



New Account Worksheet

General Information			
Partner Name/Company/ISO/Referral		Sales Person	
Account/ Merchant Name		Business Type (be specific)	
Address		City	State Zip
Owner's Name		Cell phone	
Email			

License & Support Information			
Number of Software Licenses Purchased for Ovvi System: (A)	Monthly Support Fee Charges: (B)		Number of Software Licenses Purchased for Tablet: (C)
			Monthly Support Fee Charges: (D)
Products & Services	Monthly Fees	Total	Details
Total Support Monthly Fees	A x B C x D + =	\$	
Gift Card Processing	\$15	\$	Pick up and/or Delivery Options:
Online Ordering Platform	\$49	\$	Min Amt for Delivery Charge:
Davos Automate Sales Tax	\$40	\$	Max Delivery Distance in Miles:
Scan Data Tobacco Program	\$20	\$	POS Station where orders will come in:
Accounting Integration	\$25	\$	Name of Accounting Software:
Payroll Integration	\$25	\$	Name of Payroll Software:
Delivery App Integration - UberEATS, Door Dash & 100+	\$69	\$	Name of All Delivery Apps with User ID & Passwords:
Total Monthly Fees		\$	

Hours of Operation

Monday		Tuesday		Wednesday		Thursday		Friday		Saturday		Sunday	
Open	Close	Open	Close	Open	Close	Open	Close	Open	Close	Open	Close	Open	Close

ACH Information for Monthly Fees	
Name of Account:	Bank Name:
Bank Routing#	Bank Acc#:

AUTHORIZATION & AGREEMENT FOR AUTOMATED CLEARING HOUSE (ACH) DEBITS: By my signature below, I hereby acknowledge that the information shown in this agreement is true and correct. I also hereby authorize OVVI, LLC to initiate debit entries from the checking account indicated above and the bank account named above for the goods/services described. I certify that I am an authorized user of this bank account and that I will not dispute the payment with my bank; so long as the transaction corresponds to the terms indicated in this form. Remittance of this form indicates an Authorization on the part of the Merchant to charge amounts authorized on orders placed with Ovvi, LLC. All other charges such as payment amount, frequency, bank account number change, will require a new ACH Debit Payment Authorization Form to be filled out and submitted by Merchant 15 days prior to any change being implemented. I understand that this payment plan may be cancelled by the Service Provider or Merchant due to NSF (Non-Sufficient Funds). I will be liable to pay an NSF Fee of \$50.00 (or the amount allowable by law), which may be automatically debited for each NSF. This authority is to remain in full force and effect until revoked in writing in such time and manner to allow Ovvi, LLC to act. I agree to the terms and conditions below.

Merchant/ Owner's Signature

Date

OVVI POINT-OF-SALE ("POS") SYSTEM SERVICE AGREEMENT ("Agreement") - TERMS AND CONDITIONS

THIS AGREEMENT is entered into by and between OVVI ("OVVI"), whose principal place of business is 13003 SW Freeway, Ste 100, Stafford, TX 77477, and Merchant, whose principal place of business is indicated on New account worksheet. The Terms and Conditions are hereby incorporated herein and made part of this Agreement.

WHEREAS, OVVI has placed certain Equipment at the Merchant location for the exclusive use by Merchant;

WHEREAS, Merchant now desires to purchase services for such Equipment and OVVI agrees to supply such service to the Merchant on the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the foregoing recitals, upon which the parties agree, and of the parties' mutual promises and obligations set forth below, the parties agree as follows:

1. DEFINITIONS:

Merchant Agreement shall mean the separate agreement between OVVI and the Merchant, attached as Exhibit B herein, for the purpose of providing merchant processing services.

Merchant Authorized Representative shall mean the individual authorized to enter into agreements on behalf of the Merchant and who signs this Agreement on behalf of the Merchant.

Merchant Location shall mean the address of the Merchant where the Equipment is physically located as listed in Exhibit A.

