



## MASTER SERVICES AGREEMENT

Customer: City of Irondale, Water Works Board

Customer Address: (PO Box 100188) 101 20<sup>th</sup> Street South, Irondale, AL 35210

Contact for Notices to Customer: \_\_\_\_\_

Customer Phone/Fax/Email 205-956-9200/ \_\_\_\_\_ / \_\_\_\_\_

This Master Services Agreement (“Master Agreement”) is entered into as of \_\_\_\_\_ 2014, by and between the Customer (“Customer”) identified above and **Nexcheck, LLC DBA: Nexbillpay** an Alabama Corporation (“Nexcheck”).

**WHEREAS** Nexcheck desires to provide and the Client desires to receive electronic bill payment services to utilities, municipalities and other businesses.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows. This Agreement consists of this signature page, General Terms and Conditions, and the attachments (“**Attachments**”) with schedules (“**Schedules**”) listed below.

**Schedule A:** Nexcheck Service Fee Schedule

### GENERAL TERMS AND CONDITIONS

#### Definitions

For the purposes of this Agreement, the following terms and words shall have the meaning ascribed to them, unless the context indicates otherwise.

- 1.1 **“Agreement” or “Contract”** shall refer to this Agreement, as amended from time to time, which shall constitute an authorization for the term of this contract for Nexcheck to be the exclusive provider of services, stated herein, to the Customer
- 1.2 **“User”** shall mean the users of the Customer’s services
- 1.3 **“Effective Date”** shall be the last date upon which the parties signed the Agreement. The Agreement will not be effective against any party until the said date
- 1.4 **“Launch Date”** shall be the date on which Customer launched this services to the Users
- 1.5 **“Payment”** shall mean Users to make payments to Customer’s services or Customer’s bills
- 1.6 **“Payment Amount”** shall mean the bill amount User wants to pay to the Customer.
- 1.7 **“Services”** shall include the performance of the Services outlined in section 2 of this Agreement
- 1.8 **“Nexcheck Authorized Processor”** shall mean a Nexcheck authorized merchant account provider and payment processing gateway
- 1.9 **“Reversed or Charged-back Transaction”** shall mean cancelled transactions due to User error, or a User’s challenge to Payment authenticity
- 1.10 **“Average Bill Amount”** shall mean the total amount of Payments collected through the Nexcheck system in a given month divided by the number of the Payments for the same month

## 2 Description of Services to be performed

### 2.1 Scope of Services

Nexcheck shall provide Users the opportunity to make Payment by Electronic check, Credit Cards and other payment methods as deemed necessary by Nexcheck. Payments may be made by Interactive Telephone Voice Response System (“IVR”)  secure Internet interface provided at the Nexcheck web site or other websites part of Nexchecks’



Payment network ("Webportal") , stand-alone point of sale ("VTerminal") , collectively referred to as the ("System"), Point of Sale Credit Card Processing ("POS") \_\_\_\_\_, Website Design and Hosting (Website) \_\_\_\_\_.

Nexcheck shall, on behalf of the Customer, collect and process Payments from Users using Visa, MasterCard, Debit Cards or eChecks ("herein after referred to as 'Card'").

## 2.2 Professionalism

Nexcheck shall perform in a professional manner all Services required to be performed under this Agreement.

# 3 Compensation

## 3.1 Installation Cost

Nexcheck will charge Customer \$ 0.00 related to the initial setup and personalization of System. If customer chooses the stand alone self service Kiosk option, Customer will incur the Kiosk fee listed in Schedule A.

## 3.2 Nexcheck Service Fees – Web/VTerminal (POS)

System will charge each User a service fee for each transaction processed (hereinafter called as "Nexcheck Services Fees"). Such Nexcheck Service Fees Are listed on Schedule A.

For each payment, the Nexcheck Service Fee collected will be used to pay the corresponding credit card transaction fees or transaction fees associated with debit cards and/or eChecks (hereinafter called as "Transaction Fees") and processing charges related to Nexcheck (hereinafter called as "Nexcheck Services Fees").

