than one hour between the hours of 06:00 – 23:00 AEST;

    e) **Severity 2** incident means a material outage caused by the replacement of, a modification to, or an update to the platform on which the hosted Services operates and such outage affects a material number of customers (including the Customer);

    f) **Severity 3** incident means a material failure of a substantial portion of ARM's platform to be operational and such failure affects a material number of customers (including the Customer) and which is not a Severity 1 incident or a Severity 2 incident;

    g) **Support Hours** means between 08:30 – 18:00 AEST;

    h) **Term** has the meaning given to that term in the Specific Terms.

2) **Term:** Unless terminated earlier in accordance with clause 10, this agreement will commence on the Commencement Date and continue for the Term.

3) **Services:** ARM will provide the Services set out in this agreement, including any Schedule in accordance with the terms of this agreement and any applicable Schedule. ARM may subcontract portions of the Services to subcontractors / other service providers, who may deal with Customer directly. Nevertheless, ARM alone will be responsible to the Customer for the Services (as defined), the performance of the Services, and our other obligations under this Agreement.

4) **Charges and Payment Terms:** In consideration of the Services, the Customer will pay the Charges for the Services as specified in the Specific Terms and any order. All Charges for the Services will commence from the Commencement Date specified in the Specific Terms. The Customer will pay ARM any invoiced amounts within 30 days of receipt of the invoice unless otherwise specified in a Schedule or agreed in writing by the parties. Interest will accrue on all overdue invoices at a rate of 1% per month of late payment, starting on the first date after the payment was due. Unless expressed otherwise in a Schedule or an order, all prices are expressed to be exclusive of GST and the Customer will pay any applicable GST identified on a tax invoice in addition to the Charges and at the same time as the Charges.

5) **Customer's obligations:** The Customer must:

    a) Promptly provide ARM with all information and materials reasonably requested by ARM and required in order for ARM to provide the Services, including the Customer Content. If Customer does not provide such Customer Content within the timeframes requested, ARM may not be able to provide the Services as specified in the Schedule and/or the consequences specified in the Schedule for such failure may apply;

    b) Ensure that all personnel are aware that support calls relating to the Services may be monitored or recorded.

6) **ARM's obligations:** ARM will:

    a) Make available a customer service toll-free number during Support Hours during the Term;

    b) Provide the hosting services specified in clause 7 below;

    c) Provide the Customer with any reports specified in any applicable Schedule.

7) **Hosting services:** Subject to clause 16, ARM will:

    a) Ensure a 99.95% uptime for hosted Services and will respond to incidents in accordance with the following service levels (which may be updated from time to time in a Schedule or in writing by ARM) and which is:

        i) measured on a monthly basis, over a calendar month;

        ii) calculated as follows:

$$Uptime\% = (A – B) / A \times 100$$

        Where:

        A = available time in a calendar month less any scheduled maintenance time (which may or may not be notified to the Customer); and

        B = unscheduled Severity 1 incident downtime;

    b) Calculate the uptime% at its discretion but will, if requested by the Customer, make any reasonable uptime and availability records available to the customer provided that any confidential information may be redacted from such records;

    c) Respond to incidents as follows:

Severity 1	
Initial Response	Within 1 hour of notification to ARM
Interim Response	Within 8 hours of notification to ARM
Final Response	Within 24 hours of notification to ARM
Severity 2	
Initial Response	Within 2 hours of notification to ARM
Interim Response	Within 8 hours of notification to ARM
Final Response	Within 72 hours of notification to ARM
Severity 3	
Initial Response	Within 8 hours of notification to ARM

Interim Response	Within 24 hours of notification to ARM
Final Response	Within 48 hours of notification to ARM