Equipment shall mean any products listed in Invoice as a Basic Package or Add-Ons / Accessories.

Software shall mean any retail, restaurant or hospitality software provided by OVVI to Merchant, and any additional OVVI software developed, enhanced, or revised from time to time contained in the Equipment.

2. OVVI'S OBLIGATIONS

2.1 POS Warranty and Service Agreement: So long as Merchant is not in default of this Agreement, OVVI shall, for the monthly service charges set forth in Exhibit A hereto, provide initial hardware warranty and service support to the Merchant Location as set forth in this Section. This service support described below is remote access based. It does not provide for on-site service support unless otherwise stated below. To offer the services listed below requires the ability of OVVI's technical support team to access the Merchant's system remotely to resolve issues and make modifications. The availability of a DSL, cable or T1 internet connection at the Merchant's location is required.

a) **Hardware Warranty:** Merchant shall be entitled to a hardware warranty for twenty-four (24) months from the date of installation. This warranty covers any PC systems, touch screens, pole displays, magnetic card readers, cash drawers, scanners and printers purchased. PDA's, handheld and mobile devices carry a twelve (12) month warranty from the date of installation. An Extended Hardware Warranty can be purchased at a premium.

b) **Offsite-Installation:** Merchant shall be entitled to one (1) off-site/phone installation of the Equipment at no charge. Merchant must verify time and place of installation. Additional fees will apply if Merchant fails to provide twenty-four (24) hours' notice of change of installation date as set forth below.

c) **Technical Support:** Merchant shall be entitled to 24X7X365 phone technical support. This is limited to remote system access, software, hardware and menu support. Support and software license will deactivate for non-payment clients.

d) **Repair/Replacement:** Upon notification either verbal or written, of malfunction of any Equipment covered under this Agreement, OVVI shall provide remote support to determine if the part is defective and, if so, at OVVI's sole discretion, repair Equipment or supply replacement Equipment. Replacement parts shall be sent to Merchant via priority shipping. All inoperative, repaired, or replaced parts are the property of and shall be returned to OVVI. Failure to return replaced or repaired parts will result in charges to Merchant as referenced in Section 3.6. Merchant's failure to maintain the Equipment as set forth in Section 3.3 shall result in additional charges for the service of Equipment.

e) **Voice Verification:** Upon completion of the installation and training presentation, Merchant shall be required to complete a voice verification which shall confirm that the Equipment meets the needs of the business. Merchant authorizes OVVI to record such verification and agrees that no Equipment shall be shipped prior to such verification. Any additional changes after the Equipment has been shipped to the Merchant are expressly excluded from this Agreement. Additional fees may apply. OVVI DOES NOT WARRANT THAT INSTALLATION WILL BE FREE FROM DEFECTS OR MISTAKES. OVVI EXPRESSLY DISCLAIMS AND MERCHANT AGREES TO HOLD OVVI HARMLESS FOR ANY ERRORS IN THE EQUIPMENT ONCE THE MERCHANT HAS COMPLETED VOICE VERIFICATION.

f) **Warranty Exclusions:** The following are excluded from the POS Warranty as set forth in this section of the Agreement: 1) Damages resulting from abuse, spillage or mishandling of the equipment; 2) Damages resulting from electrical surges or power irregularities. The installation of a UPS device to maintain AC power quality to protect your system is recommended. 3) Damages resulting from installation of other non-qualified products on the systems that could cause Microsoft Windows to malfunction; 4) Damages resulting from Virus injections or inappropriate internet access. The sole intention of the system is for POS use only. It should not be used for office or internet browsing. Internet access is reserved for EDC credit card processing / batching and remote support access; 5) Problems arising from relocating or reconfiguring equipment.

g) **Service Agreement Exclusions:** The following are excluded from the Service Agreement as set forth in this section of the Agreement: 1) A total re-configuration of the entire Menu is not included; 2) Addition of a catering Menu at a later time is a separate fee, unless agreed upon at the time of purchase; 3) Loss of POS Database as a result of a system failure. A timely backup of the POS Database is the responsibility of the Merchant.