A schedule of Nexcheck Service Fees is attached hereto as Schedule A. However, Nexcheck can amend this schedule upon prior written notice to the Customer, if such change is needed due to Visa and MasterCard regulations or change in credit card and electronic check fees in the Average Bill Amount or if Nexcheck incurs additional fees from one of its processors.

## 3.3 Nexcheck Service Fees - Telephone

System will charge each User a Service fee for each transaction processed (hereinafter called as "Nexcheck Services Fees"). Such Nexcheck Service Fee is to be collected in addition to the corresponding Payment as part of the transaction.

For each payment, the Nexcheck Service Fee collected will be used to pay the corresponding credit card transaction fees or transaction fees associated with debit cards and/or eChecks (hereinafter called as "Transaction Fees") and processing charges related to Nexcheck (hereinafter called as "Nexcheck Services Fees").

A schedule of Nexcheck Service Fees is attached hereto as Schedule A. Nexcheck and Customer may mutually review Nexcheck Service Fee schedule at regular intervals. However, Nexcheck can amend this schedule upon prior written notice to the Customer, if such change is needed due to Visa and MasterCard regulations or change in credit card and electronic check fees in the Average Bill Amount or if Nexcheck incurs additional fees from one of its processors.

# 4 Payment Processing

## 4.1 Explicit User Confirmation

Web - Nexcheck shall confirm the dollar amount of all Payments to be charged to a Card or checking account and electronically obtain the User approval of such charges prior to initiating transaction.

Telephone - Nexcheck shall confirm the dollar amount of all Payments and the corresponding Nexcheck Service fees to be charged to a Card or checking account and electronically obtain the User approval of such charges prior to initiating transaction.

Processing Terms and Conditions- Customer is required to meet if applicable a \$75 monthly minimum after 60 days, once customer is actively processing the services selected.

## 4.2 Merchant Account

Nexcheck will arrange for the Customer to have a merchant account with a Nexcheck Authorized Processor for processing and settlement of electronic check and credit card transactions.

## 4.3 Card Authorization



For authorization purposes, Nexcheck will electronically transmit all payment transactions to the appropriate processing center, in real time as the transactions occur.

#### 4.4 **Settlement**

Web - Nexcheck together with its authorized payment processor shall forward the payment to the appropriate payment organizations for settlement directly to the Customer's depository bank account previously designated by the Customer (hereinafter the "Customer Bank Account")

Telephone – Nexcheck together with its authorized payment processor shall forward the payment transactions and corresponding Nexcheck Service Fee to the appropriate payment organizations for settlement directly to the Customer's depository bank account previously designated by the Customer (hereinafter the "Customer Bank Account")

Nexcheck together with Nexcheck Authorized Processor will continuously review its settlement and invoicing processes for its simplicity and efficiencies. Customer and Nexcheck agree to fully cooperate with each other if Nexcheck were to change its settlement and invoicing processes.

#### 4.5 **Reversed or Chargeback Transactions**

Reversed or Chargeback Transactions can be reversed by the Customer by contacting Nexcheck directly. The bill payment amount will be refunded to the User, however, Nexcheck Service Fee is non-refundable, and therefore corresponding Nexcheck Service fees will not be refunded to the User. The remittance file will contain a record of such transaction whenever such transactions occur.

With respect to all Reversed or Chargeback Card Transactions that are substantiated by a User and approved by an authorized representative of Nexcheck and the Customer: (i) the Customer authorizes Nexcheck and Nexcheck Authorized Processor (or the respective card organization) to debit the Customer Bank Account for the amount of the corresponding Payment and (ii) Nexcheck shall refund to the Card organization (for credit back to the User) the corresponding Nexcheck Service Fees. The Customer agrees that it shall not refund in cash to a User and Payment made using Nexcheck Services.

Nexcheck together with Nexcheck Authorized Processor will continuously review its processes for Reversed or Charged-back transactions, for simplicity and efficiencies. Customer and Nexcheck agree to fully cooperate with each other if Nexcheck were to change its settlement and invoicing processes for such transactions.

