

# DIRECT ELECTRONIC PAYMENT DELIVERY AGREEMENT – DEBIT SETTLEMENT



This Direct Electronic Payment Delivery Agreement – Debit Settlement (the “Agreement”) is entered into as of \_\_\_\_\_, 2009 (“Effective Date”) between **CheckFree Services Corporation** (“CheckFree”), a Delaware corporation having its principal office at 4411 East Jones Bridge Road, Norcross, Georgia 30092, and **West Lafayette Wastewater Treatment Utility** (the “Client”), having its principal office at 609 West Navajo Street, West Lafayette, Indiana 47906-1912.

## **1. Services.**

**1.1** CheckFree provides electronic bill payment services to consumers and businesses (“Customers”) who utilize CheckFree to perform such services. At its Customer’s instruction, CheckFree will process a payment to a merchant or creditor for payment of the Customer’s bill (the “Payment”). CheckFree has developed payment and service systems to maximize the electronic delivery of Payments, and to minimize or eliminate the use of paper drafts and checks (the “Service”). CheckFree will collect and electronically deliver Payments submitted by Customers, debited from Customer’s designated bank accounts (the “Debit Entries”) to Client as the payee.

**1.2** Where CheckFree has received the funds prior to remitting the Payment to Client (known as “Good Funds”), there will be no limit (unless indicated otherwise in Exhibit A’s section 4) on the amount of a single Payment, and the Payment will be transmitted through the electronic interface. Should Client elect to limit the daily amount of any single Payment through the electronic interface, such amount shall be indicated in Exhibit A’s section 4, and individual Payments in excess of such amount will be made by paper draft or check.

**2. CheckFree Obligations.** All Payments transmitted by CheckFree shall be processed in accordance with the following specifications:

**2.1** The data file of Payments’ instructions will be electronically transmitted to Client daily by CheckFree in a mutually agreed upon format by the designated time (see Exhibit A’s section 4) each Business Day. A “Business Day” is defined as each day, Monday through Friday, that is not a Federal Reserve holiday. The data file will conform to specifications mutually agreed upon by Client and CheckFree. CheckFree will notify Client upon CheckFree’s discovery of any occurrence that may delay transmission of the data file.

**2.2** The payment and reversal data, calculated pursuant to the terms of paragraph 3.3 below, will be 100% in balance with the expected amount of funds every day in accordance with the mutually agreed upon Debit Settlement processing on which this Agreement is based. The associated Payments’ funds will be deposited electronically in the designated account and be available for use no later than on the Business Day following the date of transmission of the data records.

**2.3** CheckFree will notify Client of Debit Entries returned unpaid to CheckFree the second time. CheckFree will submit the returned Debit Entries information in the payment data file, a separate electronic reversal file, or an Advice of Reversal to Client specifying the returns that are owed to CheckFree.

**2.4** CheckFree will maintain records of the data files and Payments made and provide such information related thereto as Client may reasonably request upon reasonable notice to CheckFree during normal business hours.

**2.5** CheckFree will designate specific personnel to work with Client in support of the implementation and electronic delivery of Payments. Using the mutually agreed upon procedures, CheckFree will use commercially reasonable efforts to respond to Client-initiated research requests involving Payments within three (3) Business Days provided that sufficient information is provided by Client to perform research. CheckFree agrees to aid Client in the correction of invalid account numbers as a means of reducing future unidentified or paper transactions.

**3. Client Obligations.** All Payments received by Client shall be processed in accordance with the following specifications:

**3.1** Client will post such Payments to Customers’ accounts using a mutually agreed upon parameter for the posting date of record. Client will provide, in a mutually agreed upon format and timeframe, the necessary data to designate the date of posting of Payments. In the event such data is not provided, all associated Payments shall be regarded by the parties as posted and shall be treated as such.