2.2 Non-Standard Services: OVVI shall, at its sole discretion, for the additional charges referred to in Exhibit A, provide services and shall repair, redesign, reinstall, reconfigure or replace the Equipment when either is required due to causes not attributable to normal wear and tear, including, but not limited to a) the failure of Merchant to continually maintain the Merchant Location in conformance with commercially reasonable standards; b) impairments in the performance of the Equipment resulting from changes in the design of the Equipment made by Merchant or mechanical, electrical, or electronic interconnections made by Merchant; c) damage caused by accidents, natural disasters or the negligence of, or improper use or misuse of, the Equipment by Merchant; d) damage or necessity of repair resulting from unauthorized maintenance by Merchant or any third party other than OVVI or its authorized representative; e) damage or repair necessitated as a result of relocation of the Equipment; f) change in laws or Association rules that require service, repair, or replacement above normal day to day maintenance; g) due of any third party hardware or software in conjunction with the use of the Equipment without OVVI's express written consent; or h) theft of the Equipment.

3. MERCHANT OBLIGATIONS

3.1 Notice of Equipment Failure: Merchant shall notify OVVI's personnel immediately upon Equipment failure or malfunction and shall allow OVVI full and free access to the Equipment and the use of necessary data communications facilities and equipment at no charge to OVVI, subject to Merchant's security rules.

3.2 Receipt of Equipment: Merchant warrants that it has completed the voice verification acknowledging the proper customization of the Equipment prior to shipping and has completed an Equipment Sign-Off form acknowledging receipt of the Equipment. Any additional customization of equipment after completion of the verification shall be at additional cost to Merchant.

3.3 Maintenance: Merchant shall maintain the Equipment in good operating condition, repair, and appearance, and protect the same from deterioration other than normal wear and tear; shall use the Equipment in the regular course of its business, within its normal operating capacity, without abuse, and shall comply with all laws, regulations, directives, requirements and rules with respect to the use, maintenance and operation of the Equipment; shall use the Equipment solely for business purposes; shall not make any modification, alteration or addition to the Equipment, without the written consent of OVVI; shall not at any time affix, and shall not remove the Equipment from the Merchant Location without the written consent of OVVI, which shall not be unreasonably withheld.

3.4 Merchant Security. Merchant shall be responsible to a) have and maintain in place virus protection and security for all of its systems, data, and overall network access, and b) all risk of loss, theft, damage or destruction of the Equipment from any cause whatsoever after taking possession of the Equipment. Merchant acknowledges that security and access to any Equipment located on its premises is solely the Merchant's responsibility and agrees to notify OVVI immediately if Equipment is lost, destroyed, stolen or taken by any other person. OVVI DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT, AFTER THE INITIAL INSTALLATION OF THE EQUIPMENT OR ANY SOFTWARE CONTAINED THEREIN, THAT THE EQUIPMENT, SOFTWARE CONTAINED THEREIN, OR CUSTOMER'S DATA WILL REMAIN VIRUS-FREE. MERCHANT WAIVES ANY CLAIMS HEREUNDER AGAINST OVVI TO THE EXTENT ARISING FROM MERCHANT'S FAILURE TO HAVE OR MAINTAIN CURRENT VIRUS PROTECTION, OR TO THE EXTENT ARISING AS A RESULT OF A FAILURE OR BREACH OF CUSTOMER'S SECURITY FOR ITS SYSTEMS OR DATA, OR AS A RESULT OF ANY UNAUTHORIZED ACCESS TO MERCHANT'S SYSTEMS.