## 5 **General Conditions of Service**

### 5.1 **Service Reports**

Nexcheck shall provide Customer with reports summarizing use of the Services by Users for a given reporting period.

### 5.2 **User Adoption Communication by Customer**

Customer will make Nexcheck Services available to its residential and commercial customers by different means of customer communication including: a) through bills, invoices and other notices; b) by providing IVR, Kiosk and Web payment details on the Customer's website including a "Pay Bill Online" or similar link on a mutually agreed prominent place on the web site; c) through Customer's general IVR/Phone system; and d) other channels deemed appropriate by the Customer.

Nexcheck shall provide Customer with logos, graphics and other marketing materials for Customer's use in its communications with its users regarding the Services and/or Nexcheck.

Both parties agree that Nexcheck will be presented as a payment method option. Customer will communicate the Nexcheck option to its residential and commercial customers wherever Customer usually communicates its other payment methods.

### 5.3 **Independent Contractor**

Customer and Nexcheck agree and understand that the relationship between both parties is that of an independent contractor.

### 5.4 **Customer's Responsibilities**

In order for Nexcheck to provide Services outlined in this Agreement, the Customer shall cooperate with Nexcheck by:



- (i) Customer will enter into all applicable merchant Card, ACH or Cash Management agreements.
- (ii) For the duration of this Agreement, Customer will keep a bill payment link connecting to Nexcheck System at a prominent and mutually agreed location on the Customer website. If applicable, the phone number for the IVR payment will also be added to the website. Customer will also add the IVR payment option as part of the Customer's general phone system. Customer will be required to provide Nexcheck with an updated customer list necessary for the IVR system as discussed for the duration of this agreement.
- (iii) User Adoption marketing as described in 5.2.
- (iv) Within 30 days of the merchant account setup, Customer will launch the service to the users.
- (v) Within 60 days of the merchant account setup, Customer must submit all required information for application approval.

## 6 Governing Laws

This agreement shall be governed by the laws of the state of Alabama.

## 7 Communications

### 7.1 Authorized Representative

Each party shall designate an individual to act as a representative for the respective party, with the authority to transmit instructions and receive information. The parties may from time to time designate other individuals or change the individuals.

### 7.2 Notices

All notices of any type hereunder shall be in writing and shall be given by Post or by hand delivery to an individual authorized to receive mail for the below listed individuals, all of the following individuals at the following locations:

To: City of Irondale, Water Works Board

c/o \_\_\_\_\_

Address: (P O Box) 100188

City/State/Zip: Irondale, AL 35210

(205) 956-9200 (Phone)

To: **Nexcheck**

c/o President and CEO  
2416 Greensprings Highway  
Birmingham, AL 35209  
(800) 639-2435 (Phone)

Notices shall be declared to have been given or received on the date the notice is physically received if given by hand delivery, or if notices given by US Post, then notices shall be deemed to have been given upon on date said notice was deposited in the mail addressed in the manner set forth above. Any party hereto by giving notice in the manner set forth herein may unilaterally change the name of the person to whom notice is to be given or the address at which the notice is to be delivered.

### 7.3 Interpretation

It is the intent of the parties that no portion of this Agreement shall be interpreted more harshly against either of the parties as the drafter.

### 7.4 Amendment of Agreement



Modifications or changes in this Agreement must be in writing and executed by the parties bound to this Agreement.

#### **7.5 Severability**

If a word, sentence or paragraph herein shall be declared illegal, unenforceable, or unconstitutional, the said word, sentence or paragraph shall be severed from this Agreement, and the Agreement shall be read as if said word, sentence or paragraph did not exist.

#### **7.6 Attorney's Fees**

Should any litigation arise concerning this Agreement between the parties hereto, the parties agree to bear their own costs and attorney's fees.

