

Viva City™ Services Agreement with you “the Customer”

This agreement is between **DIN DINS CLUB LIMITED**, a company incorporated in England with registered number 09852707 and whose registered office is at Silk Ventures, 24th Floor, One Canada Square, London, England, E14 5AB Trading as Viva City (“**Viva City**”) and you, (“**the Customer**”).

If the Customer wishes to be bound by these Terms and Conditions, the Customer must agree and sign an Order Form. If the Customer does not agree to be bound by these Terms and Conditions, the Customer cannot order or use any Subscription Services or any Professional Services. The Customer must be at least 18 years old to order Subscription Services. The person accepting these Terms and Conditions on behalf of the Customer warrants that they have authority to do so.

Viva City’s issue of an Order Form to the Customer constitutes a contractual offer and the Customer’s acceptance/signing of an Order Form will conclude the contract between Viva City and the Customer relating to the Subscription Services and Professional Services listed in the Order Form. All Order Forms will be deemed to be subject to and include these Terms and Conditions.

The contract (“**Agreement**”) between the Customer and Viva City will comprise:

1. the Order Form(s);
2. these Terms and Conditions;
3. the Privacy Policy; and
4. the SLA.

If there is any conflict between the terms of an Order Form and these Terms and Conditions, then the terms of the Order Form will prevail.

The elements of the Contract will have precedence as follows:

1. Order Form (s) (in chronological order);
2. Terms and Conditions;
3. Privacy Policy;
4. SLA.

PART ONE – SUBSCRIPTION SERVICES.

1. Grant of Licence.

Viva City grants to the Customer a non-exclusive, royalty based (i.e. the fees specified in the Order Form), non-sublicensable, term licence to Use the Subscription Services for the Customer’s internal business purposes for the Subscription Term, subject to the following conditions:

- 1.1. The Subscription Services are located on the Platform. Viva City has full administrative access rights to the Platform. Users may access the Subscription Services but have no right to administer the Platform or receive a copy of the object code or source code to the Software except as specified in an Order Form.
- 1.2. Users must have a reasonable speed Internet connection, and Local Equipment that is compatible with the Subscription Services, as set out in the Documentation. None of these things are Viva City’s responsibility.
- 1.3. Viva City may periodically Upgrade and Update the Services, in order to provide Users with a greater, evolving user experience. Some of these changes shall occur automatically, while others may require the Customer to schedule and implement the changes. The changes may also mean that Users need to upgrade their Local Equipment in order to make efficient use of the Subscription Services. Viva City shall provide the Customer with reasonable notification in advance in this case.
- 1.4. Viva City has all required distribution rights to the Intellectual Property in the Software and the Documentation.
- 1.5. Neither party shall be under any liability to the other in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of Force Majeure.

2. Conditions of Use.

The Subscription Services provided to the Customer are non-exclusive, non-transferable and are for the Customer's internal business use only. The Customer's right to use the Subscription Services is subject to the following conditions:-

the Customer shall not:

- 2.1. subject to Clause 20.4 of this Agreement, transfer to any other person any of its rights to use the Subscription Services;
- 2.2. sell, license, rent or lease the Subscription Services except as provided for in this Agreement;
- 2.3. make the Subscription Services available to anyone who is not a User;
- 2.4. create any derivative works based upon the Subscription Services or Documentation;
- 2.5. copy any feature, design or graphic in, or reverse engineer the Software (including without prejudice to the foregoing generality the graphical user interface and/or menu command hierarchy);
- 2.6. access the Subscription Services (i) in order to build a competitive solution or to assist someone else to build a competitive solution; or (ii) if the User is an employee or contractor of a Viva City competitor;
- 2.7. use the Subscription Services in a way that violates any criminal or civil law;
- 2.8. load test the Subscription Services in order to test scalability; or,
- 2.9. exceed any usage limits listed on the applicable Order Form.

3. User Content/Security

- 3.1. Users provide all data for use in the Subscription Services, and Viva City is not obliged to modify or add to User Content except as specified in Clause 4. The Customer is solely responsible for User Content and the accuracy of User Content.
- 3.2. User Content belongs to Users or their licensors, and Viva City makes no claim to any right of ownership in User Content except as specifically provided herein.
- 3.3. Viva City shall keep User Content confidential in accordance with Clause 16 of this Agreement.
- 3.4. Viva City is not liable for any delays, inaccuracies, errors or omissions in User Content or, for any damage arising therefrom or occasioned thereby, or for the results obtained from the use of the User Content.
- 3.5. The Customer assumes the entire risk as to the accuracy, adequacy, completeness, currency, validity and quality of any User Content.
- 3.6. Viva City does not endorse, warrant or guarantee the food, products or services of the Customer, including, without limitation, any prices, promotions, programs, policies, services, or other information posted by the Customer.
- 3.7. Viva City is not responsible or liable for any food, products, services, information or other materials displayed, purchased, or obtained by a Guest from the Customer or the Viva City Site.
- 3.8. The pages contained in Customer websites may contain technical inaccuracies and typographical and other errors. The information in these pages may be updated from time to time and may at times be incorrect or out of date. Viva City accepts no responsibility for keeping the information in these pages accurate or up to date or liability for any failure to do so.
- 3.9. Subject to the terms of Clauses 4 and 23, Viva City shall only be entitled to use User Content strictly as necessary to carry out its obligations under this Agreement, and for no other purpose. However, Viva City:
 - 3.9.1. may observe and report back to the Customer on the Customer's and its clients' usage of the Subscription Services, and make recommendations for improved usage of the Subscription Services; and,
 - 3.9.2. shall use reasonable endeavours to ensure that the data centre containing the User Content complies with ISO 27001.
 - 3.4.3 may identify trends and publish reports on its findings from data aggregated from User Site(s) provided such reports do not identify the User and otherwise anonymise the data and comply with the terms of Clause 16 (Confidentiality);
- 3.10. Viva City shall, in providing the Subscription Services, comply with the Privacy Legislation and in accordance with its Privacy Policy and Clauses 21 and 22 of this Agreement. For the purposes of the Legislation (except in the case of Data Sharing in terms of Clause 22), Viva City will be a Data Processor and the Customer will be the Data Controller of User Content. This clause is in addition to, and does not relieve, remove or replace, Viva City's obligations or rights under the Privacy Legislation.
- 3.11. Sharing of login/account details is not permitted unless expressly authorised in writing by Viva City. Users must keep login/account details confidential and Users should not reveal their username or password to any unauthorised third parties. Viva City accepts no liability for any losses or damages incurred as a result of account details being shared in

breach of the terms of this Agreement. It is recommended that Users do not save login/account details in their internet browser.

3.12. Passwords must be robust and difficult to break.

3.13. Industry Best Practice security recommendations should be implemented at all times, such as (a) maintaining a recognised Cyber Essentials Certification IT systems such as <https://www.cyberessentials.ncsc.gov.uk>; (b) Always implementing strong, robust, difficult to break passwords, that are changed on a regular basis; (c) that Users do not save login/account details in their internet browser; and (d) implementing two factor authentication at each endpoint.

3.14. Whereas as part of the Subscription Services, Viva City may host email accounts or other online communications infrastructure or subscription accounts (including the Viva City subscription itself) for Users, Viva City accepts no responsibility and shall not be liable for third parties accessing such email, online communications accounts or subscription accounts by way of breaking or hacking passwords. It is the responsibility of Users to ensure that all email, online communications accounts and subscription accounts are properly protected with robust passwords. The terms of Clause 4 apply to the use of any such email, online communications accounts and subscription accounts.