3.5 Exclusive Credit Card Processing: Merchant agrees that during the term of this Agreement, and any renewal term that it shall enter into a Merchant Transaction Processing Agreement and exclusively process credit/debit/gift card transactions with OVVI. Failure to do so shall result in OVVI's right to immediately terminate this Agreement as set forth in Section 8, and forfeiture of the Equipment without notice or opportunity to cure. Such termination of this Agreement shall not relieve Merchant of its obligation to pay Fees that have accrued as of the termination date and shall result in an Early Termination Fee as set forth in Section 8.4.

3.6 Equipment Return: Merchant agrees that: a) upon termination of the Agreement, that it shall return all Equipment to OVVI within fifteen (15) days; b) upon receiving replacement Equipment that it shall return any Equipment which it has requested being replaced to OVVI within fifteen (15) days of receipt of the substitute Equipment; c) to the extent permitted by applicable law, without demand or legal process, OVVI, its agents, affiliate, or assigns, may enter into the premises where the Equipment may be found and take possession of and remove the Equipment, without liability of such retaking. Any Equipment that is, a) in OVVI's sole discretion damaged above ordinary wear and tear, or b) is not returned within the timeframe specified in this Section will result in a charge to Merchant of the then current rate of the Equipment.

4. CHARGES AND PAYMENTS

4.1 Commencement of Service Charges: Merchant shall be charged Total Monthly Service Fee with applicable sales taxes as set forth in Exhibit A for Equipment upon the first business day of the month immediately after the first transaction processed through OVVI. OVVI shall continue to debit Merchant for service charges on the first of every subsequent month during the term and any renewal term of this Agreement.

4.2 Billing, Payments and Credit Authorization:

a) **Payment.** Merchant grants OVVI, its affiliates, subsidiaries, successors, and assigns, Credit and/or Debit Card Authorization and permission to make a credit inquiry in order to obtain a consumer credit report as set forth in Exhibit A. Payments for amounts owed from Merchant to OVVI will be made via the Payment Authorization procedures set forth in Exhibit A. Merchant has authorized OVVI to use the Payment Procedures and to charge the Merchant's Designated Accounts in accordance with Exhibit A and these Terms and Conditions. Each Tuesday and Friday, or the earliest banking day thereafter if there is a bank holiday on, before, or after, OVVI shall charge Merchant's Designated Accounts for the amounts then owed by Merchant to OVVI for the previous days, including, without limitation, the amount of any (1) applicable fees listed in Exhibit A and (2) payments for processed Transactions. In addition, commencing with the first full calendar month of the terms of the Services Agreement, within the first ten (10) days of each month, OVVI shall charge Merchant's Designated Accounts in the amount of the Service Fee for such month. If any payment made via the Payment Procedures is rejected, returned or is not completed due to insufficient funds or any other reason in the Designated Accounts or due to any action or inaction of the Merchant ("Returned ACH"), OVVI shall have the right, in its sole discretion, to charge a fee ("Returned ACH Fee") as set forth by OVVI in its sole discretion. In addition, until the full amount of the Returned ACH and the Returned ACH Fee is paid and verified, OVVI shall have the right to stop the processing of any Transactions initiated by the Merchant for its customers until OVVI deems necessary. All other charges such as payment amount, frequency, bank account number change, will require a new ACH Debit Payment Authorization Form to be filled out and submitted to Merchant 15 days prior to any change being implemented. Merchant understand that this payment plan may be cancelled by the Service Provider or Merchant due to NSF (Non-Sufficient Funds). Merchant will be liable to pay an NSF Fee of \$35.00 (or the amount allowable by law), which may be automatically debited for each NSF.

b) **Third Parties.** OVVI may share such information with third parties so long as such third party is under no less of an obligation to maintain the security of this information as OVVI.

c) **Designated Accounts.** Merchant has designated in Exhibit A a credit / debit card account(s) identified in the Services Agreement to be charged for amounts due hereunder via the Payment Procedures (collectively, the "Designated Accounts"). Merchant shall keep sufficient funds on deposit in the Designated Accounts to cover the full amount of any deductions to be made by OVVI. After termination of this Agreement, Merchant shall maintain deposits in the Designated Accounts necessary to cover any amounts owed from Merchant to OVVI that Merchant disputes and shall keep such amounts in the Designated Accounts until such dispute(s) are resolved in accordance with the Agreement and its Terms and Conditions.

