

Terms of Service

1. Glossary

“**Authorised Users**” has the meaning given in clause 3.2.

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

“**Commencement Date**” has the meaning given in the Subscription Form.

“**Confidential information**” means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information.

“**Data**” means all data which belongs to the Client and which is not personal data.

“**Data Protection Legislation**” means the Data Protection Act 2018 and any other applicable data protection legislation in force from time to time.

“**Derivative Work**” means original content contained on our sites that is based on the Materials, such as menus, reviews, art reproduction, abridgement, condensation or any other form in which a work may be recast, transformed or adapted for use on our sites and in respect of the provision of our Services.

“**Initial Subscription Period**” means the period set out in the table in the Subscription Form under the heading “Initial Subscription Period”.

“**Materials**” means the materials provided, or to be provided, by the Client to the Company from time to time in connection with the Services.

“**Marketing Services**” means any marketing & PR services as may be provided by the Company to the Client from time to time.

“**Marketing Fee**” means a fee payable either monthly or in one instalment by the Client to the Company for the Marketing Services, as may be set out in the Subscription Form from time to time.

“**Normal Business Hours**” means 9.00 am to 6.00 pm local UK time, each Business Day.

“**Renewal Period**” has the meaning given in clause 16.1.

“**Subscription Period**” means either the Initial Subscription Period or the Renewal Period, as may be applicable.

“**Subscription Fee**” means a fee payable by the Client to the Company in respect of the Initial Subscription Period and each Renewal Period.

“**Setup Fee**” means a one-off fee payable by the Client to the Company in respect of the Initial Subscription Period for the configuration of the Services.

“**Subscription Form**” means the subscription form in regards to the Services entered into between the Company and the Client.

“**Subscription Period**” means the Initial Subscription Period and any successive Renewal Period, as may be applicable from time to time.

2. About us

Company details. **DIN DINS CLUB LIMITED** (company number 09852707) (“**we**” and “**us**”) is a company registered in England and Wales whose registered office is at Silk Ventures, 24th Floor, One Canada Square, London, England, E14 5AB.

3. Our contract with you

3.1 **The Services.** Our website comprises the following sub-domains: <https://www.vivacityapp.com/en/London>, [Inhouse.vivacityapp.com](https://www.inhouse.vivacityapp.com) and [vivacityapp.com](https://www.vivacityapp.com) (“**our sites**”) is a software platform which is designed and made available to you via the internet on a subscription basis linking you to consumers by way of providing a QR code and creating a web page on our sites. We will also publish information about you, the services you provide; recommended dishes and drinks; social ratings in our viva city review section (“**Services**”). These Terms of Service apply to you if you are a client wishing to use our sites to promote, market and sell your services to customers.

3.2 **Our contract.** These terms and conditions (“**Terms of Service**”) together with the Subscription Form apply to the use of our sites and the Services by you and your employees, agents, and independent contractors who are authorised by you (“**Authorised Users**”) to use our sites and the Services (the “**Contract**”).

3.3 **Entire agreement.** The Contract is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.

3.4 **Language.** The Contract is made only in the English language.

3.5 **Your copy.** You should print a copy of these Terms of Service or save them to your computer for future reference.

3.6 **Your contracts with consumers.** We will not be a party to any contract made between you and any consumer and therefore we shall not be liable for any loss or damage that results from any dealings between you and any consumer. For detailed information regarding our liability to you please see clause 15 of these Terms of Service.

4. Our sites

4.1 **Descriptions and illustrations.** Any descriptions or illustrations on our sites are published for the sole purpose of giving an approximate idea of the services described in them. They will not form part of the Contract or have any contractual force.

4.2 **Modifications.** We reserve the right to temporarily discontinue or modify the Services or any part of our sites where necessary in our sole discretion for the purposes of making modifications to the design, specifications, network connectivity or method of operation of our sites. You acknowledge that our sites are subject to limitations, delays and other technical issues which are inherent in the use of third-party networks or communications facilities including the internet.

4.3 **Changes to specification.** We reserve the right to amend the specification of the Services if required by any applicable statutory or regulatory requirement or if the amendment will not

materially affect the nature or quality of the Services, and we will notify you in advance of any such event.

5. Acceptance of booking

We may, from time to time accept bookings directly from the customers. Our restaurant booking system is integrated with Restaurantdiary.com Limited (trading as ResDiary). You may view ResDiary's terms of use at <https://www.resdiary.com/Terms> and privacy policy at <https://sales.resdiary.com/privacy-statement/>. By entering into the Contract, you agree to procure that ResDiary's terms of business, privacy policy and all other relevant and up to date policies are available to each user of the Services at the time of booking.

6. Other terms that apply to you

6.1 Terms of Website Use

6.2 Privacy and Cookie Policy. Please visit our Privacy and Cookie Policy to learn how we may process your personal information.