**3.2** Client shall establish and maintain for the term of this Agreement an account at a financial institution (the “Settlement Account”) for the purpose of allowing CheckFree to credit funds to Client. Client hereby grants CheckFree authorization to effect electronic credits to the Settlement Account and Client agrees to execute any required documentation to grant such authority. The Settlement Account shall be the account designated in Exhibit A’s section 1.

**3.3** Client accepts full financial responsibility for the dollar amount of Debit Entries originally credited to Client and returned unpaid to CheckFree that were originated by CheckFree for Payments, irrespective of the reason for the return. Client agrees that CheckFree is authorized to initiate a debit of Client’s designated bank account (see Exhibit A’s section 2) in the amount of the returned Debit Entries on the day CheckFree notifies Client of the return.

**3.4** Client will designate specific personnel to work with CheckFree in support of the electronic delivery of Payments. Using the mutually agreed upon procedures, Client will use commercially reasonable efforts to respond to CheckFree-initiated research requests involving Payments within three (3) Business Days provided that sufficient information is provided by CheckFree to perform research. Client agrees to aid CheckFree in the correction of invalid account numbers as a means of reducing future unidentified or paper transactions.

**4. Rejected Payments.** No Payment transmitted hereunder may be rejected by Client unless the account data for such Payment is incorrect or incomplete or the account is blocked or closed. If any Payment is rejected hereunder, and CheckFree and Client are unable to determine the correct posting information, Client shall return the Payment data and funds in a mutually agreed upon format.

**5. Exceptions.** Client acknowledges that Payments will not be transmitted electronically in the following circumstances:

- (a) Where the Customer banks at a financial institution that is not accessible through the Automated Clearing House (“ACH”);
- (b) Where the Customer’s Client account number is incomplete, incorrect or otherwise fails the account number edit procedures established by CheckFree and Client; or,
- (c) For a Payment in excess of the amount indicated in Exhibit A’s section 4, if applicable.

## **6. Fees, Billing, and Payment.**

**6.1** Each party will bear its own costs associated with efforts in systems development, operational implementation, marketing and research. Fees for the Service performed by CheckFree under this Agreement (the “Fees”) shall be calculated in accordance with Exhibit A’s section 3. CheckFree reserves the right to change Fees with sixty (60) days advance written notification. Where Client does not agree to any such change, then

Client may, within thirty (30) days of notification of such change, provide CheckFree with a thirty (30) day termination notice.

**6.2** In addition to payment of Fees, Client shall be responsible for any taxes or other expenses, fees, and charges imposed by a governmental agency arising out of or incidental to Client's use of the Service (the "Expenses"), excluding taxes, expenses, fees or charges based on the income or property of CheckFree.

## **7. Confidential Information.**

**7.1** The term "Confidential Information" means proprietary information, trade secrets, customer information and transactions, all information that is not known by, or generally available to, the public at large and that concerns the business and affairs of CheckFree or Client, including, but not limited to, existing systems and programs and those in development, accompanying documentation and related business plans, pricing, costs, pricing strategy, marketing plans, programs and/or other business strategies. Neither CheckFree nor Client shall have the obligation to specifically identify any information to which the protection of the Agreement extends by any notice or other action.

**7.2** Confidential Information shall be used by each party solely in the performance of its obligations pursuant to this Agreement. Each party shall receive Confidential Information in confidence and not disclose Confidential Information to any third-party, except as may be necessary to perform its obligations pursuant to this Agreement and except as may be required by law or agreed upon in writing by the other party. Each party shall take all reasonable steps to safeguard Confidential Information disclosed to it so as to ensure that no unauthorized person shall have access to any Confidential Information. Each party shall promptly report to the other party any unauthorized disclosure or use of any Confidential Information of that party of which it becomes aware.

**7.3** Upon request or termination of this Agreement, each party shall return to the other party all Confidential Information in its possession or control. No disclosure by a party hereto of Confidential Information of such party shall constitute a grant to the other party of any interest or right whatsoever in such Confidential Information, which shall remain the sole property of the disclosing party.

