



Invisalign Advertising Agreement.

Advertising agreement.

Invisalign advertising agreement Align Technology Europe BV.

Align Technology B.V., Arlandaweg 161, 1043 HS Amsterdam, The Netherlands (“Align”), as licensee of Align Technology, Inc., 2560 Orchard Pkwy, San Jose 95131, USA is willing to grant you the right to use the Marks and the Works (both as defined below) for the purpose of promoting and advertising the Invisalign Products and Services offered in your practice on the terms and conditions set forth in this advertising agreement (this “Agreement”).

Note: If you are an authorised Invisalign Provider and you are a dentist or orthodontist located in Andorra, Austria, Bulgaria, Belgium, Croatia, Czech Republic, Denmark, Faroe Islands, Finland, France, Germany, Ghana, Gibraltar, Greece, Greenland, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, and Switzerland, and you would like to use Align’s Work and/or Marks as further described below, please read this Agreement carefully.

1. Definitions.

“Art and Advertising Standards” means Align’s art and advertising standards from time to time in place;

“Invisalign Products and Services” means the dental and orthodontic devices and the orthodontic and dental services provided under Align’s Marks (including the Invisalign brand);

“Infringement” means use of one or more of the Marks (including colourable imitations and the use of trademarks incorporating or derived from all or part of any Align trademarks) in a manner that is not authorised by Align Technology, Inc.;

“Marks” means the Invisalign word trademark and the Invisalign logos, Vivera and Align, together with any additional or substitute trademarks which Align shall from time to time deem suitable or necessary for the promotion and advertisement of the Invisalign Products and Services that are provided for use by you pursuant to this agreement in writing;

“Personalise” (“Personalised” and “Personalisation”) means and is limited to the adding of your name, address and contact information in the space designated for such insertion to the marketing materials stored online and provided to you;

“Territory” means the country where you provide Invisalign Products and services; and

“Work” means Align’s advertising templates, i.e. all marketing materials that are provided to you, such as texts, photos, templates, videos, images, artworks and logos.

2. Licence.

2.1 Subject to the terms herein, Align hereby grants you a personal, limited, non-transferable, non-sublicensable, non-exclusive, royalty-free licence within the Territory to:

- (a) Personalise the Work solely in accordance with the Arts and Advertising Standards;
- (b) use the Personalised Work in promotional or advertising material solely to promote or advertise Invisalign Products and Services, and only to the extent explicitly stated herein;
- (c) use, without modification or alteration, the Marks solely as such Marks appear in the Work as such Work is provided to you by Align and in accordance with the Art and Advertising Standards or Align prior written approval; and
- (d) refer to Align in the Personalised Work only as further stipulated below for the sole purpose of promoting and advertising the Invisalign Products and Services offered in your practice.

2.2 No modification or alteration of the Work is permitted other than (i) Personalisation and (ii) reduction or expansion of the overall size of the Work to accommodate advertising copy size constraints. If you have to re-size the Work to meet the specific space requirements for a given publication, the utmost care must be taken to maintain the integrity of the design to whatever degree possible. In short, change as little as you can while paying attention to the spatial relationships between elements in the layout.

Advertising agreement (continued).

2.3 This licence does not give you any ownership rights in the Work or Marks. You acknowledge that the Work and Marks shall remain the exclusive property of Align. All goodwill arising out of your use of the Marks inures to the benefit of Align. Your limited right to use the Work and Marks terminates upon the termination of this Agreement, which shall itself terminate automatically upon termination of your right to purchase products from Align.

3. Align's prior approval of use.

3.1 No later than ten (10) days prior to any use of the Work and the Marks, you are required to (i) submit to Align at eumarcoms_uk@aligntech.com an electronic copy of all advertising or marketing materials referring to Align and/or using the Work and/or the Marks or parts thereof, (in all formats including, but not limited to, online web pages and banners, physically printed materials, and audio or audiovisual work including video, smartphone apps or other digital content created for broadcast, webcast, podcast, posting to website, use on "smart" handheld devices or any other mode of transmission), and (ii) obtain Align's written approval prior to any such use. Align reserves the right to impose such additional terms and conditions as it deems reasonably appropriate, and to revoke such approval at any time.

