



## Viva Marketing Agreement

This Agreement is between Viva Dental, LLC located at 1025 Brand Blvd. Suite 301, Glendale, CA 91202 ("Viva") and ("Client"). Name of client: \_\_\_\_\_ Address: \_\_\_\_\_

**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. 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. Viva offers two payment options: 1) **Auto-Debit from credit cards which carries a 3.5% credit card fee**, or 2) **ACH (direct banking deposit), which carries no additional fee**. Viva, as a merchant, is in full compliance with contractual rules required by credit card brands (Visa, MasterCard, American Express, Discover, etc.). Viva receives zero benefit, profit or any funds for credit card processing or merchant fees. Debit cards may be used and there is no fee for debit cards. Clients who opt for credit card auto-debit receive 10% additional materials on internal Vivapaks purchased.

**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.* All labor, material costs for dies, printing, plastic cards, etc. are heavily loaded (costs incurred by Viva) at the front end of beginning the program. In addition, all materials for Viva's clients, vivapaks, plastic cards, database mailers, neighborhood mailers are fully produced, assembled and shelved for the full year's program. As such it must be clear to the client there is a *breakage fee of sixty percent of the full cost of the program in addition to used materials and administrative fees* incurred for account representative commission fees and account processing fees.

**6. 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, due to inability to contact client or obtain client approval to deliver purchased Viva materials in alignment with paragraph 6.1 (below), and after due diligence by a Viva Account Representative to deliver all materials to the contracted client, will be void within 60 days after termination of the marketing agreement contract.



### 6.1 Deliver Policy Dates & Time Expectancy.

Overview: The delivery time of client materials is dependent on placing the order with Viva's Order Processing Department. It is unalterable policy that all items needed by the client (photographs, copy, logo, color theme and the client's database) are delivered to the Order Processing Department within 7 working days from signed marketing agreement.

Delivery of all Viva programs are done as follows:

Vivapaks: Vivapaks are fully produced with plastic cards (a year's quantity) and shipped at one time.

Delivery Expectancy: Estimated time of delivery is four working weeks (weekends not included) after the client approval date.

Plastic Cards: Offers on plastic cards **cannot be changed once printed**. In the event a client wants to change his/her offer, to accommodate Viva clients, plastic cards can be redone at a cost of .40 per card.

Database Mailers: Database mailers are produced in full quantity for a 12 month period and turned over to a fulfillment center to be delivered in accordance with the delivery months chosen by the client. Database mailers for clients on a 24, 36 or 48 month program are produced in full quantity for each success year (for a 12 month period) for purposes of adding the new patients from the last year into the next year's database mailings. The delivery dates are pre-set at the time your order is processed. Once the delivery dates are set and shipped to the fulfillment center, **there are no change orders allowed or accepted for any reason**. The materials are produced, enveloped, shipped and in monthly delivery containers at Viva's certified fulfillment center. The order can be cancelled at the cost of the client, but it cannot be altered or changed in any manner.

Neighborhood Mailers: Neighborhood mailers are mailed monthly, every 2 months or quarterly. Neighborhood mailers have a minimum quantity of 2,000 for each mail drop. Once neighborhood mailer brochures are scheduled with approved delivery dates by the client, **there are no change orders allowed or accepted for any reason**. The materials are produced, enveloped, shipped and in monthly delivery containers at a certified fulfillment center. The order can be cancelled at the cost of the client, but it cannot be altered or changed in any manner.

#### Delivery Expectancy:

Database Mailers—Estimated time of delivery for database mailers is 4 weeks after the client approval date.

Neighborhood Mailers—Estimated time of delivery for neighborhood brochures is 6 weeks after the client approval date.

Client's Database: The client's database (list of patients, names, addresses, etc.), is the full responsibility of the client and all lists are provided by client to Viva. Client understands the list provided to Viva is reviewed and authorized as correct and valid, including whether the list contains active, inactive or a combination of both. The entire database must be provided *with the last visit date of the patient*.

### 6.2 Design of Client Materials—Restrictions & Policy:

- a. It is unalterable policy and understood that Viva's Design department does the designs of all client materials, not the client. The client's initial direction on color, theme and general concept is used by the designer. The design is done in accordance with the initial written instructions from the client. The client is allowed two rejects and/or changes on their designs of a vivapak, presentation card or neighborhood mailer. Any version or change after two changes is charged at \$120 per hour or \$120 per reject, whichever occurs.
- b. A maximum of 4 images will be accepted by Viva's Design Department for neighborhood brochures, these include an image of the doctor (we highly recommend a family photograph showing wife and children), an outside photo of the building and/or facility and 1 or two internal images such as a photo of reception or operator. Viva design department does not use photoshop for editorial purposes.
- c. All design assets (images and logos or copy supplied by client) must be promptly received by the Viva Design Department (within 3-4 days) as Viva's firm policy is that all designs are completed, approved and turned over to the printing facility **within seven working days**. It is firm and unalterable policy when Viva Design Department does not receive images, photos or logos, **within 3-4 working days**, then images from the client's website and/or stock images will be used to design the brochure. The client must understand that once stock images are used, there is no changing of the design. Any change of the design is subject to a minimum surcharge of \$250. Designs of materials, logos and copy are the property of and owned by the client.

### 7. 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).

**8. Postage & Shipping Charges.**

- a. Postage fees, both ground shipping and United States postal fees, are paid in advance prior to materials being shipped and/or mailers being mailed by the post office. All postage and shipping fees are included in the client’s monthly auto-debit agreement. **Any shortage in postal charges or shipping & handling fees are added to the monthly auto-debit at the time such costs are incurred.**
- b. Client hereby understands that shipping costs are **estimates** and any additional shipments or extra charges or shipping & handling are charged as an additional amount to the client’s monthly auto-debit agreement at the time such additional costs are incurred by Viva.
- c. As well, a client may order a specific “targeted” mailing list which changes the postal rates per item. In such cases, where postal rates are changed due to location and/or modifications of postal routes (targeted mailings), any additional postal fees are the responsibility of the client. If such costs are incurred, client agrees that Viva has authorization to charge the additional postage rate to the client’s monthly auto-debit agreement.

**9. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the State of California.

**10. Default, Acceleration & Attorney’s Fees.** In the event of any Client default under this agreement, including, but not limited to deposit, installment or other, then all sums due hereunder shall become immediately due, owing and payable to Viva. If any Party brings an action to enforce the terms of this Agreement or to declare its rights hereunder, the prevailing party in such action shall be entitled to an award of its reasonable attorney’s fees and costs.

**11. Complete Agreement.** This Agreement incorporates the general terms and conditions found herein. Execution of this Agreement constitutes their complete acknowledgment 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.

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.

**Training:** Employees of the office implementing the Viva Referral System must have completed the Viva Introduction in order to make full use of the Viva System.

**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 signing this agreement you confirm that you are authorized to agree, and do agree, to the terms of the referenced agreement on behalf of \_\_\_\_\_ (client’s name). A copy of the executed agreement will be emailed to the email address specified above.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_