## **8. Warranties and Limitations of Liability.**

**8.1** CheckFree warrants that it will exercise reasonable care in the performance of its obligations under this Agreement and that it will comply with all applicable laws, rules and regulations, including the ACH Rules published by the National Automated Clearing House Association. Client warrants that it will exercise reasonable care in the performance of its obligations under this Agreement and that it will comply with all applicable laws, rules and regulations. Subject to the limitation set forth in paragraph 8.2 below, CheckFree shall be liable only for loss due to its failure to properly maintain the Service and its failure to comply with Client's instructions regarding the Service. CheckFree shall not be liable for loss due to inaccurate or untimely information provided by Client or Customers. If CheckFree causes funds to be transferred other than in accordance with the correct instruction from the Customer, CheckFree shall be responsible for redirecting the misdirected funds to the proper payee. CheckFree's liability will not exceed the dollar amount of any entries which are the subject of any claim.

**8.2** Because of the extreme difficulty of fixing actual damages for any failure of CheckFree to perform its obligations hereunder, or from any failure of CheckFree to perform any obligations imposed by law, the parties agree that CheckFree's liability for an uninsured loss hereunder, if any, shall be limited to liquidated damages in the amount of the Fees paid for the two (2) calendar months immediately preceding the month in which the event occurred which gave rise to the damages. The provisions of this paragraph 8.2 apply even though the loss or damage, irrespective of cause or origin, results, directly or indirectly, from either performance or nonperformance of obligations imposed by this Agreement.

**8.3** CHECKFREE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY

WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL CHECKFREE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY OF CHECKFREE'S DUTIES HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, OR FOR ANY LOSS OR DAMAGE TO CLIENT, DIRECT OR CONSEQUENTIAL, ARISING OUT OF OR IN ANY WAY RELATED TO ACTS OR OMISSIONS OF THIRD PARTIES.

## **9. Indemnification.**

**9.1** CheckFree agrees to indemnify Client, its officers, directors and employees from and against liability, cost and expense, including reasonable attorneys' fees, incurred by any one or more of them by reason of any and all claims, demands, suits or proceedings made or brought against any one or more of them arising from any negligent act or omission of CheckFree or of the Service or the breach of any obligation, responsibility, warranty or representation of CheckFree to Client related to the development, operation, promotion or use of the Service pursuant to this Agreement.

**9.2** Client agrees to indemnify CheckFree, its officers, directors and employees from and against liability, cost and expense, including reasonable attorneys' fees, incurred by any one or more of them by reason of any and all claims, demands, suits or proceedings made or brought against any one or more of them arising from any negligent act or omission of Client or the breach of any obligation, responsibility, warranty or representation of Client to CheckFree related to the operation, promotion or use of the Service pursuant to this Agreement.

**10. Delays and Excuse from Performance.** Neither party shall be liable for any delay or other failure of performance caused by factors beyond the reasonable control of the applicable party, such as, but not limited to: strikes, insurrection, war, fire, lack of energy, acts of God, mechanical or electrical breakdown, governmental acts or regulations, computer malfunction or acts or omissions of third parties. Each party shall be responsible for notifying the other within a reasonable time if it is unable to perform.

## **11. Term and Termination Provisions.**

**11.1** The term of this Agreement is as of the Effective Date and shall continue for a period of three (3) years and shall renew automatically for additional one (1) year terms unless either party provides at least ninety (90) days notice of non-renewal prior to the end of the then-current term. If either party shall fail to deliver any payments when due without cause or intervention of force, this Agreement may be terminated immediately, or if either party shall default in the performance of any obligations other than payment obligations under this Agreement and shall fail or refuse to remedy such default within thirty (30) days after written notice of the alleged default, either party may terminate this Agreement upon twenty-four (24) hours written notice; provided further that if either party shall cease doing business, or become insolvent or become a party to any bankruptcy or receivership proceedings, or make an assignment for the benefit of creditors, then this Agreement shall terminate immediately. If, after the Effective Date of this Agreement, any law, regulation, or ordinance, whether federal, state, or local, becomes effective which substantially alters the ability of either party to perform hereunder, the applicable party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other party.