#### **7.7 Confidentiality**

Both parties agree not to disclose to any third party or use for any purpose inconsistent with this Agreement any confidential or proprietary non-public information it obtains during the term of this Agreement about parties business, operations, financial condition, technology, systems, no-how, products, services, suppliers, customers, marketing data, plans and models, and personnel. Nexcheck will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential User information it received in connection with its performance of the services.

#### **7.8 Intellectual Property**

In order that the Customer may promote the services and Nexcheck role in providing the Services, Nexcheck grants to Customer a revocable, non-exclusive, royalty-free, license to use Nexcheck logo and other service marks (the "Nexcheck Marks") for such purposes only. Customer does not have any right, title, license or interest, express or implied in and to any object code, software, hardware, trademarks, service mark, trade name, formula, system, know-how, telephone number, telephone line, domain name, URL, copyright image, text, script (including, without limitation, any script used by Nexcheck on the IVR, kiosk or the website) or other intellectual property right of Nexcheck ("Nexcheck Intellectual Property"). All Nexcheck Marks, Nexcheck Intellectual Property, and the System and all rights therein (other than rights expressly granted herein) and goodwill pertain thereto belong exclusively to Nexcheck.

#### **7.9 Force Majeure**

Nexcheck will be excused from performing the Services as contemplated by this Agreement to the extent its performance is delayed, impaired or rendered impossible by acts of God or other events that are beyond any reasonable control and without its fault or judgment, including without limitation, natural disasters, war, terrorist acts, riots, acts of a government entity (in a sovereign or contractual capacity), fire, storms, quarantine, restrictions, floods, explosions, labor strikes, labor walk-outs, extra-ordinary losses of utilities (including telecommunications services), external computer "hacker" attacks, and/or delays of common carrier.

#### **7.10 Time of the Essence**

Nexcheck and Customer acknowledge and agree that time is of the essence for the completion of the Services to be performed and each parties respective obligations under this Agreement.

## **8 Indemnification**

### **8.1 Nexcheck Indemnification and Hold Harmless**

Nexcheck agrees to the fullest extent permitted by law, to indemnify and hold harmless the Customer and its governing officials, agents, employees, and attorneys (collectively, the "Customer Indemnities") from and against all liabilities, demands, losses, damages, costs or expense (including reasonable attorney's fees and costs), incurred by any Customer Indemnities as a result of arising out of (i) the willful misconduct or negligence of Nexcheck in performing the Services or (ii) a material breach by Nexcheck of its covenants.

### **8.2 Customer Indemnification and Hold Harmless**

Customer agrees to the fullest extent permitted by law, to indemnify and hold harmless Nexcheck, its affiliates, officers, directors, stockholders, agents, employees and representatives, (collectively, the "Nexcheck Indemnities") from and against all liabilities, demands, losses, damages, costs or expenses (including without limitation reasonable attorney's fees and expenses) incurred by any Nexcheck Indemnities as a result or arising out of (i) the willful misconduct or negligence of Customer related to the Services or (ii) a material breach of Customer's covenants.



**8.3 Warranty Disclaimer**

Except as expressly set forth in this Agreement, Nexcheck disclaims all other representations or warranties, express or implied, made to the Customer or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any good provided incidental to the Services provided under this Agreement.

**8.4 Limitation of Liability**

Notwithstanding the foregoing, the parties agree that neither party shall be liable to the other for any lost profits, lost savings or other special, indirect or consequential damages, even if the party has been advised of or could have foreseen the possibility of such damages.

**9 Term and Termination**

**9.1 Term**

The term of this Agreement shall commence on the effective date of this Agreement and continue for a term of 3 (three) years (“Initial Term”) from the Launch Date. Thereafter, the Agreement will then automatically renew for additional and successive one-year periods unless terminated by either party upon thirty (30) days written notice. However, at any time Nexcheck may cancel this Agreement on 60 days written notice for any reason by actually providing written notice. Nexcheck or Customer may cancel immediately without notice if it reasonably suspects fraud, collusion, dishonesty or misrepresentation. Customer shall pay on demand, an early termination fee of four hundred and ninety five dollars (\$495.00) for processing services.