7. Your obligations

7.1 You shall:

7.1.1 provide us with:

- (a) all necessary co-operation in relation to the Contract;
- (b) all such Documentation as may be required for the provision of the Services. You warrant that all such Documentation provided by you is accurate, reliable and not misleading;
- (c) all necessary access to such information as may be required by us; and
- (d) all names, logos, images, text, films, website links, social media links, terms and conditions and other materials relating to you and your business,

in order to provide the Services.

7.1.2 without affecting your other obligations set out in these Terms of Service, comply with all applicable laws and regulations with respect to your activities under the Contract;

7.1.3 carry all your other responsibilities as set out in the Contract in a timely and efficient manner;

7.1.4 deal with all customer queries and complaints in a timely manner;

7.1.5 ensure that the Authorised Users use our sites in accordance with the Contract and shall be responsible for any Authorised User's breach of the Contract;

7.1.6 obtain and shall maintain all necessary licences, consents, and permissions necessary to enable us, including our contractors and agents, to perform our obligations under the Contract, including without limitation the Services;

7.1.7 ensure that your network and systems comply with the relevant specifications as may be provided to you from time to time; and

7.1.8 be solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

7.2 You acknowledge and confirm that you are solely responsible for any contracts entered into between you and any customer.

8. Charges and payment

8.1 You shall pay the Subscription Fees for the Services in accordance with this clause 8.

8.2 You shall, on the Commencement Date, either:

8.2.1 provide valid up-to-date and complete debit card details or approved purchase order information acceptable to us and any other valid up-to-date and complete contact and billing details and, if you provide your debit card details to us, you hereby authorise us to bill such credit card:

(a) on the Commencement Date for the Subscription Fees and the Setup Fee in respect of the Initial Subscription Period; and

(b) subject to clause 16.1 on each anniversary of the Commencement Date for the Subscription Fee payable in respect of the next Renewal Period; or

(c) for the Marketing Fee in respect of any Marketing Services rendered during the Subscription Period, if applicable; or

8.2.2 complete a direct debit mandate on GoCardless website (we will send you a link via e-mail on or before the Commencement Date) to give us the permission to collect money from your bank account on agreed payment dates. This will either be on a one-off or recurring payment basis, depending on the duration of your chosen Subscription Period.

Payment in accordance with clause 8.2.2 shall be due within 30 calendar days after the due date, and without prejudice to any other rights and remedies.

8.3 Your approved Subscription Form information, we shall invoice you:

8.3.1 on the Commencement Date for the Subscription Fee payable in respect of the next Renewal Period; and

8.3.2 subject to clause 15.1, at least 30 days prior to each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period,

and you shall pay each invoice within 30 calendar days after the due date, and without prejudice to any other rights and remedies.

8.4 If we have not received payment within 30 days after the due date, and without prejudice to any other rights and remedies:

8.4.1 we may, disable your password, account and access to all or part of our sites and we shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain outstanding; and

8.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of our bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.5 All amounts and fees stated or referred to in the Contract:

8.5.1 shall be payable in pounds sterling;

8.5.2 are, subject to clause 15.1, non-cancellable and non-refundable; and

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

8.6 We reserve the right to increase the Subscription Fee and the fees payable in respect of the Additional Subscription Options purchased pursuant to clause of the Subscription Form at the start of each Renewal Period upon giving reasonable prior notice.

9. Proprietary rights

9.1 You acknowledge and agree that we and/or our licensors own all intellectual property rights in the Services and the Materials. Except as expressly stated herein, we do not grant you the right to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.

9.2 You confirm that you have all the rights in relation to the Services that are necessary to grant all the rights you purport to grant under, and in accordance with, the Contract.

9.3 By entering into the Contract and providing the Materials, you hereby grant us a non-exclusive right to use the Documentation during the Subscription Period for the purposes of providing the Services.

9.4 The licence granted under clause 9.3 above permits us to:

9.4.1 modify, electronically reproduce and distribute and display the Materials and their contents on our sites; and

9.4.2 make Derivative Works, reproduce, display and distribute such Derivative Works in conjunction with the Materials and the Services on our sites.

10. Confidentiality

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 10.1.2 was in the other party's lawful possession before the disclosure;
 - 10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.
- 10.3 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 the Contract.
- 10.4 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 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 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6 You acknowledge that details of the Services, and the results of any performance tests of the Services, constitute our Confidential Information.
- 10.7 No party shall make, or permit any person to make, any public announcement concerning the Contract 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.
- 10.8 The above provisions of this clause 10 shall survive termination of the Contract, however arising.

11. Your data

- 11.1 At all times you shall own all right, title and interest in and to the Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity and accuracy of all such Data.
- 11.2 In the event of any loss or damage to Data, your sole and exclusive remedy against us shall be our reasonable commercial endeavours to restore the lost or damaged Data from the latest back-up of such Data, in accordance with our archiving procedure and practices.
- 11.3 We shall not be responsible for any loss, destruction, alteration or disclosure of Data caused by any third party.