8) **Intellectual property:** the parties agree that:
   a) ARM or its licensees and service providers own all intellectual property and other rights in the Services and any deliverables provided to the Customer as a result of the Services excluding the Customer Content ("ARM IP");
   b) ARM grants the Customer a non-exclusive right for the Term to use the ARM IP for the purpose of making use of the Services;
   c) The Customer owns, or has the right to use and licence ARM to use, the Customer Content;
   d) The Client shall provide a worldwide, perpetual, royalty-free, and sub-licensable license (the "Client Content License") to use in connection with producing the Products and Services, the Client Content and any pictures, images and voice recordings of the Client's facilities, properties or products or its employees, agents or clients as shall be created by ARM in the course of creating the Product or Service (also "Client Content") and to list, represent, register or establish accounts or keywords on behalf of the Client with third party media or other Parties or services;
   e) Except as expressly specified in this agreement, each party acknowledges that no right, title or interest in or to any trademarks and/or logos or other intellectual property of the other party are extended or conveyed to that party other than in accordance with this agreement; and
   f) In relation to Websites provided as part of the Services detailed in Schedule A, the Customer will own the website content (other than the ARM-IP) and URL address and other materials provided to it as part of the Services on and from the expiry of the minimum 12 month initial term of the Services.

9) **Customer warranty and indemnity:** the Customer represents and warrants that:
   a) It has full rights to use, broadcast and distribute the Client Content and documentary substantiation for all the claims made therein;
   b) All Client Content is truthful and not misrepresentative or misleading and does not plagiarise, libel, defame or harm any party;
   c) Use of the Products and Services will not invade the rights of privacy of any third party or otherwise infringe upon or violate the rights or property interests of any third party; and
   d) Will not use the Products and Services except as permitted by the Publisher.
   The Customer shall agree to indemnify and hold harmless ARM and its affiliates and their respective officers, agents, partners, directors, shareholders, suppliers, and employees from and against any loss, damages, liabilities, claims, demands, suits, expenses, including reasonable attorneys' fees, which any such party may incur arising out of or relating to:
      i) Client Content or the Client's modification, display and use of a Product or Service;
      ii) Claims that the Client's products or services are defective, injurious or harmful or violate the rights of any third Parties; and

      iii) Claims predicated on a breach by the Client of the terms and conditions of it license to use the Products and Services.

ARM represents and warrants that:
   e) It has full rights to use and sub-licence the Services (other than the Customer Content);
   f) Use of the Services (excluding the Customer Content) by the Customer in accordance with the terms of this agreement will not infringe any third party's intellectual property.

10) **Termination by either party:** Without prejudice to any rights or remedies, either ARM or the Customer may, prior to expiry of the Term, immediately terminate this agreement by written notice if either of them:
   a) Commits any breach of any terms of this agreement which is remediable and fails to remedy the breach within 20 days of receipt of notice from the other party requiring the breach to be remedied;
   b) Commits any breach of any terms of this Agreement that is incapable of remedy; or
   c) Becomes insolvent, is placed in receivership, enters into a scheme of arrangement with its creditors, becomes (or application is made for it to become) bankrupt or placed in liquidation (except for solvent reconstruction) or has a receiver or manager (including a statutory manager or other official form of compulsorily-appointed manager) appointed in respect of any of its assets.

11) **Termination by ARM:** ARM may terminate this agreement on 30 days' notice to the Customer, if ARM may no longer provide these services.

12) **Termination in part:** Except where a party terminates this agreement under clause 10(c), which shall be deemed to also terminate every then-current Service, where a party has a right to terminate this agreement it may terminate this agreement in whole or in part. If a party elects to terminate these General Terms and the Specific Terms only, then the parties may not enter into any further Services under this agreement from the date of termination (but the General Terms and Specific Terms continue to apply to any continuing Services as necessary).

13) **Consequences of Termination:**
   a) On termination by ARM or expiry of this agreement:
      i) The Customer must pay all amounts due and owing to ARM up to the date of termination immediately on termination;
      ii) Each party will deliver to the other (or, at the other's request permanently delete and destroy) all confidential information and other proprietary information of the other party.
   b) On termination by the Customer or expiry of this agreement:
      i) The Customer must pay all amounts due and owing to ARM immediately on termination;
      ii) Each party will deliver to the other (or, at the other's request permanently delete and destroy) all confidential information and other proprietary information of the other party

14) **Survival:** The provisions of clauses 1, 4, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19 and 20 will survive termination or expiry of this agreement.