4.3 Adjustments: OVVI may adjust the monthly service charges in Exhibit A upon thirty (30) days written notice in accordance with the provisions of Section 9.6 hereof.

4.4 Taxes: Merchant shall pay (or reimburse OVVI), in addition to the charges for the services specified herein and as a separate item, all taxes (exclusive of OVVI net income taxes), however designated, or amounts legally levied in lieu thereof, based on or measured by the charges set forth in this Agreement or on this Agreement, or on the services rendered hereunder, now or hereunder imposed under the authority of any federal, state or local taxing jurisdiction.

4.5 Shipping: All Equipment shall be shipped via UPS ("Courier") in accordance with the shipping option(s) selected as set forth in Exhibit A. Merchant authorizes OVVI to debit the amount for shipping at the time the unit ships. OVVI shall have no liability for failure of Equipment to reach its destination in a timely manner once it has delivered the Equipment to Courier.

5. LIMITATION OF LIABILITY AND REMEDIES.

5.1 Scope of Damages:

OVVI AND ITS AFFILIATES SHALL NOT BE RESPONSIBLE TO THE MERCHANT OR ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, BUSINESS INTERRUPTION, OR OTHER INCIDENTAL, PUNITIVE OR ECONOMIC DAMAGES (INCLUDING THOSE ASSOCIATED WITH IMPROPER OR INADEQUATE TAXES CHARGED), WHETHER ARISING FROM MERCHANT'S USE (OR INABILITY TO USE) THE EQUIPMENT, SERVICES PROVIDED IN CONNECTION HERewith, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL THE MERCHANT BE ENTITLED TO RECOVER OR COLLECT ANY DAMAGES IN THE AGGREGATE IN EXCESS OF AN AMOUNT EQUAL TO THE FEES PAID HEREUNDER DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE MERCHANT'S FIRST CLAIM OF ALLEGED DAMAGES.

5.2 Warranty Disclaimer:

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, OVVI AND ITS AFFILIATES MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY OVVI SERVICE, RELATED PRODUCTS, EQUIPMENT, SOFTWARE OR DOCUMENTATION. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY OVVI, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. OVVI DOES NOT GUARANTEE THAT THE EQUIPMENT WILL SATISFY MERCHANT'S REQUIREMENTS, OR THAT THE OPERATIONS OF SUCH WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS AGREEMENT, IF ANY, THE EQUIPMENT (OR SERVICES) IS PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT WILL BE WITH THE MERCHANT. OVVI SHALL NOT BE LIABLE FOR ANY COSTS OR FOR PERFORMING ANY SERVICES HEREUNDER ARISING IN CONNECTION WITH MERCHANT'S NEGLIGENCE, ABUSE, MISUSE, OR FAILURE TO PERFORM ROUTINE MAINTENANCE AND STANDARD OPERATING PROCEDURES.

5.3 Force Majeure: Neither party shall be liable for non-performance caused by such events as fires, telecommunications failures, equipment failures, strikes, riots, war, non-performance of vendors, suppliers, processors or transmitters of information, acts of God or any other cause over which the parties have no control.

