



Viva Dental, LLC  
1025 N. Brand Blvd.  
Glendale, CA 91202  
(888) 340-1840

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## Viva Marketing Agreement

This Agreement is between Viva Dental, LLC located at 1025 Brand Blvd. Suite 301, Glendale, CA 91202 ("Viva") and ("Client").

**1. Scope of Services.** From time to time, at Client's request Viva may provide the Viva System package specified on a Viva order form ("Order Form"), which includes the development and distribution of cards with promotional offerings chosen by the Client ("Viva Cards").

**2. Service Fees and Payment.** Prices are as listed on the order form and are paid at the time of order. All other payment terms must be accompanied by an Auto-Debit Authorization Form. Prices are subject to change and future orders will reflect any new pricing.

**3. Licensing and Client Warranties.** Client warrants and represents that:

a. Client is in compliance with all applicable laws of each political subdivision in which it operates, is not in material violation of any laws, rules, regulations, licensing and/or certification requirements which apply to the conduct of Client's business.

b. Client is fully qualified and legally entitled to offer and provide the promotional service that it will offer on Viva Cards.

c. This Agreement constitutes a legal, valid, and binding obligation Client and Client has complied with all internal actions necessary to authorize Client to enter into this Agreement.

d. Any valuation of an offer included on a Viva Card for Client shall be a true and correct valuation, for which Client has a reasonable basis meaning objective evidence that supports the claim.

e. Client owns or has a valid license to all intellectual property furnished to Viva for inclusion in any materials to be prepared and/or distributed by Viva. Client agrees to hold harmless, defend, and indemnify Viva, including its parents, subsidiaries, affiliates, members, managers, employees, etc. from any claim or lawsuit arising out of the use of intellectual property provided to Viva by Client.

f. Any Client Viva Cards will be redeemed with Client will be (i) honored, (ii) swiped in so as to ensure that data is captured into Viva's database for Client for accurate monitoring of the efficacy of the program. Client understands and agrees that should any Viva Cards fail to be swiped when redeemed, Company has the right to immediately terminate this Agreement, at its sole discretion, and, in such event, Company is released from all further obligation to Client.

**4. Limitation of Liability.** Client's sole and exclusive remedy for any and all claims for damage under this Agreement, including general, special and punitive damages is limited to the total sum of fees paid by Client under this Agreement during the Initial Term. Company makes no representation as to the quality of persons redeeming Viva Cards or how many, if any, become actual patients of record for Client.

**5. Refund Policy.** Client orders may be cancelled only on written notice. Viva will issue a refund on orders cancelled within 14 days of placement. Any cancellations after 14 days will be for credit against future orders only, less reasonable expenses related to the cancelled order.

Results Guarantee Program: The Results Guarantee Program is a binding contractual agreement for twelve consecutive months. Due to this program being heavily loaded on the front end (design, dashboard integration and mailers produced at start of program), there is a breakage fee of forty percent of the full cost of the program.

Patient Guarantee Specifications: Patient Guarantee: Your Viva package when used as directed provides a patient guarantee. When the program fails to produce the indicated number of patients, Viva will cover all expense to supply the client with additional marketing materials, in limited quantities until the guarantee has

been met. This guarantee is limited to consistent participation in the Viva Program as intended and directed. This program is designed to go to each patient leaving the practice for referrals. The dashboard must provide indication that the program has been used as directed. Certain limitation and conditions may apply depending on market change. Guarantee is valid for one calendar year from the date of invoice, or as long as the client maintains weekly use of the dashboard, showing continuing participation in the program. The client will cover any necessary expense to cover the costs related to shipping and handling, not to exceed \$40 per delivery.

**7. Delivery Policy of Viva Materials.** Delivery of materials is defined as all items included in any purchase of goods and services from Viva Dental, LLC. All materials purchased by client for his/her Viva program are fully delivered by the end of the contract date. Materials not delivered by the end of the contracted time period, after due diligence by a Viva Account Representative to deliver all materials to the contracted client, will be voided within 60 days after termination of said contract .

Quarter Deliver Dates: Delivery of all Viva programs are done quarterly and can be calculated by simply dividing the total items purchased by 4. For example, if 1200 Vivapaks (and plastic cards) were purchased as part of a program, then 400 Vivapaks will be delivered every 3 months. This applies to database mailers and neighborhood mailers. Any client on a monthly, annual or bi-annual marketing agreement: Viva *does not* deliver “by the month,” *only by the quarter*. The client may elect to have more materials delivered in any given quarter, but all such changes must be SET at the time of the first order processing.

Delivery “Change Order” Surcharge: There are NO CHANGE orders on the amount (quantity of items) or quarterly delivery dates after the initial (first) order processing has been done. Any “change order” in either volume of materials or quarterly delivery dates, carries a surcharge of \$250 (for each change).

**8. Typographical Mistakes, Wrong URLs, Numbers or Spelling on Viva Materials:** Viva has an established Quality Control Department (QC) that performs proofreading to eliminate as much as possible, oversights in both grammar and spelling errors with names, phone numbers, addresses and website URLs. Although Viva makes every effort to eliminate such errors, the client must approve all final materials as an authorization to print and produce his/her materials. Any error(s), whether small or large, is the full responsibility of the client upon his approval authorization. When checking and authorizing of your materials all copy should be read, all phone numbers, names, addresses, services and URLs should be read, and corrected where wrong, with a high regard and due diligence. If materials are printed and/or produced and errors are discovered afterwards, the cost of any re-prints are paid for by the client (cost of materials and labor).

## **9. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the State of California. Any disputes arising out of this Agreement shall be resolved through the American Arbitration Association in Los Angeles, California, and under its then-existing rules governing arbitration of commercial disputes. Any award made by an arbitrator shall be binding upon the parties and may be entered into judgment in a court of competent jurisdiction. Prevailing party is entitled to attorney's fees and costs.

**10. Complete Agreement.** This Agreement incorporates the general terms and conditions found at [www.viva-cards.com/terms.html](http://www.viva-cards.com/terms.html). Execution of this Agreement constitutes their complete acknowledgement of and agreement to the terms and conditions relating to the Program for this location. This Agreement may be executed in counterparts, and a facsimile or electronic signature has the same legal force and effect as an original signature. If any part of this Agreement is found to be unenforceable, the remainder of the Agreement shall be in full force and effect, less the offending sections.

1. Customer response rates are directly proportional to distribution and therefore the cards must be distributed.
2. Swipe-Ins: Patients coming in to the office with a Viva card must be swiped in so the information is recorded in the Viva System program Metrics.
3. Training: Employees of the office implementing the Viva Referral System must have completed the Viva Introduction E-course in order to make full use of the Viva System.

4. Ramp-up Time: While results with the Viva System are beyond compare with any other marketing method, the program takes approximately three (3) months of continual use to implement the system in Client's office and see results.

By checking the preceding box you confirm that you are authorized to agree, and do agree, to the terms of the referenced agreement on behalf of . A copy of the executed agreement will be emailed to the email address specified above.

Dated:

To be digitally signed

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