15) **Limitation of Liability:** the parties agree that:

a) ARM will not be liable to the Customer for any deficiency in performance of the Service which arises as a result of any Customer Content, or of the Customer failing to provide the Customer Content or the Customer's breach of this agreement.

b) ARM will not be liable to the Customer for any claim that any content provided as part of the Service which is not Client Content infringes a third party's rights, unless the Customer notifies ARM of such claim within 90 days' of delivery of the applicable Service solution or of an update to the applicable Service solution where the updated content is the subject of the claim;

c) Except in relation to any liability arising out of the fraud or wilful misconduct of a party and subject to this clause:

   i) Neither party will be liable to the other for any indirect, special, consequential, punitive or tortious damages of any kind whatsoever, or for any loss of profits, loss of revenue or loss of opportunity, arising out of or relating to the use of the Services; and

   ii) The aggregate liability which either party may incur in respect of any action or proceeding based on this agreement, shall not in any event exceed the total amount paid to ARM by the Customer under this agreement during the 12 months prior to the action arising.

16) **Confidentiality:** The parties to this agreement and their officers, employees and agents will keep the terms of this agreement (including but not limited to the financial obligations of the parties) confidential and will keep all other aspects of the other party's business of which they may become aware from time to time confidential and will not disclose the terms of this agreement or disclose or use for any purpose other than performing their obligations under this agreement any confidential business information of the other party without the prior written consent of the other party. If either party is subject to an order or requirement to disclose the confidential information of the other then:

a) Notify the other party as soon as possible of such order or requirement (unless prohibited by law) and use reasonable efforts to resist, or to assist the other party in resisting, such disclosure and if such disclosure must be made, to obtain or assist in obtaining a protective order or comparable assurance that the confidential information disclosed shall be held in confidence and not be further disclosed without prior written consent; and

b) Disclose only those portions of the other's confidential information as necessary to comply with the order or requirement.

17) **Disputes:** If there is a dispute relating to the Services or this Agreement, the parties must submit the dispute to mediation before having recourse to any other dispute resolution process. Written notice of the dispute will be given for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree, by the Australian Commercial Disputes Centre ("ACDC"). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ACDC Mediation Guidelines to the extent that they do not conflict with the provisions of this Section. If the dispute is not resolved within 60 days after notice of the dispute, the mediation will terminate unless the parties otherwise agree

18) **Notices:** Any notices to be given under this agreement will be in writing and addressed to the recipient at the address specified in the Specific Terms or as otherwise notified to a party from time to time. Delivery may be effected by hand, post or email and notices will be deemed to have been received:

a) In the case of hand deliver, at the time of actual delivery to the recipient's address; b) in the case of delivery by post, on the third working day following the date of posting; and

b) In the case of delivery by email, at the time the sender receives an active response from the recipient (not being an automatically generated response).

19) **General:**

a) The parties are independent contracting parties and are not partners. Neither party may bind the other party to any contract or arrangement.

b) If one or more provisions of this agreement is declared to be invalid or unenforceable, the remaining provisions will not be affected and will continue in full force and effect.

c) This agreement contains all the essential terms of the agreement between the parties and supersedes all prior arrangements or undertakings that are not consistent with this agreement.

d) This agreement may only be modified in writing, executed by the parties.

e) No waiver of any breach of this agreement will be deemed to be a waiver of any other or subsequent breach. The failure of any party to enforce any provisions of this agreement at any time will not be interpreted as a waiver of that provision.

f) The Customer may not assign or transfer its rights or obligations under this agreement to any person without the prior written consent of ARM. ARM may assign or transfer its rights or obligations under this agreement to any person who is part of the ARM group of companies or any person who acquires all, or substantially all, of ARM's business which is the subject of this agreement or to a person who acquires all of ARM's shares, without the Customer's consent This agreement binds each party's successors, permitted assigns and permitted licensees and/or sub-licensees.

g) This agreement is governed by Queensland, Australia law and the parties submit to the jurisdiction of the Queensland, Australian Court.