- 11.4 We both will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to and does not relieve neither you nor us from complying with the Data Protection Legislation.
- 11.5 We acknowledge and agree that if we process any personal data when performing our obligations under the Contract, you shall be the data controller and we shall be the data processor for the purposes of the Data Protection Legislation. Where “personal data” “data controller” and “data processor” shall have the same meanings as set out in the Data Protection Legislation); and
- 11.6 Our Privacy and Cookie policy sets out the scope, nature and purpose of processing; the duration of the processing; and types of personal data.
- 11.7 As of 25 May 2018, we're aligning with the European Union's new General Data Protection Regulation (GDPR). We have updated our privacy policy to provide you with more information on how Viva City protects your rights to your data.

12. Third party providers

You acknowledge that the Services may enable or assist you to access our sites, and purchase services from third parties via third-party website and that you do so solely at your own risk. We make no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by you, with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party. We recommend that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. We do not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

13. Translation of the restaurant menus

- 13.1 You acknowledge and agree that we are not responsible for the accuracy and completeness of the list of ingredients of every dish contained on your menus which we translate and display on our sites.
- 13.2 We cannot guarantee that the meals sold by you are free from allergens.
- 13.3 You undertake to provide to the consumers full information on substances or products causing allergies or intolerances as may be required by the relevant law from time to time.

14. Indemnity

- 14.1 You shall defend, indemnify and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Services. We will give you a prompt notice of any such claim and will provide reasonable cooperation in the defence and settlement of such claim at your expense.
- 14.2 In defence or settlement of any claim, we may procure the right for you to replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to you without any additional liability or obligation to pay you liquidated damages or other additional costs.

14.3 Neither we nor our employees, agents or sub-contractors shall be liable to you to the extent that the alleged infringement is based on:

14.3.1 a modification of the Services by anyone other than us; or

14.3.2 your use of the Services in a manner contrary to the instructions given by us to you; or

14.3.3 your use of the Services after notice of the alleged or actual infringement whether received from us from any appropriate authority.

14.4 The foregoing and clause 15 state your sole and exclusive rights and remedies, and our (including our employees', agents' and subcontractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15. Limitation of liability

15.1 Except as expressly and specifically provided in the Contract:

15.1.1 you assume the full responsibility for results obtained from the use of the Services and for conclusions drawn from such use. We shall have no responsibility for any damage caused by errors or omissions in any information or instructions provided by us to you in connection with the Services, or any actions taken by us at your direction; and

15.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract.

15.2 Nothing in these Terms of Service excludes our liability for:

15.2.1 death or personal injury caused by our negligence; or

15.2.2 fraud or fraudulent misrepresentation.

15.3 Subject to clause 15.1 and 15.2:

15.3.1 we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

15.3.2 our total aggregate liability in contract (including in respect of the indemnity in clause 14.1), tort, (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

16. Term and termination

16.1 The Contract shall, unless otherwise terminated as provided in this clause 16, commence on the Commencement Date and, subject to clause 16.2, shall continue for the Initial Subscription Period

and, thereafter shall be automatically renewed for successive periods of 12 months (each a “**Renewal Period**”), unless:

16.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Period or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Subscription Period or Renewal Period; or

16.1.2 otherwise terminated in accordance with the provisions of the Contract,

and the Initial Subscription Period together with any subsequent Renewal Periods shall constitute the Subscription Period.

16.2 The Client shall have the right to terminate the Contract during the first three months of the Initial Subscription Period by giving notice to the Company in writing not later than on the last day of the second month following the Commencement Date.

16.3 Without affecting any other right or remedy, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

16.3.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

16.3.2 the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

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

16.3.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

16.3.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.3.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.3.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

- 16.3.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 16.3.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 16.3.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 16.3.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.3.4 to clause 16.3.10 (inclusive);
 - 16.3.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 16.3.13 there is a change of control of the other party.
- 16.4 On termination of the Contract for any reason:
- 16.4.1 all licences granted under this agreement shall immediately terminate and you shall immediately cease all use of the Services; and
 - 16.4.2 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

17. Force Majeure

We shall have no liability to you under the Contract if we are prevented from or delayed in performing our obligations under the Contract, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that you are notified of such an event and its expected duration.

18. Conflict

If there is an inconsistency between any of the provisions in these Terms of Service and the Subscription Form, the provisions in the Subscription Form shall prevail.

19. Miscellaneous

19.1 Variation

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

19.2 **Waiver**

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

19.3 **Rights and remedies**

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

19.4 **Severance**

19.4.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

19.4.2 If any provision or part-provision of the Contract is deemed deleted under clause 19.4.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19.5 **Entire agreement**

19.5.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.5.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

19.5.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

19.5.4 Nothing in this clause shall limit or exclude any liability for fraud.

19.6 **Assignment**

19.6.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.6.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.7 **No partnership**

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the

authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19.8 Third party rights

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

19.9 Notices

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

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

19.10 Governing law and jurisdiction

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

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