6. INSURANCE:

During the term of this Agreement, Merchant agrees to maintain, at Merchant's expense "Special Form" property insurance protecting the Equipment for its replacement value at a minimum of four thousand five hundred dollars (\$4,500.00) per POS system, naming "OVVI" as a loss payee on public liability insurance, in amounts acceptable to OVVI, naming "OVVI" as an additional insured. Merchant must provide OVVI satisfactory written evidence of the insurance within thirty (30) days of the commencement date of this Agreement or any subsequent written request. If Merchant does not do so, OVVI may obtain insurance from an Insurer of its choosing in such forms and amounts as OVVI deems reasonable to protect its interests. Such insurance covers the Equipment and OVVI; it does not name the Merchant as the insured. Merchant agrees to pay OVVI periodic charges for insurance that include: a premium that may be higher than if the Merchant maintained its own insurance separately, a finance charge of up to 1.5% per month on any premium advances made by OVVI or its agents, affiliates or assigns, and billing and processing fees; each of which may generate a profit for OVVI and its agents, affiliates, and assigns. OVVI shall discontinue billing insurance charges upon receipt of satisfactory evidence of insurance. Merchant agrees to arbitrate any dispute with OVVI or OVVI's agents, affiliates, or assigns regarding insurance or insurance charges under the rules of the American Arbitration Association in Houston, Texas; provided however, such agreement does not authorize class arbitration.

7. TERMS:

This Agreement and the Terms and Conditions herein shall be effective commencing on the date that OVVI accepts and executes the Agreement and shall continue in effect for an initial term of thirty six (36) consecutive months [three (3) years], until earlier terminated pursuant to this section. This Agreement shall auto-renew for a period of thirty six (36) months [three (3) years] at the end of any term, unless the terminating party provides 90 days prior written notice to the non-terminating party and the non-terminating party acknowledges such notification as provided for in Section 10.6 of this Agreement.

8. TERMINATION:

This Agreement may be terminated in accordance with the following:

8.1 Merchant's Default on Payments: In the event Merchant defaults on any payment due under this Agreement, OVVI shall be entitled to, a) immediately terminate this Agreement, and b) direct OVVI to withhold and collect Merchant processing funds in the amount which it is in default for which OVVI may immediately apply to payment of the fees set forth in Exhibit A.

8.2 Breach: In the event Merchant commits a breach of any of its obligations under Section 3 - Merchant Obligations, OVVI may terminate this Agreement or exercise its rights as set forth in this Section.

8.3 Survival of Merchant's Obligations: Merchant's obligation to pay all charges which shall have accrued hereunder prior to termination of this Agreement shall survive termination, irrespective of the reason.

8.4 Early Termination Fee: If this Agreement is terminated either during the Initial Term or any renewal term for any reason set forth in this Section, Merchant agrees to pay an early termination fee equal to the total monthly service fee as set forth in Exhibit A multiplied by the number of months remaining on the then-current term, in addition to all other amounts that the Merchant owes. The parties agree that the precise damages resulting from an early termination by Merchant are difficult to ascertain, and the early termination fee is a reasonable estimate of anticipated actual damages and not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. Merchant expressly authorizes OVVI to debit this fee from its account which may be done within thirty (30) days of termination.

9. GENERAL TERMS AND CONDITIONS:

9.1 Assignment: Merchant shall not have the right to assign or otherwise transfer its right and obligations under this Agreement except with the written consent of OVVI. OVVI shall have the right to assign any or all of its interest, rights, and obligations in this Agreement without the need for consent from Merchant. Any prohibited assignment shall be null and void.

9.2 Ownership: The Equipment is, and will remain at all times, the exclusive property of OVVI, its affiliates, successors, or assigns. OVVI shall at all times retain title to the Equipment. Merchant's use of the Equipment is expressly conditioned on the terms of this Agreement and does not confer any ownership rights of any kind in the Merchant. Merchant hereby authorizes OVVI, at Merchant's expense, to cause this Agreement or any statement or any other instrument in respect to this Agreement showing OVVI's interest in the Equipment, to be filed or recorded. Merchant shall at all times keep the Equipment free from legal process or encumbrance whatsoever and, shall indemnify OVVI from any loss caused thereby.