3.2 No deviation from the copy shown in the print advertising templates provided to you is allowed without prior written approval from Align. No editing or re-mixing of Align video content is permitted without prior written approval from Align. All edited or re-mixed versions of Align video content created with Align's permission must be submitted for approval prior to use, and shall not be posted online, transmitted, displayed, broadcast, or otherwise used by you without prior written approval by Align.

3.3 Align reserves the right to require modifications to any part of your original artwork prior to publication. If you wish to add your own original artwork, practice logo or tagline to any of the Work or use the same in connection with the Marks, this will be subject to Align's prior written approval.

3.4 Invisalign must be the only clear aligner mentioned in any advertisement.

4. Copyright and trademark acknowledgments.

4.1 All Work must bear the credit line "© [year], Align Technology, Inc. Invisalign is a registered trademark of Align Technology, Inc." or as otherwise indicated in writing by Align.

5. Use of the Work and/or Marks.

5.1 You undertake to ensure that the use of the Work and/or Marks shall in no way reduce or diminish the reputation, image and prestige of the Work, the Marks and/or Align and/or any of its group companies in general.

5.2 You agree to comply with the Invisalign Align Art and Advertising Standards which will be available to you online upon signing of this Agreement. Pornographic, defamatory, libellous or otherwise unlawful use of the Work and/or Marks is strictly prohibited whether directly or in context or juxtaposition with a specific subject-matter. Please assume that no model release or other release exists for the Work unless otherwise specified in writing by Align. You should contact Align for processes and procedures regarding model releases.

5.3 You agree not to make, authorise or permit any use of the Work or the Marks or any derivative thereof except as authorised herein. Align or its representative may at any time upon three (3) days' prior notice audit any of your records relating to the use of the Work or Marks, to verify that the Marks and the Work are being used in accordance with this Agreement, provided that such third party is under obligations of confidentiality similar to the terms of this Agreement.

5.4 No products competitive to or incompatible with Invisalign Products or Services may appear or be mentioned in any marketing materials, including but not limited to web pages or coupons, or advertising that use Invisalign or any other trademarks belonging to Align or Align US. Align retains the right to require immediate removal of any Work that may have been provided or approved for use; and you agree to promptly comply with such requirement(s).

Advertising agreement (continued).

5.5 You expressly understand and acknowledge that:

- (a) Align Technology Inc. is the owner of all right, title and interest in and to the Marks and the goodwill associated with and symbolised by them;
- (b) during the term of this Agreement and after its expiration or termination, you will not directly or indirectly contest the validity of, nor take any other action which might jeopardise our or Align US' ownership of, or our right to use and to license others to use, the Marks;
- (c) your use of the Marks and/or the Work pursuant to this Agreement does not give you any ownership interest or other interest in or to the Marks and/or the Work; and
- (d) the laws on the advertising of medical devices vary and in some countries might not be lawfully engaged in by dentists or at all. It is your responsibility to ensure that any advertising is permitted in the country in which you practice. Align does not when authorising the use of its Mark, check the legality of that use, in the particular country.

5.6 Any additional goodwill generated by you for the Marks will be our or Align US' sole property.

5.7 Align reserves the right to substitute, add to and/or withdraw those trademarks and other indicia which comprise the Marks at the date of execution of this Agreement if the Marks can no longer be used or if Align, in its sole discretion, determines substitution of different marks will be beneficial to promote and advertise the Invisalign Products and Services. In such circumstances, the use of substituted marks shall be governed by the terms of this Agreement, and you will not be eligible for any compensation for such substitution.

5.8 Align gives no warranty, either express or implied, with the validity of the Marks or that the Marks and/or the Work will not infringe the rights of a third party.

6. Infringement and breaches of advertising laws.

6.1 You shall promptly notify Align of any actual or suspected Infringement of the Marks within the Territory that comes to your attention but you will take no other action against the infringer save to assist Align in any action it may take.