**9.2 Material Breach**

A material breach of this Agreement shall be cured within 90 (ninety) days (“Cure Period”) after a party notifies the other of such breach. In the event, such material breach has not been cured within the Cure Period, the non-breaching party can terminate this Agreement by providing the other party with a 30 (thirty) days notice.

**9.3 Upon Termination**

Upon termination of this Agreement, the parties agree to cooperate with one another to ensure that all Payments are accounted for and all refundable transactions have been completed. Upon termination, Nexcheck shall cease all Services being provided hereunder unless otherwise directed by the Customer in writing.

This Agreement represents the entire understanding between the parties hereto with respect to its subject matter and supersedes all other written or oral agreements heretofore made by or on behalf of Nexcheck or Customer with respect to the subject matter hereof and may be changed only by agreements in writing signed by the authorized representatives of the parties.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives.

City of Irondale, Water Works Board (Customer)

**Nexcheck, LLC-DBA: Nexbillpay**

Address: P O Box 100188

2416 Greenspings Highway

City/State/Zip: Irondale, AL 35210

Birmingham, AL 35209

By: \_\_\_\_\_/\_\_\_\_\_ (Sign/Title)

By : \_\_\_\_\_/\_\_\_\_\_ ( Sign/Title)

\_\_\_\_\_ (Print)

\_\_\_\_\_ (Print)

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ (Date)

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ (Date)



**Schedule A – Nexcheck Service Fee Schedule**

Service Fee charged to the User will be based on the following model. (Web)

Payment Type	Payment Amount	Service Fee
eCheck	<u>\$000.01</u> - <u>\$2000.00</u>	<u>\$2.00</u>
Credit Card/Debit Card	<u>\$000.01</u> - <u>\$200.00</u>	Residential <u>\$2.50</u>
	<u>\$200.01</u> - <u>\$2000.00</u>	<u>2.95%</u>

eCheck Transaction Limit - \$2000.00

Credit Card/Debit Card Limit - \$2000.00

A One Time Set Up Payment Portal Fee - Waived

Activation Fee - Waived

Service Fee charged to the User will be based on the following model. (IVR Telephone)

Payment Type	Payment Amount	Service Fee
eCheck	<u>\$000.01</u> - <u>\$2000.00</u>	<u>\$2.00</u>
Credit Card/Debit Card	<u>\$000.01</u> - <u>\$200.00</u>	Residential <u>\$3.25</u>
	<u>\$200.01</u> - <u>\$2000.00</u>	<u>Each additional \$200.00, \$3.00 increase</u>

eCheck Transaction Limit - \$2000.00

Credit Card/Debit Card Limit - \$2000.00

Utility Telephone Number - Waived

A One Time Set Up Fee - Waived

Per Minute Waived

Service Fee charged to the User will be based on the following model. (V-Terminal)

Payment Type	Payment Amount	Service Fee
Credit Card/Debit Card	<u>\$000.01</u> - <u>\$150.00</u>	<u>\$2.00</u>
	<u>\$150.01</u> - <u>\$2,000.00</u>	<u>2.95%</u>

eCheck Transaction Limit - \$2000.00

Credit Card/Debit Card Limit - \$2000.00

One time set up fee - Waived



The Nexcheck Service Fee will be collected separate to the Payment Amount. Nexcheck may apply different transaction limits per payment type. The fees listed are based on the business qualifying for the interchange utility rate set by Visa and MasterCard.

City of Irondale, Water Works Board (Customer)

Address: P O Box 100188

City/State/Zip: Irondale, AL 35210

By: \_\_\_\_\_/\_\_\_\_\_(Sign/Title)

\_\_\_\_\_(Print)

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_(Date)

**Nexcheck, LLC-DBA: Nexbillpay**

2416 Greenspings Highway

Birmingham, AL 35209

By : \_\_\_\_\_/\_\_\_\_\_( Sign/Title)

\_\_\_\_\_(Print)

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_(Date)