4. Acceptable Usage Policy

4.1. Without prejudice to the generality of Clause 2.7, when using the Subscription Services; Users should do so in accordance with the following rules:

4.1.1. Users must not use obscene or vulgar language;

4.1.2. User Sites may not contain any material that is unlawful or otherwise objectionable (including that which may be in breach of rules, regulations or legislation in force in the United Kingdom or any other jurisdiction in which the Customer's User Site can be lawfully accessed. This does not extend to material which may be automatically blocked in certain jurisdictions but that is lawful in the Customer's home country);

4.1.3. User Sites may not contain any material that is intended to promote or incite violence or any other unlawful conduct against any group, individual or animal. This includes, but is not limited to, the provision of instructions on how to assemble weapons of any kind, bombs, grenades or other explosive devices;

4.1.4. User Sites may not infringe the Intellectual Property rights of any third party including, but not limited to, copyright, trademarks, patents and designs;

4.1.5. User Sites may not contain any material that may contain viruses or other software or instructions that may damage or disrupt other software, computer hardware or communications networks; and

4.1.6. User Sites may not be used for unauthorised mass-communications such as "spam" or "junk mail".

4.2. Viva City does not screen or pre-approve any User Site or User Content (although Users acknowledge that Viva City may do so if it wishes).

4.3. Viva City may edit a User Site to comply with the provisions of sub-Clause 4.1 without prior consultation. In cases of severe breaches of the provisions of sub-Clause 4.1, a User Site may be taken down and the relevant account may be suspended or terminated. The Customer will not be informed in writing of the reasons for such alterations or take downs.

4.4. Viva City accepts no responsibility or liability for any infringement of third-party rights by User Sites.

4.5. Viva City will not be liable in any way or under any circumstances for any loss or damage that any User may incur as a result of such User Sites, or Viva City exercising its rights under this Agreement, nor for any errors or omissions in User Sites. Use of and reliance upon User Sites is entirely at the Customer's own risk.

4.6. The Customer acknowledges that Viva City may retain copies of any and all communications, information, User Content and User Sites sent to Viva City.

4.7. Users must comply with the terms of the Privacy Legislation at all times.

4.8. When using WeChat Users must do so in accordance with the rules of WeChat located here

https://www.wechat.com/en/service_terms.html and https://www.wechat.com/en/acceptable_use_policy.html.

Viva City shall have no liability to the Customer or any User or third party whatsoever in relation to a User's use of WeChat in conjunction with the Subscription Services. The Customer and all Users will indemnify Viva City in respect of any liability incurred by Viva City through its/their use of WeChat in conjunction with the Subscription Services.

5. Intellectual Property

5.1. Subject to the exceptions in Clause 6 of this Agreement, all Content, that is not User Content, and the Database and the Software and the Documentation are the property of Viva City, or Viva City's Affiliates or licensors. By continuing

to use the Subscription Services the Customer acknowledges that such material is protected by applicable United Kingdom and international Intellectual Property and other laws.

- 5.2. The Customer may print, reproduce, copy, distribute, store or in any other fashion re-use Content from the Subscription Services for personal or educational purposes only unless otherwise given Viva City's express written permission to do so. Specifically, the Customer agrees that it will not systematically copy Content from the Subscription Services with a view to creating or compiling any form of comprehensive collection, compilation, directory or database unless given Viva City's express written permission to do so.
- 5.3. In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, the Customer acknowledges that the same shall be the property of Viva City unless otherwise agreed in writing by Viva City.
- 5.4. Any trade mark, trade name or logo such as "Powered by Viva City" appearing on or in the Software is the property of Viva City and must not be copied, obscured or removed from the Software.

6. User Site Intellectual Property

- 6.1. The Intellectual Property rights subsisting in the User Content of User Sites belong to the User to which that/those User Site(s) belong(s) unless it is expressly stated otherwise in this Agreement.
- 6.2. Where expressly indicated, certain Content available through User Sites and the Intellectual Property rights subsisting therein belongs to third parties.
- 6.3. The third party Content described in this Clause 6, unless expressly stated to be so, is not covered by any permission granted by Clause 5 of these Terms and Conditions to use Content.
- 6.4. For the avoidance of doubt, the Database (excluding the User Content therein) shall not be considered User Content.

7. Third Party Intellectual Property

- 7.1. Unless otherwise expressly indicated, all Intellectual Property rights including, but not limited to, copyright and trademarks, in Content belong to the manufacturers or distributors of such Content as may be applicable.
- 7.2. Subject to Clause 5 the Customer may not reproduce, copy, distribute, store or in any other fashion re-use Content unless otherwise indicated on the Subscription Services or the Documentation or unless given express written permission to do so by the relevant manufacturer or supplier.

8. Subscription Services Warranties

- 8.1. Viva City warrants that: (i) the Subscription Services will function substantially as described in the Documentation; and (ii) Viva City owns or otherwise has the right to provide the Subscription Services to the Customer under this Agreement. The remedies set out in this Clause 8 are the Customer's exclusive remedies for breach of either warranty.
- 8.2. If the Subscription Services do not function substantially in accordance with the Documentation, Viva City shall, at its option, either (i) modify the Subscription Services to conform to the Documentation; or (ii) provide a workaround solution that will reasonably meet the Customer's requirements. If neither of these options are commercially feasible, either party may terminate the relevant Order Form under this Agreement, in which case Viva City shall refund to the Customer all fees pre-paid to Viva City under the relevant Order Form for unused Subscription Services.
- 8.3. If the normal operation, possession or use of the Subscription Services by the Customer is found to infringe any third party Intellectual Property right or Viva City believes that this is likely, Viva City shall, at its option, either (i) obtain a license from such third party for the benefit of the Customer; (ii) modify the Subscription Services so that they no longer infringe; or (iii) if neither of these options is commercially feasible, terminate the relevant Order Form under this Agreement, in which case Viva City shall refund to the Customer all fees pre-paid to Viva City under the relevant Order Form for unused Subscription Services.
- 8.4. However, Viva City has no warranty obligations for:
 - 8.4.1. the extent that Software has been modified by the Customer or any third party, unless the modification has been approved in writing by Viva City; or,
 - 8.4.2. problems in the Subscription Services caused by any Third-Party Software or hardware, by accidental damage or by other matters beyond Viva City's reasonable control.
- 8.5. Viva City assumes no liability, obligation or responsibility in connection with any transactions between a Guest and a Customer, including, but not limited to, failure by either party to keep a reservation, a Customer's knowledge (or lack thereof) of any Guest's food allergies, injuries and/or damages sustained or caused by a Guest at a Customer's Venue, a Guest's or any employee's behaviour at a Venue or the quality of the food, service, event, experience, accommodation or products at a Venue.

- 8.6. If a Guest has a dispute with a Customer or any third party, all parties release Viva City (and its agents and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such dispute.

PART TWO – PROFESSIONAL SERVICES.