6.2 Align will have the conduct of all proceedings relating to the Marks and will in its sole discretion decide what action, (if any), to take in respect of any infringement or alleged infringement of or by the Marks or passing-off or any other claim or counterclaim brought or threatened in respect of the use or registration of the Marks. You shall co-operate fully with Align in taking all steps required by Align, in its sole discretion, in connection with any Infringement, including, without limitation, in any action, claim or legal proceedings brought or threatened in respect of the Marks subject to your reasonable and properly incurred costs (including reasonable legal expenses) being reimbursed by Align. Align shall be entitled to any damages, account of profits and/or awards of costs recovered. You shall use your best endeavours to assist Align in any legal proceedings relating to any Infringement.

6.3 You are responsible for checking with a local lawyer that the advertising using the Marks is a permitted activity. If you are notified by any authority or regulatory authority that advertising using the Marks is prohibited or to be otherwise restricted, you will promptly inform Align in writing in all reasonable detail.

7. Trademark and domain name registrations.

7.1 You shall not apply for, or obtain, registration of one or more Marks for any goods or services in any country.

7.2 You shall not apply for, or obtain, registration of any trade or service mark in any country which consists of or comprises one or more of the Marks, including but not limited to the word "Invisalign" or any confusingly similar word or words, or any trade or service mark which consists of, comprises or is confusingly similar to one or more of the Marks, including but not limited to the word "Invisalign" or any colourable imitations of the same.

Advertising agreement (continued).

- 7.3 The Marks, including but not limited to the word "Invisalign" may be not used in a web address, domain name or e-mail address.
- 7.4 The Marks, including but not limited to the word "Invisalign", shall not be incorporated by you into any company name, practice name, or into any product or service brand name, including apps or new technologies.

Examples of approved uses are:

"Smilemore Orthodontics an Invisalign Provider"

"London Orthodontics for Invisalign"

"Invisalign Provider of Strasbourg"

Improper types of uses are:

"Dublin Invisalign, "www.invisalignmadrid.com", and "Invisalign Center of Vienna."

8. Indemnification and limitation of liability.

- 8.1 You agree to indemnify and keep indemnified Align against, and shall reimburse Align for, and in respect of any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, remedies and penalties, including interest, and reasonable legal fees and expenses that Align shall incur or suffer and which arise from, or are attributable to, by reason of or in connection with any (i) breach by you of, or any failure by you to perform or comply with this Agreement, (ii) any allegation that there is an infringement of the intellectual property rights of Align or a third party and such infringement is a result of your use of the Work and/or Mark in a manner not expressly authorised by this Agreement, (iii) the content of your own original marketing materials infringe copyright, trademark, trade secret, patent or any other intellectual property rights of any third party, (iv) any allegation that the content of your marketing materials is libellous, defamatory or invasive of privacy, (v) any allegation or claim that your marketing materials are in breach of any local laws on advertising or promotion.
- 8.2 In no event shall Align be liable to you for any lost profits, incidental, indirect, special or consequential, arising out of this Agreement. Nothing in this clause 8.2 excludes or limits Align's liability for death or personal injury of a person caused by Align's negligence or for any other liability that might not by applicable law be lawfully excluded or restricted.

9. Disclosure and confidentiality.

- 9.1 If you receive confidential, secret or any proprietary information of Align or any of its group companies ("Confidential Information") pursuant to this Agreement, you shall keep it confidential and not at any time after such receipt disclose, divulge or communicate the same to any person other than to your officers or employees who have agreed, in writing, to keep such information confidential in accordance with the terms of this clause 9.
- 9.2 You shall give notice to Align of any unauthorised misuse, disclosure, theft or other loss of Align's Confidential Information immediately upon becoming aware of the same.
- 9.3 You will not and will ensure that your officers and employees do not reveal to or discuss with any third party, including the press, any details of any dispute or disagreement between Align and yourself or between Align and any other third party. Such information is confidential and constitutes Confidential Information.
- 9.4 The obligations of confidentiality set out in clause 9.1 shall not extend to information acquired by you which you can show:
- (a) at the time of its acquisition was in, or at a later date has come into, the public domain, other than following a breach of this clause 9; or
 - (b) you knew before the first disclosure to you by Align; or
 - (c) you received independently from a third party with the full right to disclose.

