

## **STANDARD TERMS AND CONDITIONS**

**THESE TERMS AND CONDITIONS (“TERMS”) ARE APPLICABLE TO ALL AGREEMENTS BETWEEN YOU AND THE COMPANIES LISTED BELOW AND WILL AFFECT YOUR RIGHTS AND OBLIGATIONS.**

1. These Terms are an integral and incorporated part of, and shall apply to, any and all agreements that may be entered into between you and CRS Solutions, Intermediate, LLC (“CRS Solutions”), POS Partners, LLC (“POSP”), and Cash Register Sales & Service of Houston, Inc. (“CRS Texas”); one or more of which may do business under different names, including, but not limited to, Advanced Data Systems (“ADS”), CRS Oklahoma, CRS Louisiana, CRS Indiana, Rapid Retail, CRS Arizona and CRS Carolina (all collectively the “Company”). Additionally, these Terms are intended to and do inure to the benefit of any affiliates of the Company, including, but not limited to POS Card Services, LLC (“PCS”) and Merchant Cash Advance of Texas, LLC (“MCA”).

2. The agreement between you and the Company includes any and all quotes, bids, delivery/installation forms, service contracts, subscription agreements, leases, loans, processing agreements, cash advance agreements, promissory notes, security agreements financing statements or other contracts that are signed by you (collectively the “Agreement”), and do not include any promotional, marketing, advertising, product and similar materials. No Agreement shall be binding upon the Company unless it has been signed, in writing, by an authorized officer of the Company, and no Agreement may be modified except in a written document signed by an authorized officer of the Company.

3. These Terms shall control in the event of a conflict with the other provisions or parts (typewritten or handwritten) of an Agreement unless such other provisions specifically state that they control in the event of such a conflict, and these Terms may not be modified except in a written document signed by an authorized officer of the Company.

4. You affirm and agree that: (a) no officer, employee, representative or agent of the Company has made or entered into any oral agreement, promise, or understanding with you concerning the subject of any Agreement; (b) you have not relied, and will not rely, upon any oral statements, promises or representations made to you by the Company or its officers, employees, representatives or agents in entering into any Agreement; and (c) you have not relied, and will not rely, upon any promotional, marketing, advertising, product and similar materials, or any other documents other than the Agreement and these Terms, in entering into any Agreement.

5. The Company shall have the right to not proceed, to delay, or to terminate any Agreement, or the delivery of any Product (as defined below), by reason of your being the subject of any bankruptcy or insolvency proceeding, your breach of any of the terms of any Agreement, your assignment of any Agreement with advance written approval, the pendency of any legal proceedings against you, or your failure to meet any other reasonable requirements established by the Company.

6. Unless specifically stated otherwise, no price quoted or stated in any Agreement includes installation, programming (programming includes all data inputs made to any software programs to, *inter alia*, design and create such things as menus, displays, reports, functionality, structure and other features for use by you), training, other Products, or other services that are not expressly listed in the Agreement.

7. All down payments are non-refundable, and shall be used, in the event that you do not proceed with a transaction, to reimburse the Company for the costs incurred by it in connection with the transaction.

8. The Company shall endeavor to deliver equipment, hardware, software, programming, and all other products and services (hereinafter collectively referred to as “Products”) on or before the delivery date specified in the Agreement, but shall not be liable for any delay, or any damages caused by any delay, in the delivery of any Products. If a delivery delay is caused solely by the willful negligence or wrongdoing of the Company, then you may (and your sole and exclusive remedy shall be to) terminate the Agreement in writing within two days of the specified delivery date, and to obtain a refund of any part of the purchase price already paid by you, including deposits, for the Products in question.

9. If you require emergency, urgent or expedited delivery of any Product, a fee in the amount of up to 5% of the quoted cost of the Product (up to maximum of \$500) may be charged. If any Product is returned to the Company after delivery, a restocking fee of 20% of the quoted cost of the Product will be charged, and if the Company determines, in its sole judgment, that the Product has been used, the Company may assess a charge of up to 100% of the quoted cost of Product.