9. Professional Services Warranties.

- 9.1. Viva City warrants that (i) the Professional Services shall substantially conform to the applicable Order Form; and (ii) the Professional Services shall be performed with reasonable skill, care and diligence. The remedies set out in this Clause 9 are the Customer's exclusive remedies for breach of either warranty. If the Professional Services do not conform to the Order Form or are not performed with reasonable skill, care and diligence, Viva City shall re-perform the Professional Services to the extent necessary to correct the defective performance.
- 9.2. Viva City shall comply with the terms of the SLA (or as amended in an Order Form) at all times. The terms of Clause 9.1 shall apply to the SLA.

10. The Customer's Responsibilities.

- 10.1. The Customer shall provide Viva City with all information, access, and full good faith cooperation reasonably necessary to enable Viva City to deliver the Professional Services and shall do anything that is identified in the Order Form as the Customer's responsibility. If the Customer fails to do this, Viva City shall be relieved of its obligations to the extent that the obligations are dependent upon the Customer's performance.
- 10.2. Without prejudice to the generality of Clause 10.1, the Customer shall obtain and maintain all necessary licences, permissions and consents which may be required in order for Viva City to perform and supply the Professional Services and the Subscription Services including without prejudice to the foregoing generality, the creation and maintenance of a WeChat Account and to provide Viva City with the appropriate administration permissions as detailed in the appropriate Order Form. The administration permissions including log-in details will be treated as Confidential Information in terms of Clause 16;

PART THREE – GENERAL.

11. Term of Agreement.

This Agreement starts on the date that both parties sign an Order Form for the relevant services and ends when Viva City no longer is obliged to provide the Customer with Subscription Services or Professional Services under any Order Form.

12. Payments.

- 12.1. The Customer shall pay the fees listed in, and in accordance with, the relevant Order Form.
- 12.2. If the Customer initially purchases Subscription Services for a term, and subsequently orders an additional product, the purchase price for the additional product shall be pro-rated so that the added subscriptions terminate on the same day as the initial Subscription Term (unless specified otherwise in the relevant Order Form).
- 12.3. The fees for the initial Subscription Term (stated in the relevant Order Form) will be as specified in the Order Form. Viva City reserves the right to change fees from time to time and any such changes may affect the Customer's recurring fees after the initial Subscription Term. Increases in price will be reflected in the Customer's recurring fees for the Services.

13. Termination and Suspension.

- 13.1. Either party may terminate rights granted to the other under a particular Order Form at any time after expiry of the Subscription Term and provided all outstanding fees have been paid to the party providing the services by providing 30 days' prior written notice to the other party.
- 13.2. Either party may terminate this Agreement, or any rights granted under a particular Order Form with immediate effect if:
- 13.2.1. the other party commits a material breach of any term of this Agreement or any Order Form which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
 - 13.2.2. the other party is unable to pay its debts and/or ceases to trade and/or suffers an Insolvency Event.

- 13.3. Clauses 2.4, 2.5, 3.3, 4, 5, 6, 7, 8, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24 and 25 shall continue after this Agreement ends.
- 13.4. If Viva City terminates an Order Form under this Agreement because of non-payment by the Customer, all unpaid fees for the remainder of the Subscription Term immediately fall due for payment.
- 13.5. Upon termination of this Agreement or any Order Form for any reason:
- 13.5.1. (except in the case of termination due to the Customer's material breach of this Agreement), the Customer will be given restricted access to the Subscription Services for a period of ten days in which to recover their User Content. Viva City can provide a User Content recovery service to the Customer, should they wish to use it. Viva City reserves the right to charge for this service; and
 - 13.5.2. each party shall immediately pay to the other all of that party's unpaid invoices and interest at the rate specified in the relevant Order Form, for any services for which no invoice has been raised and any work in progress. Each party shall invoice the other and the invoice shall be payable immediately on receipt.
- 13.6. Termination of this Agreement or any Order Form shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages (subject to the limitations contained herein) in respect of any breach of this Agreement or any Order Form that existed at or before the date of termination.
- 13.7. Viva City may retain User Content in backup media for an additional period of up to one year after the date of termination of this Agreement, or longer if required by law, provided it makes no further use of such User Content (except as provided for herein or as is required by law), keeps the User Content confidential in accordance with Clause 16, and supplies the Customer with a copy of the most recent back-up of the User Content within 30 days of the Customer's request (at the Customer's cost).

14. Warranty Disclaimer.

- 14.1. Except as expressly provided in this Agreement, the Subscription Services, Software and Professional Services are provided with no other warranties of any kind, and Viva City disclaims all other warranties, express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose. Viva City does not warrant that the use of the Subscription Services shall be uninterrupted or error-free.

15. Limitation of Liability.

- 15.1. Neither party shall be liable under this Agreement for any indirect, special, incidental, punitive or consequential damages (including without limitation damages for loss of goodwill, work stoppage, computer failure or malfunction, lost or corrupted data, lost profits, lost business or lost opportunity), or any other similar damages under any theory of liability (whether in contract, tort/delict, strict liability or any other theory), even if the other party has been informed of this possibility. The Customer assumes all responsibility for the selection of the Subscription Services, Software and Documentation necessary to achieve the Customer's intended results, and for the use and results of the Subscription Services or work product. Each party's total liability for any direct loss, cost, claim or damages of any kind related to this Agreement or the relevant Order Form shall not exceed the amount of the fees paid or payable by the relevant party under such relevant Order Form during the period of 12 months before the event giving rise to such loss, cost, claim or damages. However, there is no limitation on direct loss, claim or damages arising as a result of an infringement of either party's Intellectual Property rights by the other party, or a breach of Clause 16 or Clauses 21 and 22 of this Agreement by the other party.
- 15.2. Viva City's liability under this Agreement (except where provided otherwise in this agreement to a lesser extent) shall be limited to the amount of professional indemnity insurance underwritten in the name of Viva City which shall be £1,000,000. This limitation shall not apply to a breach of Clauses 21 or 22.

16. Confidentiality

- 16.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement and any Order Form. A party's Confidential Information shall not be deemed to include information that (i) is now, or subsequently becomes, through no act or failure to act on the part of receiving party (the "Receiver"), generally known or available; (ii) is known by the Receiver at the time of receiving such information, as evidenced by the Receiver's records; (iii) is subsequently provided to the Receiver by a third party, as a matter of right and without restriction on disclosure; or (iv) is required to be disclosed by law, provided that the party to whom the information belongs is given prior written notice of any such proposed disclosure.

- 16.2. Subject to clauses 16.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party (other than to a consultant or a Sub-contractor for the purposes of this Agreement and which consultant or Sub-contractor shall have entered into undertakings of confidentiality in relation to the Confidential Information on terms no less onerous than those contained in this Clause 16), or use the other's Confidential Information for any purpose other than to carry out its obligations under this Agreement.
- 16.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 16.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of a competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 16.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 16.5. No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 16.6. This clause 16 shall survive termination of this Agreement or any Order Form, howsoever arising.