9.3 Confidentiality: Merchant shall not copy, translate, disassemble, or decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code any Equipment, or any software or products used in conjunction with the Equipment. Merchant is not permitted to make derivative works of any software, hardware, or otherwise used in conjunction with or part of the Equipment, and ownership of any unauthorized derivative works shall vest in OVVI. Merchant shall not, without OVVI's prior written consent, disclose any of the Proprietary Information of OVVI, including but not limited to the Equipment, to any person, except as is necessary to enable such party to exercise its rights hereunder. Merchant agrees to solely use the Proprietary Information of OVVI as is necessary in its performance under this Agreement and as otherwise necessary to enjoy the acceptable use of the Equipment. Merchant agrees that any party that has access to this information will be subject to the confidentiality terms as set forth in this section.

9.4 Proprietary Interest: Merchant shall have no interest whatsoever, including copyright interest, franchise interests, license interest, patent rights, property rights or other interest in the Equipment or Software provided by OVVI. This Agreement is not construed as granting the Merchant any intellectual rights or intellectual license in any intellectual property which OVVI may obtain in respect of the Equipment and Software. The Merchant will make no attempt to duplicate or otherwise ascertain the Proprietary Information, or otherwise attempt to reverse engineer any OVVI provided Equipment or Software.

9.5 Modifications: This Agreement may be modified or amended by OVVI, its affiliates, or assigns, upon thirty (30) days written notice. Merchant's continued use of the Equipment shall be acceptance of such amended terms.

9.6 Notices: All notices or other communications required to be given hereunder shall be in writing and shall be delivered either personally or by U.S. mail, certified, return receipt requested, postage prepaid, and addressed as provided in this Agreement or as otherwise requested by the receiving party. Notices delivered personally shall be effective upon delivery and notices delivered by mail shall be effective upon their receipt by the party to whom they are addressed.

9.7 Severability: In the event that any of the terms of this Agreement are in conflict with any rule of laws, regulations, provisions or otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement and this Agreement such continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.

9.8 Governing Law: Merchant and OVVI acknowledge and agree that this Agreement and Guarantee contained herein, was, and shall be deemed to have been made and delivered in Harris County, Texas. The laws of the State of Texas, without giving effect to its conflicts of law principles shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this Agreement and the Guarantee contained herein, including without limitation, the validity, interpretation, construction, performance and enforcement of the Agreement and Guaranty contained herein, the courts of the State of New Jersey shall have and be vested with personal jurisdiction over the parties. The parties further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this Agreement or the Guaranty contained herein shall be filed and litigated in Harris County, Texas, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this Agreement or the Guarantee contained herein. If Merchant brings legal action against OVVI for any reason, Merchant shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred.

9.9 Conflicting Terms: The terms and conditions of this Agreement shall prevail over any additional or contrary terms which may be contained in any instructions or other communications submitted to Supplier by Customer.

10. INDEPENDENT CONTRACTOR:

The parties intend that any Supplier, in performing services specified in this Agreement, shall act as an independent contractor and shall have complete control of the work and the manner in which it is performed. Supplier is not to be considered an agent or employee of Merchant and is not entitled to participate in any pension plans, or in bonus, stock, or similar benefits that Merchant provides for its employees.

11. ENTIRE AGREEMENT:

THIS AGREEMENT, INCLUDING THE EXHIBITS ATTACHED HERETO AND INCORPORATED AS AN INTEGRAL PART OF THIS AGREEMENT, CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ALL PREVIOUS PROPOSALS, ORAL OR WRITTEN, AND ALL NEGOTIATIONS, CONVERSATIONS OR DISCUSSIONS HERETOFORE HAD BETWEEN THE PARTIES RELATED TO THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY ANY REPRESENTATIONS OR STATEMENTS, ORAL OR WRITTEN, NOT EXPRESSLY CONTAINED HEREIN. IN WITNESS WHEREOF, the parties have executed and entered into this Agreement on the date written on New account worksheet.