10. If any Product is to be delivered to you via commercial shipper, you shall bear all costs of such shipping, and all risk of loss, shortage or damage to the Product from any cause whatsoever once the Product is placed into the hands of the commercial shipper. Upon delivery of any Product, you are deemed to have inspected the Products and accepted them to be in good working order, and you are further deemed to have waived any claim for loss, shortage or damage concerning any Product unless you deliver written notice of such claim to the Company within 2 days after delivery of the Product.

11. The Company shall retain all rights of ownership, possession and control over all Products that are provided to you until such time as those Products are paid for in full.

12. All software Products that are provided to you by the Company are licensed, not sold, to you for you to use for so long as you pay all sums due and owing to the Company, and for so long as you are not otherwise in breach or default under any Agreement with the Company and any agreement between you and an affiliate of the Company. The license is nonexclusive, nontransferable, and revocable by the Company at its discretion, and shall solely entitle you to use the software in the establishment and location identified in the Agreement, as intended, and subject to the Agreement and any applicable license issued by the software developer. You may not reverse-engineer, decompile, modify, or disassemble any software Products, nor may you allow others to do so. You may not share or disclose the software Products with any third parties (including other vendors and service providers), or allow such third parties to gain access to or to make use of any software Products, without first obtaining the Company's express written permission. Should you continue to use any software Products after receiving notice that your license to do so has been revoked, or should you allow any unauthorized access to or use of any software Products, the Company shall be entitled, in addition to all other remedies available to it, to obtain all revenue received by you as a result of such use or access, and to disable or remove all such software Products.

13. All work product resulting from all programming services that are provided to you by the Company, including, but not limited to, menus, terminal displays, menu board displays, terminal interfaces, and system reports belong exclusively to the Company, and are licensed, not sold, to you by the Company for you to use for so long as you pay all sums due and owing to the Company, and for so long as you are party to, and not otherwise in breach or default under any Agreement with the Company and any agreement between you and an affiliate of the Company. The Company shall, at all times, retain ownership of all such work product, and your license to use such work product is nonexclusive, nontransferable, and revocable by the Company at its discretion, and shall solely entitle you to use the work product in the establishment and location identified in the Agreement, as intended, and subject to the Agreement. You may not reverse-engineer, decompile, modify, or disassemble any such work product, nor may you allow others to do so. You may not share or disclose the work product with any third parties (including other vendors and service providers), or allow such third parties to gain access to or to make use of any work product, without first obtaining the Company's express written permission. Should you continue to use any work product after receiving notice that your license to do so has been revoked, or should you allow any unauthorized access to or use of any work product, the Company shall be entitled, in addition to all other remedies, to all revenue received by you as a result, in whole or in part, of such use or access, and to disable or remove all such work product.

14. Except as otherwise expressly provided in any Agreement; (a) the Company does not warrant the performance or suitability of hardware Products, software products, programming or other products or services sold or provided to you under an Agreement; (b) you will not receive software and programming upgrades and enhancements; and (c) you must pay the prevailing rate for any and all software, and other, support that the Company may provide to you, including, but not limited to, 24/7 remote support and on-site support.

15. In the absence, or upon the expiration, of any hardware manufacturer's warranty provided to you under an Agreement, you will be automatically enrolled in an extended warranty program. The extended warranty program lasts for so long as you use the hardware, and you will be charged the prevailing rate that is in effect for such program, which rate may change from time to time. If you are not in breach or default under an Agreement, you may elect not to participate in such program by notifying the Company, in writing, of your election, at any time within 30 days after, you sign the Agreement. Absent a timely and proper election and notice not to participate, you are deemed to have agreed to participate and to have agreed to pay the monthly fees charged for participation in such program, and you authorize the Company, at its option, to collect the monthly fee from any payments that may be due to you from any banks that processes your credit card transactions.