17. Indemnification by Viva City.

- 17.1. Viva City shall indemnify and hold harmless the Customer its clients, its Affiliates, directors and employees from any damages finally awarded against the Customer (including, without limitation, reasonable costs and legal fees incurred by the Customer) arising out of any third party suit, claim or other legal action alleging that the use of the Subscription Services or Documentation by the Customer (other than User Content – see Clauses 4 and 18) infringes the Intellectual Property of any third party, ("Legal Action"). Viva City shall provide reasonable assistance in the defence of such Legal Action.
- 17.2. However, Viva City shall have no indemnification obligations for any Legal Action arising out of: (i) a combination of the Subscription Services and/or Software with software or products not supplied, or approved in writing by Viva City; (ii) any repair, adjustment, modification or alteration to the Subscription Services by the Customer or any third party, unless approved in writing by Viva City; or (iii) any refusal by the Customer to install and use a non-infringing version of the Subscription Services offered by Viva City under Clause 8.3(ii). Clause 8.3(ii) and this Clause 17 state the entire liability of Viva City with respect to any Intellectual Property infringement by the Subscription Services or Software or Documentation.
- 17.3. The Customer shall give written notice to Viva City of any Legal Action no later than 30 days after first receiving notice of a Legal Action, and shall give copies to Viva City of all communications, notices and/or other actions relating to the Legal Action. The Customer shall give Viva City the sole control of the defence of any Legal Action, shall act in accordance with the reasonable instructions of Viva City and shall give Viva City such assistance as Viva City reasonably requests to defend or settle such claim. Viva City shall conduct its defence at all times in a manner that is not adverse to the Customer's interests. the Customer may employ its own counsel to assist it with respect to any such claim. The Customer shall bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with Viva City or its counsel, or because Viva City fails to assume control of the defence. The Customer shall not settle or compromise any Legal Action without Viva City's express written consent. Viva City shall be relieved of its indemnification obligation under Clause 17 if the Customer materially fails to comply with Clause 17.3.

18. Indemnification by the Customer

- 18.1. The Customer shall indemnify and hold harmless Viva City, its Affiliates, directors, and employees from any damages finally awarded against Viva City (including, without limitation, reasonable costs and legal fees incurred by Viva City) arising out of any third party suit, claim or other legal action (including but not limited to any governmental investigations, complaints and actions) in connection with the User Content, including, without limitation, any action for infringement of any trademark, copyright, trade secret, right of publicity or privacy (including defamation), patent or other proprietary right with respect to the User Content ("Legal Claim").
- 18.2. Viva City shall give written notice to the Customer of any Legal Claim no later than 30 days after first receiving notice of a Legal Claim and shall give copies to the Customer of all communications, notices and/or other actions relating

to the Legal Claim. Viva City shall give the Customer the sole control of the defence of any Legal Claim, shall act in accordance with the reasonable instructions of the Customer and shall give the Customer such assistance as the Customer reasonably requests to defend or settle such claim. The Customer shall conduct its defence at all times in a manner which is not adverse to Viva City's interests. Viva City may employ its own counsel to assist it with respect to any such claim. Viva City shall bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with the Customer or its counsel, or because the Customer fails to assume control of the defence. Viva City shall not settle or compromise any Legal Claim without the Customer's express written consent. The Customer shall be relieved of its indemnification obligation under Clause 18 if Viva City materially fails to comply with Clause 18.2.

19. Publicity.

Viva City may list the Customer as a customer and use the Customer's logo on Viva City's website, on publicly available Customer lists, and in media releases with the Customer's consent, such consent not to be unreasonably withheld.

20. Miscellaneous.

- 20.1. This Agreement represents the entire express agreement of the parties, and supersedes any prior or current agreements or understandings, whether written or oral. If there is a conflict between the Agreement and an Order Form, the Order Form shall prevail.
- 20.2. This Agreement may not be changed or any part waived except by written agreement between the parties.
- 20.3. This Agreement shall be governed by the laws of Scotland. The parties consent to the exercise of exclusive jurisdiction of the Scottish courts.
- 20.4. Neither party shall assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.
- 20.5. The language of this Agreement shall be English.
- 20.6. The time zone of this Agreement shall be Greenwich Mean Time.

21. Data Processing.

- 21.1. Both parties will comply with all applicable requirements of the Privacy Legislation. This Clause 21 is in addition to, and does not relieve, remove or replace a party's obligations or rights under the Privacy Legislation.
- 21.2. The provisions of this Agreement shall apply to the processing of the Personal Data carried out for the Customer by Viva City, and to all Personal Data held by Viva City in relation to all such processing whether such Personal Data is held at the date of this Agreement or received afterwards.
- 21.3. This Agreement shall continue in full force and effect for so long as Viva City is processing Personal Data on behalf of the Customer.
- 21.4. Viva City is only to process the Personal Data received from the Customer:
 - 21.4.1. for the purposes of this Agreement and not for any other purpose;
 - 21.4.2. to the extent and in such a manner as is necessary for those purposes; and
 - 21.4.3. strictly in accordance with the Agreement or otherwise with the express written authorisation and instructions of the Customer (which may be specific instructions or instructions of a general nature or as otherwise notified by the Customer to Viva City).
- 21.5. Schedule 1 sets out the scope, nature and purpose of processing by Viva City, the duration of processing and the types of Personal Data and categories of data subject.
- 21.6. All instructions given by the Customer to Viva City shall be made in writing and shall at all times be in compliance with the GDPR and other applicable laws. Viva City shall act only on such written instructions from the Customer unless Viva City is required by law to do otherwise (as per Article 29 of the GDPR).
- 21.7. Viva City shall promptly assist the Customer (where the Customer cannot do this itself via the Subscription Services) in complying with a legitimate data subject request to amend, transfer, delete, or otherwise dispose of Personal Data. Where permitted to do so by law, Viva City may charge a reasonable fee for providing such assistance.
- 21.8. Both Parties shall comply at all times with the GDPR and other applicable laws and shall not perform their obligations under this Agreement or any other agreement or arrangement between themselves in such way as to cause either party to breach any of its applicable obligations under the GDPR.
- 21.9. The Customer hereby warrants, represents, and undertakes that the Personal Data shall comply with the GDPR in all respects including, but not limited to, its collection, holding, and processing.