Advertising agreement (continued).

10. Assignment.

Neither party may assign any of its rights, whether by operation of law or otherwise, without the prior express written consent of the other party, provided however, that Align may assign this Agreement without such consent in connection with a merger, acquisition, corporate reorganisation or sale of all or substantially all of its relevant assets. Any attempted assignment in violation of this clause 10 shall be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11. Waiver and severability.

The failure of either party at any time to require performance by the other party of any provision will not affect in any way the full right to require such performance at any time thereafter. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.

12. Term and termination.

- 12.1 The term of this Agreement shall be twelve (12) months from your most recent treatment submission as confirmed to you by us in writing.
- 12.2 This Agreement may be extended by written agreement of the parties.
- 12.3 This Agreement may be terminated at any time by Align with immediate effect, with or without cause.
- 12.4 This licence shall terminate automatically and without notice if you have not submitted an Invisalign case within six months of its start date, or, if you have not submitted any Invisalign case in the previous twelve months.
- 12.5 This licence shall terminate automatically and without notice if your right to purchase products from Align terminates.
- 12.6 Upon expiry or termination of this Agreement, you shall immediately cease all use of the Marks, the Work and the Personalised Work and destroy all copies of the Work and the Personalised Work (in any format whatsoever) or return all such copies to Align, as instructed by Align.
- 12.7 Termination of this licence by Align shall be without any right to compensation or damages.

13. Compliance with applicable law.

- 13.1 Each use of the Work and/or Marks under this Agreement shall comply with all applicable laws and regulations of governmental or other competent authorities in the Territory from time to time.

14. Relationship.

- 14.1 Nothing in this agreement shall constitute, or be deemed to constitute, a partnership between the parties nor, except as expressly provided, shall it constitute, or be deemed to constitute, any party as the agent of any other party for any purpose.
- 14.2 By exercising its rights under these Advertising Standards, Align only enforces certain rights relative to its intellectual property. Align does not control or certify the legal compliance of any promotional or advertising content published by its customers. The provider remains responsible for content of any advertising published by him/her, including legal compliance.

Advertising agreement (continued).

15. Notices.

- 15.1 Please refer to the Notice information for your local country which is available on your Invisalign Doctor Site (IDS).
- 15.2 All notices shall be delivered by a means evidenced by a delivery receipt and will be effective upon receipt. Notices to Align shall be addressed to the attention of its Chief Executive Officer, with a copy to its General Counsel.

16. Governing law and jurisdiction.

- 16.1 You and we agree that this Agreement 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 law of England.
- 16.2 You and we agree that the courts of England shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), but that Align might take action against provider and/ or their practice in the courts of the country in which they treat patients.
- 16.3 Laws governing the advertisement of dental/medical devices and services vary from country to country. It is your responsibility to make sure that all advertisements, marketing, or promotional materials you use comply with your local laws.

17. General terms.

- 17.1 This Agreement embodies the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and merges all prior and contemporaneous discussions between them. No waiver of, or modifications to, this Agreement or any of its provisions shall be made except in writing executed by the parties.
- 17.2 Each party shall take any and all additional acts reasonably requested by the other to further effectuate the terms and conditions of this Agreement.
- 17.3 Specific terms of this Agreement shall survive the termination of this Agreement as may be necessary to achieve their purpose including, without limitation the provisions in clauses 8, 9, 16, and 17.

© 2014 Align Technology (BV). All Rights Reserved.
Invisalign® ClinCheck® and SmartTrack® among others,
are trademarks and/or service marks of Align Technology,
Inc. or one of its subsidiaries or affiliated companies and
may be registered in the U.S. and/or other countries.