16. In the absence, or upon the expiration, of any software support provided to you under an Agreement, you will be automatically enrolled in a support program. The support program lasts for so long as you use the software, and you will be charged the prevailing rate that is in effect for such program, which may change from time to time. If you are not in breach or default under an Agreement, you may elect not to participate in such program by notifying the Company, in writing, of your election, at any time within thirty days after, you sign such Agreement. Absent a timely and proper election and notice not to participate, you are deemed to have agreed to participate and to have agreed to pay the monthly fees charged for participation in such program, and you authorize the Company, at its option, to collect the monthly fee from any payments that may be due to you from any banks that processes your credit card transactions.

17. You will be automatically enrolled in the Company's Platinum Program if you accept, or have previously accepted: (a) a Platinum Program Proposal; (b) a proposal that provides for you to receive pricing under a Preferred Payment Program; (c) a Platinum Discount on any hardware or software; (d) a discount or subsidy under a processing partner promotion; (e) software under a subscription pricing model; or (f) a proposal that provides for, or allows, the Company, or an affiliate, to receive payments via your credit card processing receivables. And, if you are not automatically enrolled in the Platinum Program, you may enroll any time that you wish by notifying the Company in writing.

18. If you are a Platinum Program enrollee, you are eligible for: (a) discounts, subsidies and special offers on software, software modules and upgrades; (b) 1 year of 24/7 remote software support upon first purchasing software; (c) 1 year of on-site support free of charge (if your location is within 30 miles of a Company office) or depot support (otherwise); (d) discounts and special offers on hardware, financing, and other products and services; (e) merchant services offerings; and (f) other special offers from the Company and its vendors. However, as a Platinum Program enrollee, you must accept credit and debit card payments from customers, and you must process all credit and debit card transactions with a third party payment processor that is referred to you, and approved, by the Company, for the entirety of your period of enrollment (upon installation of a point of sale system, you have 5 days to begin to accept and process credit and debit card transactions).

19. Enrollment in the Platinum Program is for an initial term of 5 years, and 2 additional years shall be automatically added to the then current term whenever the then current term has only 1 year remaining; provided that neither you nor the Company have given written notice of no-renewal to the other party prior to that time. Additionally, all other existing agreements between you and the Company, between you and the any of the Company's affiliates, and between you and your Company-approved third party payment processor shall be automatically renewed for identical terms and renewals so that all such agreements shall be coterminous in duration.

20. The Company and its affiliates are intended third party beneficiaries of the processing agreement(s) between you and any Company-approved third party payment processor. Should you terminate any such processing agreement prior to the agreed upon term thereof, and any extensions of that term (either under the processing agreement or under any Agreement to which these Terms are a part), you shall pay the Company an amount equal to the total payments that it, and its affiliates, would have received, in monthly referral, residual, and other fees, commissions and payments from such processor in connection with your credit card transactions through the then remaining term of such processing agreement, including any renewals and/or extensions. For the avoidance of doubt, such fees, commissions and payments shall be measured by the average monthly fees, commissions and payments received by the Company, and its affiliates, from such processor in connection with your credit card transactions during the 12 months (or fewer, if less than 12 months of history exist) of such processing prior to the termination.

21. Payments owed by you to the Company, its affiliates, and any third party that have assigned to the Company all or any part of your payment obligation to that third party, are due payable at the Company's office located at 8208 Westpark Drive, Houston, Texas 77063, and shall be timely made by you. Should you fail to timely pay any amount that is due and owing to the Company, or should you otherwise breach, be in default under, or prematurely terminate any Agreement with the Company, its affiliates, or any third party mentioned above, then: (a) your right to use all Products shall be immediately and automatically terminated and revoked; (b) the Company, or its affiliates, may, and are hereby authorized to, enter any premises where the Products are located and take immediate possession thereof, without notice to you, and without a need to make a demand or obtain any court order; (c) you shall immediately owe to the Company or its affiliate, as the case may be, an amount equal to the revenue that the Company and its affiliates would have received under all Agreements between you and the Company, its affiliates or any third party mentioned above, as measured by the average of the actual monthly revenues received by the Company and its affiliates under each such Agreement, multiplied by the