- 21.10. Viva City agrees to comply with any reasonable measures required by the Customer to ensure that its obligations under this Agreement are satisfactorily performed in accordance with any and all applicable legislation from time to time in force (including, but not limited to, the GDPR) and any best practice guidance issued by the ICO.
- 21.11. Viva City shall provide all reasonable assistance (at the Customer's cost) to the Customer in complying with its obligations under the GDPR with respect to the security of processing, the notification of Personal Data breaches, the conduct of data protection impact assessments, and in dealings with the ICO.
- 21.12. When processing the Personal Data on behalf of the Customer, Viva City shall:
 - 21.12.1. not process the Personal Data outside the European Economic Area (all EU member states, plus Iceland, Liechtenstein, and Norway) ("EEA") other than the United Kingdom (which shall be permitted) without the prior written consent of the Customer and, where the Customer consents to such a transfer to a country that is outside of the EEA, to comply with the obligations of Data Processors under the provisions applicable to transfers of Personal Data to third countries set out in Chapter 5 of the GDPR by providing an adequate level of protection to any Personal Data that is transferred and providing appropriate safeguards in relation to the transfer;
 - 21.12.2. not transfer any of the Personal Data to any third party without the written consent of the Customer and, in the event of such consent, the Personal Data shall be transferred strictly subject to the terms of a suitable agreement, as set out in Clause 21.21;
 - 21.12.3. process the Personal Data only to the extent, and in such manner, as is necessary in order to comply with its obligations to the Customer or as may be required by law (in which case, Viva City shall inform the Customer of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);
 - 21.12.4. implement appropriate technical and organisational measures, and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, or disclosure;
 - 21.12.5. make available to the Customer any and all such information as is reasonably required and necessary to demonstrate Viva City's compliance with the GDPR; and
 - 21.12.6. inform the Customer immediately if it is asked to do anything that infringes the GDPR or the Privacy Legislation.
- 21.13. Viva City shall, at the Customer's cost, assist the Customer in complying with its obligations under the GDPR. In particular, the following shall apply to data subject access requests, complaints, and data breaches.
- 21.14. Viva City shall notify the Customer without undue delay if it receives:
 - 21.14.1. a subject access request from a data subject; or
 - 21.14.2. any other complaint or request relating to the processing of the Personal Data.
- 21.15. Viva City shall, at the Customer's cost, cooperate fully with the Customer and assist as required in relation to any subject access request, complaint, or other request, including by:
 - 21.15.1. providing the Customer with full details of the complaint or request;
 - 21.15.2. providing the necessary information and assistance in order to comply with a subject access request;
 - 21.15.3. providing the Customer with any Personal Data it holds in relation to a data subject (within the timescales required by the Customer); and
 - 21.15.4. providing the Customer with any other information requested by the Customer.
- 21.16. Viva City shall notify the Customer immediately if it becomes aware of any form of Personal Data breach, including any unauthorised or unlawful processing, loss of, damage to, or destruction of any of the Personal Data.
- 21.17. The Customer shall be liable for, and shall indemnify (and keep indemnified) Viva City in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, Viva City and any Sub-Processor arising directly or in connection with:
 - 21.17.1. any non-compliance by the Customer with the GDPR or other applicable legislation;
 - 21.17.2. any Personal Data processing carried out by Viva City or Sub-Processor in accordance with instructions given by the Customer that infringe the GDPR or other applicable legislation; or
 - 21.17.3. any breach by the Customer of its obligations under this Agreement, except to the extent that Viva City or a Sub-Processor is liable under sub-Clause 21.18.
- 21.18. Viva City shall be liable for, and shall indemnify (and keep indemnified) the Customer in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor

and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Customer arising directly or in connection with Viva City's Personal Data processing activities that are subject to this Agreement:

- 21.18.1. only to the extent that the same results from Viva City's or a Sub-Processor's breach of this Agreement; and
- 21.18.2. not to the extent that the same is or are contributed to by any breach of this Agreement by the Customer.
- 21.19. The Customer shall not be entitled to claim back from Viva City or a Sub-Processor any sums paid in compensation by the Customer in respect of any damage to the extent that the Customer is liable to indemnify Viva City or Sub-Processor under sub-Clause 21.17.
- 21.20. Nothing in this Agreement (and in particular, this Clause 21) shall relieve either party of, or otherwise affect, the liability of either party to any data subject, or for any other breach of that party's direct obligations under the GDPR. Furthermore, Viva City hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a Data Processor under the GDPR may render it subject to the fines, penalties, and compensation requirements set out in the GDPR.
- 21.21. In the event that Viva City appoints a Sub-Processor, Viva City shall:
 - 21.21.1. enter into a Sub-Processing Agreement with the Sub-Processor which shall impose upon the Sub-Processor the same or similar obligations as are imposed upon Viva City by this Agreement;
 - 21.21.2. ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the GDPR; and
 - 21.21.3. remain fully liable to the Customer for performance of the Sub-Processor's obligations to the extent the Sub-Processor fails to fulfil their data protection obligations.
- 21.22. Except as provided otherwise herein, Viva City shall, at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this Agreement unless required by applicable law to store the Personal Data (and for these purposes the term "delete" shall mean to put such data beyond use).
- 21.23. Viva City shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 21 and immediately inform the Customer if, in the opinion of Viva City, its instruction infringes the DPA or GDPR or applicable laws.

22. Data Sharing

- 22.1. In certain circumstances, Viva City and a Customer may require to share data which includes Personal Data for example to improve and enhance User experience and (2) to perform and/or improve the Services and (3) to obtain relevant marketing, demographic, clinical and other appropriate information from Viva City.
- 22.2. The parties shall not process the Shared Personal Data for any purpose or in any way that is incompatible with the Stated Purposes.
- 22.3. The Shared Personal Data shall be disclosed by one party to another only to the extent reasonably necessary for the Stated Purposes.
- 22.4. Each party shall appoint a data protection officer and/or at least one other of its representatives as a point of contact for all issues relating to the sharing of the Shared Personal Data and the GDPR (including, but not limited to, compliance, training, and the handling of Personal Data breaches).
- 22.5. Both parties shall at all times during the Subscription Term comply with their obligations as Data Controllers, the rights of data subjects, and all other applicable requirements under the GDPR. These Terms and Conditions are in addition to, and do not relieve, remove, or replace either party's obligations under the GDPR. Any material breach of the GDPR by either party shall, if not remedied within 14 days of written notice from the other party, give the other party grounds to terminate this Agreement with immediate effect.
- 22.6. The extent of the Shared Personal Data, including any applicable restrictions relating to will be agreed between the parties and set out in writing.
- 22.7. Each party shall ensure that the Shared Personal Data is accurate and up-to-date prior to its disclosure to the other party.
- 22.8. The parties shall use compatible technology for the processing of the Shared Personal Data in order to preserve accuracy.
- 22.9. Both parties shall at all times during the Term process the Shared Personal Data fairly and lawfully.
- 22.10. Both parties shall ensure that they have legitimate grounds for processing the Shared Personal Data under the GDPR.
- 22.11. Both parties shall ensure that they have in place all required notices and consents in order to enable the sharing of the Shared Personal Data under this Agreement. In particular, the parties shall ensure that data subjects are provided with clear and sufficient information about the following:

- 22.11.1. the purposes for which their Personal Data is to be processed;
- 22.11.2. the legal basis upon which it is relying for such purposes;
- 22.11.3. the fact that their Personal Data is to be transferred to a third party and sufficient detail about the transfer to enable the data subject to understand the purpose of the transfer and any risks associated therewith; and
- 22.11.4. in the event that their Personal Data is to be transferred outside of the United Kingdom or EEA, the fact that such a transfer is to take place and sufficient detail about the transfer to enable the data subject to understand the purpose of the transfer and any risks associated therewith; and
- 22.11.5. all other information required under Article 13 of the GDPR.
- 22.12. The parties shall assist one another in complying with their respective obligations and the rights of data subjects under the GDPR. Such assistance shall include, but not be limited to:
 - 22.12.1. consulting with the other party with respect to information and notices provided to data subjects relating to the Shared Personal Data;
 - 22.12.2. informing the other party about the receipt of data subject access requests and providing reasonable assistance in complying with the same;
 - 22.12.3. not disclosing or otherwise releasing any Shared Personal Data in response to a data subject access request without prior consultation with the other party, whenever reasonably possible;
 - 22.12.4. assisting the other party at the cost of the other party in responding to any other data subject request.
- 22.13. Each party shall maintain records of all data subject requests received, the decisions made in response, and any information provided to the data subject(s) concerned. Such records shall include copies of the request, details of any data accessed and shared, and, if applicable, details of any further correspondence, telephone conversations, or meetings relating to the request.
- 22.14. Each party shall hold and process the Shared Personal Data only for so long as is necessary for the fulfilment of the Stated Purposes.
- 22.15. In the event that any statutory or similar retention periods apply to any of the Shared Personal Data, the relevant Personal Data shall be retained by the relevant party in accordance therewith.
- 22.16. The parties shall delete (or otherwise dispose of) or at a party's option anonymise the Shared Personal Data (or the relevant part thereof) and any and all copies thereof or, on the written request of the other party, other than in the case of anonymised data, return it to the other disclosing party, subject to any legal requirement to retain any applicable Personal Data, in the following circumstances:
 - 22.16.1. upon the termination or expiry of this Agreement; or
 - 22.16.2. once the Stated Purposes have been fulfilled and it is no longer necessary to retain the Shared Personal Data (or the relevant part thereof) in light of the Stated Purposes; whichever is earlier.
- 22.17. All Shared Personal Data to be deleted or disposed of or anonymised under this Agreement shall be deleted or disposed of using methods compliant with the GDPR.
- 22.18. Following the deletion and/or disposal or anonymisation of the Shared Personal Data (as applicable), the party deleting or disposing of the data shall notify the other party of the same in writing, confirming that the Shared Personal Data has been deleted or disposed of or anonymised using methods compliant with the GDPR.
- 22.19. For the purposes of this Clause the transfer of Shared Personal Data shall refer to any sharing of the Shared Personal Data by a party with a third party. Such sharing shall include, but not be limited to, the appointment of a third-party Data Processor and sharing the Shared Personal Data with a third-party Data Controller.
- 22.20. In the event that a party wishes to appoint a third-party Data Processor, it shall remain liable to the other party for any acts and/or omissions of the third-party processor and it shall comply with Articles 28 and 30 of the GDPR.
- 22.21. Neither party shall transfer any of the Shared Personal Data outside of the United Kingdom or EEA unless:
 - 22.21.1. that party complies with the provisions of Article 26 of the GDPR (where the third party is a joint controller); and
 - 22.21.2. that party ensures that the transfer is to a country that the European Commission has determined (by means of an adequacy decision) offers an adequate level of data protection, pursuant to Article 45 of the GDPR; there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or one of the derogations for specific situations set out in Article 49 of the GDPR applies.
- 22.22. A party shall transfer the Shared Personal Data to the other party using methods compliant with the GDPR.
- 22.23. Both parties shall ensure that they have in place appropriate technical and organisational measures as reviewed and approved by the other party, to protect against the unauthorised or unlawful processing of, and against the

accidental loss or destruction of, or damage to, the Shared Personal Data, having regard to the state of technological development and the cost of implementing any such measures.

- 22.24. When putting appropriate technical and organisational measures in place, both parties shall ensure a level of security appropriate to the nature of the Shared Personal Data which is to be protected, and to the potential harm resulting from the unauthorised or unlawful processing of, the accidental loss or destruction of, or damage to, the Shared Personal Data.
- 22.25. All technical and organisational measures put in place by both parties shall be reviewed regularly by the respective party, updating such measures upon the agreement of the other party as appropriate throughout the Term of this Agreement.
- 22.26. Both parties shall ensure that any and all of their representatives by whom the Shared Personal Data is to be handled and processed are appropriately trained to do so in accordance with the GDPR and with the requisite technical and organisational measures.
- 22.27. The parties shall further ensure that any of their respective representatives to whom the Shared Personal Data is to be disclosed are subject to contractual obligations in relation to confidentiality and data protection that bind those Representatives and that are same as the obligations imposed upon the parties by this Agreement.
- 22.28. In the event of a dispute or claim brought by a data subject or the ICO concerning the processing of Shared Personal Data against either or both parties, the parties will inform each other about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.
- 22.29. The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the supervisory authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation, or other dispute resolution proceedings developed for data protection disputes.

23. Translations and White Labelling

- 23.1. Viva City grants to the Customer a non-exclusive, worldwide, royalty based, non-sub-licensable licence to use the Translations for the Specified Purpose only for the Term;
- 23.2. For the avoidance of doubt and without prejudice to the terms of Clause 23.1, Translations must not be copied, duplicated, sub-licensed, assigned, sold, transferred, mirrored, linked to any third party or third party platform or website or application or in any other way accessed or be used by any third party for any other purpose other than the Specified Purpose.
- 23.3. It is the responsibility of the Customer to ensure the accuracy and ownership of the Customer Material and in particular (but without prejudice to the foregoing generality) the terms of Clauses 4 [Acceptable Usage] and 18 [Customer Indemnity] shall apply, in addition.
- 23.4. The Customer shall advise Viva City of all changes made to Customer Material which will require updating the relevant Translation. If there are material changes made to Customer material, then this will constitute a Change requiring a Change Order;
- 23.5. Viva City shall not be liable for any action, claim or demand incurred by the Customer in relation to a Translation incurred due to the breach of the terms of this Agreement by the Customer.

24. Feedback and Modifications

- 24.1. The Customer hereby acknowledges that upon submitting Feedback to Viva City, the Customer automatically grants to Viva City a worldwide, perpetual, irrevocable, royalty free licence to use that Feedback in any way Viva City deems appropriate including, but not limited to:
 - 24.1.1. The use, publication, distribution, transmission, broadcasting, licensing, sub-licensing, leasing, lending and sale of the Feedback; and
 - 24.1.2. The creation, use, publication, distribution, transmission, broadcasting, licensing, sub-licensing, leasing, lending and sale of any derivative works based upon the Feedback.
- 24.2. Viva City's use of the Feedback shall not bestow any rights or interests upon the Customer whatsoever.
- 24.3. The Customer hereby acknowledges that any modifications made to the Software at the request or suggestion of the Customer will belong to and be the Intellectual Property of Viva City.

25. Change Orders.

- 25.1. If the Customer wishes to amend the scope of an Order Form, the parties will use all reasonable endeavours to agree to a Change Order. Each Change Order shall detail the requested changes to the applicable task, responsibility, duty, budget, work programme or other matter. The Change Order will become effective upon the execution of the Change Order by both parties and will include a specified period of time (as agreed upon by the parties) within which Viva City will implement the changes and any increase in price.
- 25.2. Both parties agree to act in good faith and promptly when considering a Change Order requested by the other party. Viva City reserves the right to postpone effecting material changes in the scope of Professional Services until such time as the parties agree to and execute the corresponding Change Order.

26. Entire Agreement

This Agreement and each Order Form comprises the entire Agreement between the Parties and supersedes all previous agreements between the Parties. This Agreement can only be altered or amended by either an Order Form or a Change Order.

PART FOUR – DEFINITIONS.

27. Glossary.

- 27.1. **“Affiliate”** means an entity which controls, is controlled by, or is under common control with, a party, and control means the ability to vote 50% or more of the voting securities of any entity or otherwise having the ability to influence and direct the policies and direction of an entity;
- 27.2. **“Change Order”** means a written statement signed by the parties recording any (a) change in the details of an Order Form, or (b) change in the assumptions upon which the Order Form is based (including, but not limited to, changes in an agreed starting date for a Subscription or Professional Services or suspension of the services by the Customer or (c) any changes in the fees, costs and/or time lines;
- 27.3. **“Confidential Information”** means any information that is proprietary or confidential which either party directly or indirectly discloses, or makes available, to the other, including but not limited to, the existence and terms of this Agreement, all confidential or proprietary information relating to the business, affairs, operations, processes, product information, know-how, technical information, designs, trade secrets or software and/or Intellectual Property of the party disclosing such information;
- 27.4. **“Content”** means any text, graphics, images, audio, video, software, data compilations including, but not limited to, text, graphics, logos, icons, sound clips, video clips, data compilations, page layout, underlying code and software and any other form of information capable of being stored in a computer that appears on, is uploaded to or forms part of the Subscription Services or the Platform; BUT excluding User Content;
- 27.5. **“Database”** means the database stored on the Platform which contains inter alia User Content;
- 27.6. **“Data Controller”, “Data Processor”, “Personal Data” “processing” and “data subject”** shall have the meanings ascribed to them in the Privacy Legislation;
- 27.7. **“DPA”** means the Data Protection Act 2018 and any modification, amendment or re-enactment thereof;
- 27.8. **“Documentation”** means user documentation provided electronically by Viva City for use with the Subscription Services, as periodically updated;
- 27.9. **“Feedback”** means all comments, suggestions, requests, requirements, improvements, feedback, or other input the Customer and Users provide regarding any products or services owned or supplied by Viva City or its Affiliates;
- 27.10. **“Force Majeure”**, means circumstances beyond the control of Viva City which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority, disease, epidemic or pandemic (whether naturally occurring or man-made); inability to supply the Subscription Services and or the Professional Services, materials, breakdown of Local Equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer);
- 27.11. **“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679) as amended, replaced, supplemented or adopted into United Kingdom Legislation from time to time;
- 27.12. **“Guest”** means a customer, diner, visitor or guest of the Customer and/or any Customer website, created, administered or operated as part of either the Subscription Services or the Professional Services;

- 27.13. **"ICO"** means the UK's supervisory authority, the Information Commissioner's Office;
- 27.14. **"Industry Best Practice"** means the standard of care, attention, diligence, expertise, knowledge, methods and practice expected of a competent and experienced professional in the IT and Cyber Security profession;
- 27.15. **"Insolvency Event"** means the other party (a) enters liquidation, or a winding up petition is presented against the company; (b) has a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets; (c) proposes to make any arrangements with its creditors or passes a resolution to place the company into liquidation; or (d) suffers an event which, under the law of a different country, is equivalent to any of the previously specified acts or events;
- 27.16. **"Intellectual Property"** means patents, trademarks, trade name, service mark, copyright, trade secrets, know-how, process, technology, development tool, ideas, concepts, design right, domain names, moral right, database right, methodology, algorithm and invention, and any other proprietary information (whether registered, unregistered, pending or applied for);
- 27.17. **"Local Equipment"** means the Customer or User's own on-premise equipment including hardware and software environment which is used in connection with the Software Services, which comprise of, but is not limited to - server computers (whether virtual or not), Desktop PC's, Laptops or any other portable device, storage systems and relative hardware, firmware, operating software, operating system software, networking software, database software, anti-virus and security software, switches, power supplies and telecommunications infrastructure, internet connection, broadband availability and infrastructure, routers, Printers, associated peripheral devices or accessories whether fixed or portable;
- 27.18. **"Order Form"** means a document provided by Viva City and signed by the Customer that describes the Subscription Services and Professional Services being purchased and/or licensed by the Customer in terms of this Agreement and any additional conditions pertaining thereto substantially in the form comprising PART SIX of this Agreement;
- 27.19. **"Platform"** means the hardware and software environment in which the software element of the Subscription Services operates, which comprises one or more server computers (whether virtual or not), mirroring/duplicating/back-up and storage systems and relative hardware operating software, virtual machine software (where relevant), operating system software, database software, anti-virus and security software, switches, power supplies and telecommunications infrastructure;
- 27.20. **"Privacy Legislation"** means the GDPR (where applicable in relation to the storage retention and processing of EU personal data), the DPA, the retained EU law version of the GDPR (the "UK GDPR"), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner. (as amended or replaced from time to time);
- 27.21. **"Privacy Policy"** means Viva City's policy relating to User Content and compliance with (amongst others) the Privacy Legislation from time to time, the current version of which is located here <https://www.vivacityapp.com/privacy/>;
- 27.22. **"Professional Services"** means the training, consulting, development and other professional services identified on an Order Form but does not include the Subscription Services;
- 27.23. **"Shared Personal Data"** means the personal data and special category personal data to be shared between Viva City and the Customer under these Terms and Conditions;
- 27.24. **"SLA"** means a Service Level Agreement in the form set out in PART FIVE of this Agreement;
- 27.25. **"Specified Purpose"** means for use on the Platform strictly in connection with the Subscription Services only and for no other purpose whatsoever;
- 27.26. **"Software"** means the Viva City™ proprietary operating software and the Third-Party Software written in object and source code residing on and used for operating the Platform and the Subscription Services as Updated and Upgraded from time to time;
- 27.27. **"Stated Purposes"** means the purposes agreed between Viva City and a Customer in writing in terms of which Viva City and a Customer will share Personal Data;
- 27.28. **"Sub-Processor"** means a sub-processor appointed by Viva City to process the Personal Data;
- 27.29. **"Sub-Processing Agreement"** means an agreement between Viva City and a Sub-Processor governing the Personal Data processing carried out by the Sub-Processor, as described in Clause 21;

- 27.30. **“Subscription Services”** means the hosted Customer experience solutions identified in an Order Form, and any modifications periodically made by Viva City, but does not include the Professional Services;
- 27.31. **“Subscription Term”** means the period of time during which Viva City is required to provide the Customer with the Subscription Services as specified in the relevant Order Form;
- 27.32. **“Third-Party Software”** means software other than the Software which belongs to third parties and in relation to which Viva City has the right to grant sub-licenses;
- 27.33. **“Update”** means any update, update rollup, service pack, feature pack, critical update, security update, or hotfix that is used to improve or to fix a software product;
- 27.34. **“Upgrade”** means a software package that replaces an installed version of a product with a newer version of the same product, typically leaving existing customer data and preferences intact while replacing the existing software with the newer version;
- 27.35. **“User”** means the Customer and any of its employees, or a person to whom the Customer has outsourced services, that has permission to access the Subscription Services as a named user and is not employed by Viva City and acting in the course of their employment;
- 27.36. **“User Content”** means any text, graphics, images, audio, video, software, data compilations and any other form of information capable of being stored in a computer that appears on, is uploaded to or forms part of a User Site or the Subscription Services and has been uploaded by a User;
- 27.37. **“User Site”** means a partition/tenancy/instance on the Platform created by Viva City for the Customer and/or User or Users accessing the Subscription Services which shall contain User Content and shall be hosted on the Platform;
- 27.38. **“Venue”** means any restaurant, establishment, outlet, shop, premises, dwelling, vehicle, ship, locomotive, aircraft or unit owned, leased and/or operated by a Customer or its Affiliate, contractor or sub-contractor;
- 27.39. **“WeChat”** means 微信, a Chinese multi-purpose messaging, social media and mobile payment app developed and owned by Tencent Holdings Limited, Tencent Binhai Mansion, Nanshan District, Shenzhen, China;
- 27.40. **“WeChat” Account** means an account and profile created by the Customer in WeChat in order to allow Viva City to deliver the Subscription Services and the Professional Services;
- 27.41. **“White Labelling”** means the use of the Services in an anonymised manner (predominantly as if it were the Customer’s own product (subject to the display of Viva City’s branding in terms of any relevant Order Form)) via an API integration and/or Sub-domain of the Viva City Site all as specified in a relevant Order Form and **“White Labelled”** shall be construed accordingly;
- 27.42. **“Working Day”** means any day (1) which is neither a Saturday or a Sunday or a public holiday in any part of the United Kingdom and (2) upon which the Bank of England is open for business.