number of months remaining in the then current term of each such Agreement; (d) the Company, or its affiliates, may charge, and you shall owe, a monthly rental fee for your continuing use of the Products; and (e) the Company, and its affiliates, may, and are hereby authorized to, collect all such sums, and any future sums that you may owe, by any means available, including: (i) from payments or receivables that are due to you from third parties, including banks, financial institutions, and card transaction processors; and (ii) by an automated clearinghouse transaction with any bank or financial institution at which you have an account. In this regard, you hereby instruct and authorize all third parties to pay the Company, and its affiliates, from any payments or receivables that may be due to you and you expressly release and hold all such third parties harmless for acting in conformity with this authorization. You further agree that this payment is a reasonable and good faith calculation of the damage that would be caused by any such failure to timely pay, breach, default, or premature termination of any Agreement, and you grant to the Company, and its affiliates, a security interest in all Products that are provided to you, as well as in all other accounts, receivables and other assets described above, to secure your obligations referenced above, and you agree that the Company, and its affiliates, may take such actions to perfect and protect such interest as they deem necessary and appropriate.

22. All Agreements, and any licenses conferred thereby, are executory in nature within the meaning of the US Bankruptcy Code, and your status as a debtor in any bankruptcy proceeding shall not preclude the termination of your right to use any Products, including software and programming, upon your default. The foregoing rights and remedies are not exclusive, and the Company, and its affiliates shall also have, and may exercise at any time, all other rights and remedies that are or may be available to them at law or in equity, including, but not limited to, the right to obtain temporary and permanent injunctive relief.

23. Should the Company, or an affiliate, have to take any action to enforce its rights under any Agreement, then you shall, upon demand, pay a reasonable Product rental fee and reimburse the Company for all expenses that it incurs as a result thereof, including, without limitation, attorneys' fees and court costs.

24. If any Agreement requires the Company to provide training, the Company's sole obligation shall be to provide a qualified instructor (in the Company's sole judgment) to provide such training to your employees for the designated number of training hours. The Company does warrant or guarantee that, after such period of training, the trainees shall be certified or able to use or operate the Products properly or efficiently. At your request, the Company may provide additional training beyond the number of hours stated in the Agreement; with such training provided, and to be paid for by you, at the Company's then-prevailing rates for training.

25. You shall remain solely responsible for determining, installing, inspecting and supplying all necessary electrical service and all ancillary equipment for all Products, and for providing environmental and operating conditions that are suitable for all Products, and the Company shall have no obligation or responsibility with respect to such matters, including inspecting or certifying any aspect of the electrical service or any ancillary equipment.

26. The Company is a reseller of Products, and does not develop or manufacture any Products. Except as otherwise stated immediately below, all Products, and any services, provided by the Company are provided "as is" and without any representations, guarantees, or warranties. You expressly agree to rely solely on the developers and manufacturers of the Products for documentation, warranty, service, and support, and that you have not relied upon and shall not rely upon any statement, promise or representation made by the Company. Nevertheless, the Company shall, for a period of 12 months after delivery, make reasonable efforts to repair or replace any Product, or any part thereof, that proves (in the Company's sole opinion) to be defective in material or workmanship. You hereby grant remote access to the Products, and any related systems, to enable the Company to provide such warranty service, and to otherwise service your account. This warranty does not apply to repairs or replacement made necessary by damage due to fire, viruses, intentional acts of third parties, system breaches, water, storm, burglary, power line fluctuations, spillage, accident, negligence, or abuse of any Product; nor does it apply to any damages to printer heads or printer motors caused by paper jams or insertion of foreign objects between the printer head and the print surface. Such warranty service shall be provided at no charge to you except for labor charges; which shall be charged at the then-prevailing rate for any labor charges (including travel) for warranty service performed at Customer's request outside of the foregoing time periods. Warranty service is available Monday – Friday from 8:00 AM to 5:00 PM, excluding holidays. Local onsite labor during the warranty period will only be provided to customers operating within a 75-mile radius of a Company office, all others will be managed using remote access and standard freight carriers. **YOU FURTHER ACKNOWLEDGE THAT:**