PART FIVE – SLA

1. Server availability Service Level Agreement (SLA)

This SLA is designed to ensure that Viva City meets the needs of its Customers and it outlines what levels of service can be expected.

Service Line	SLA	KPI (%)
System Availability	To be made available to Users 24/7	99
Support Hours:	Viva City will respond within defined service levels (see below)	99
Technical Support - Second Line	Available 9.00am – 5.00pm GMT	99

2. Incident Resolution Targets

Severity Description

Response

Resolution

2.1. Unplanned outage impacting multiple Users	1hr	<24 hrs
2.2. Outage / severe disruption to service for several Users	2hrs	within 2 Working Days
2.3. Reduced functionally causing disruption to business	4hrs	within 3 Working Days
2.4. Non-urgent / reduced functionality with low impact	8hrs	within 5 Working Days
2.5. On Demand Professional services requests for installations etc.	8hrs	Agree with Customer

Viva City shall use reasonable endeavours to provide the helpdesk support services in accordance with these Service Levels and Response Times. These Response times refer only to the time within which Viva City shall respond to a helpdesk support request. Viva City gives no guarantee as to the time any given issue may take to resolve save that it hereby undertakes to use reasonable endeavours to resolve issues as quickly as is reasonably possible within the target resolution times specified in the table above.

3. Support provided under this Agreement shall include:

3.1. Help Desk facilities.

- 3.1.1. Due to the close working relationship required during the proof of concept, Viva City will appoint a dedicated account manager who will be the first and primary point of contact for all communications.
- 3.1.2. For software issues, the Customer can email support@vivacityapp.com to contact the Viva City Help Desk which is available during normal business hours (Contracted Hours)
- 3.1.3. The Customer Contact must submit sufficient material and information to enable Viva City support staff to duplicate the problem. A support technician will be assigned and will attempt to solve a problem immediately, or as soon thereafter as possible. When appropriate, the support technician will give an estimate of how long it will take to resolve. The technician will do their best to keep the Customer advised on the progress of problem resolution.
- 3.1.4. The help desk includes an on-line Support facility: The Customer shall ensure the availability at its expense of compatible Local Equipment including software, hardware, communications infrastructure and provide adequate broadband facilities for on-line problem resolution. Viva City will work with the Customer's hardware supplier where necessary to ensure that remote support facilities are setup according to requirements.
- 3.1.5. The help desk is strictly not a training facility. Its objective is to troubleshoot and resolve Software Operational Issues.
- 3.1.6. The help desk is not a hardware or Local Equipment IT support facility. Viva City does not support or warrant your Local Equipment, or any other system or service that you subscribe to. Its sole purpose is to support the Viva City Software only. Anything else is strictly the Customer's responsibility.
- 3.1.7. Additional Service Levels: additional service levels shall be as follows:
 - 3.1.7.1. Viva City will maintain a help desk staffed by skilled, trained professionals.
 - 3.1.7.2. The help desk is equipped with a purpose designed management system that allows Customer/User calls to be logged, tracked, traced and reported.
 - 3.1.7.3. All requests are logged and prioritised, against this priority Viva City will respond to Customer/User requests.
 - 3.1.7.4. During "Contracted hours", Viva City will log all Customer/User calls to the Helpdesk.
 - 3.1.7.5. "Contracted hours" are Monday to Friday- 9am to 5pm Monday to Friday GMT.
 - 3.1.7.6. A restricted service is provided on public holidays.

3.2. Help Desk Procedures:

- 3.2.1. Answer the support case, received via email:
 - 3.2.1.1. Update the Case database
 - 3.2.1.2. Agree case priority
 - 3.2.1.3. Give the user a case reference if necessary
- 3.2.2. Take action on the case:
 - 3.2.2.1. Confirm that this is a Viva City problem
 - 3.2.2.2. Interrogate the Help Desk database

- 3.2.2.3. Use reasonable endeavours to resolve the problem reported by Customer/User
- 3.2.2.4. Report to Customer if problem cannot be resolved
- 3.2.2.5. Pass to a third party if not an Viva City problem
- 3.2.2.6. Inform Customer of progress
- 3.2.3. Close the case:
 - 3.2.3.1. Inform Customer of resolution
 - 3.2.3.2. Update the Help Desk System Database
 - 3.2.3.3. Performance Analysis / reporting
 - 3.2.3.4. Review/Update the Help Desk Database
 - 3.2.3.5. Review Service Level
- 3.2.4. Correction of critical errors or assistance to overcome problems.
- 3.2.5. Viva City may, at its sole discretion, correct errors by "patch" or by version update.
- 3.2.6. Provision of Information on availability of new versions of Licensed Software.
- 3.2.7. Provision Consultancy advice (chargeable at agreed rates may apply where appropriate) on Software development,
- 3.2.8. enhancements and modifications, together with estimates for the same.
- 3.2.9. Provide Installations and Re-installations of Viva City as are required and reasonable to support use of Viva City software.

PART SIX – ORDER FORM

The following Order Form is a template to be used and completed each time the Customer wishes to order new Subscription or Professional Services and the terms have been agreed between the parties.

This Order Form forms part of the Agreement.

This Order Form ("**Order Form**") is between **DIN DINS CLUB LIMITED**, a company incorporated in England with registered number 09852707 and whose registered office is at Silk Ventures, 24th Floor, One Canada Square, London, England, E14 5AB Trading as Viva City ("**Viva City**") and you, ("**the Customer**") and is governed by the Viva City Terms and Conditions which can be found here: <https://www.vivacityapp.com/terms.pdf> (the "**Terms**").

The parties hereby agree as follows:

This document constitutes an "Order Form" under the Terms, and this Order Form is subject to the terms and conditions of the Terms. In this Order Form, unless specified otherwise, words and phrases shall have the same meanings as those in the Terms.

CUSTOMER & BILLING DETAILS	
Customer Name:	
Customer Address:	
Billing Contact Name:	
Billing Phone Number:	
Billing Email Address:	
Customer Registration Number:	
Customer VAT Number:	
CONTACT DETAILS	
Full Name:	
Email:	

Role:	
Phone:	
CONTRACT TERM & TERMINATION	
Terms & Conditions:	
Commencement Date	
Subscription Term:	
PROFESSIONAL SERVICES, FEES & OTHER CHARGES Quote valid for 7 Days from Receipt All Prices Exclude VAT.	
ADDED TO FIRST INVOICE	
Setup Fee:	
Chosen Template:	
Professional Services provided in Setup Fee	
Setup Add-Ons:	
Training Fee:	
Training Details:	
PAYABLE MONTHLY	
Licensing Fee:	
Extra Add-On Costs:	
Admin Support Fees:	
Other Notes:	
Payment Terms:	

YOUR ONBOARDING OBLIGATIONS	
Obligation	Deadline to Meet Obligation

OUR ONBOARDING OBLIGATIONS	
Obligation	Deadline to Meet Obligation

By signing below, you agree to be bound by this Order Form and the Terms and Conditions, including all Onboarding Obligations (above).

The signatory warrants that he / she is authorised to sign on behalf of the Customer

Signed: On behalf of	
Name:	
Date:	
Capacity in which signing:	