- a. THIS IS THE ONLY WARRANTY MADE AS TO THE PRODUCTS AND ANY SERVICES PROVIDED BY THE COMPANY, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND USE.
- b. THE COMPANY'S SOLE OBLIGATION IS TO REPAIR OR REPLACE THE PRODUCTS OR PARTS THEREOF UNDER THE CONDITIONS AND AS DESCRIBED ABOVE.
- c. IN NO EVENT SHALL THE COMPANY, ITS AFFILIATES, OR ITS OR THEIR EMPLOYEES, BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, OR OTHER INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, ECONOMIC OR PUNITIVE DAMAGES (INCLUDING THOSE ASSOCIATED WITH IMPROPER, UNDER-CALCULATED OR UNDER-ACCRUED TAXES OR GOVERNMENT LEVIES).
- d. THE COMPANY SHALL NOT BE RESPONSIBLE FOR AND DISCLAIMS ANY LIABILITY ASSOCIATED WITH ANY FAILURE BY ANY PRODUCTS OR SYSTEM TO PROCESS CREDIT CARD TRANSACTIONS OR TO SATISFY COMPLIANCY REQUIREMENTS FROM THE CREDIT CARD INDUSTRY.
- e. YOU ARE SOLELY RESPONSIBLE FOR IMPLEMENTING AND ENFORCING SUCH SECURITY POLICIES AND PROCEDURES FOR THE USE OF COMPUTERS AND COMPUTER SYSTEMS THAT ARE NECESSARY TO PREVENT SECURITY BREACHES, VIRUSES, MALWARE AND OTHER SIMILAR THREATS, INCLUDING THOSE ASSOCIATED WITH THE USE OF THE INTERNET.

27. Except for such other remedies as are otherwise expressly authorized herein, you and the Company agree to resolve any claim, dispute or controversy, whether in contract, tort or otherwise ("claim"), arising out of or related to any Agreement to which these Terms and Conditions apply by first providing the other party with written notice of the claim, and then engaging in face to face negotiations in Harris County, Texas between persons fully authorized to resolve the claim on behalf of the parties. If such negotiations are unsuccessful, the parties shall next attempt to resolve the claim by engaging in mediation, utilizing a mutually agreeable mediator, in Harris County, Texas; unless all parties agree to forego mediation. In the event the parties are unable to resolve the claim through negotiation and mediation within a reasonable period of time after written notice of the dispute exists (such time not to be less than 60 days), then either party may file a lawsuit, but it is expressly agreed that: (a) any such lawsuit may only be filed in the state or federal district courts located in Harris County, Texas; (b) both parties hereby consent to the exclusive jurisdiction and venue of such court, and agree to submit themselves to the jurisdiction of such court; (c) both parties hereby waive any right to challenge venue; (d) both parties expressly waive any right to pursue a class action; and (d) both parties expressly waive any right to a jury trial.

28. The rights and duties of both you and the Company, or its affiliates, under any Agreement to which these Terms apply shall be governed by, and determined under, the Laws of the State of Texas, without regard to any conflicts of laws principles. Further, because some, or all, of the performance by both you and by the Company, or its affiliates, of various duties under such Agreements shall occur in Harris County, Texas (e.g., payment of all sums due and payable, pulling Product from stock), jurisdiction and venue for any dispute arising out of such Agreement will lie solely and exclusively with the federal and state district courts located in Harris County, Texas.

29. You may not assign your rights and obligations under any Agreement with the Company without the express written consent of the Company. Moreover, if any Agreement between you and the Company is assigned, it shall be binding upon and inure to the benefit of any successors or assigns. You acknowledge and agree that the Company is permitted to, and may, assign or utilize subcontractors to perform certain of its obligations under any Agreement.

30. If a court of competent jurisdiction holds any provision of any Agreement to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect. No waiver of any breach of any provision of any Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof. No waiver shall be effective unless made in writing and signed by the waiving party.

31. Your agreement to these Terms is conclusively presumed from your acceptance of any Product or service provided to you under any Agreement.