**11.2** Upon termination, the rights and obligations of the parties hereunder will cease, excepting only the following which will continue: (a) the rights of each party with respect to any breach of this Agreement by the other party; (b) the right of CheckFree to continue its relationships with its Customers; (c) for all transactions occurring on or before the effective date of termination, the rights and obligations of each party to make or accept Payments and the obligations of Client to pay Fees and Expenses or fund returns; and, (d) the rights and obligations set forth in sections 7, 8, 10, and 12 through 17.

**12. Notices.** All notices and other official communications under this Agreement shall be in writing and sufficiently given if delivered by any method

evidencing written receipt of delivery, or mailed by certified mail, return receipt requested, proper postage prepaid, or by telephone, email, or facsimile with subsequent confirmation by delivery in any manner previously mentioned to:

CheckFree Services Corporation  
4411 East Jones Bridge Road  
Norcross, Georgia 30092  
Attention: General Counsel, Biller Solutions

West Lafayette Wastewater Treatment Utility  
609 West Navajo Street  
West Lafayette, IN 47906-1912  
Attention: Judy Rhodes

or to such other address or addresses as either party may from time to time designate to the other by written notice. Any such notice or other official communication shall be deemed to be given as of the date it is personally delivered or three (3) days following the date when placed in the U.S. Postal Service mail in the manner specified.

**13. Independent Contractor.** Each party shall perform all services hereunder as an independent contractor, and nothing contained herein shall be deemed to create, nor does it create and shall not be construed to create, any association, partnership, joint venture, or relationship of principal and agent or master and servant between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.

**14. Agency Relationship.** CheckFree and Client mutually agree that if a Payment from a Customer of Client, which is transmitted by CheckFree to Client, or to an agent of Client, does not post, it may be necessary for CheckFree to contact Client in an attempt to resolve the problem (a "Contact"). Client acknowledges that when CheckFree makes a Contact, it is doing so as agent for the Customer and Client agrees to provide the Customer information requested by CheckFree. CheckFree will indemnify and hold Client harmless from any loss resulting from the provision of information by Client to CheckFree pursuant to a Contact.

**15. Assignment.** Neither party may assign this Agreement, or any part thereof, without the prior written consent of the other party, and any such attempted assignment shall be void; provided, however, either party may assign this Agreement, or any part thereof, to its parent, an affiliate (including any successor by merger or acquisition), or to any direct or indirect wholly-owned subsidiary without the prior written consent of the other party. As between the parties hereto, no such assignment to a direct or indirect wholly-owned subsidiary shall relieve the assigning party of any of its duties and obligations under this Agreement.

**16. General Provisions.** (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to its conflicts of law principles. (b) This Agreement shall not be amended except by written agreement signed by both parties. (c) In the event that any provisions, or any portion thereof, of this Agreement are determined by competent judicial, legislative, or administrative authority to be prohibited by law, then such provision or part thereof shall be ineffective only to the extent of such prohibition, without invalidating the remaining provisions of the Agreement. (d) This Agreement, along with any executed addenda attached, together with any Schedules or Exhibits, contains the full and complete understanding of the parties with respect to the subject matter hereof, and supersedes all prior representations and understandings, whether oral or written. (e) No delay in enforcement or extension of time or failure to exercise any right hereunder will be deemed to be a waiver of any right by any party. No waiver of any earlier breach shall be construed as a waiver of a later breach. No waiver shall be effective unless such waiver is approved in writing by the waiving party. (f) This Agreement shall inure to the benefit of the parties hereto and is not intended to create any right or cause of action or remedy of any nature whatsoever in any third party.

IN WITNESS WHEREOF, the parties, each acting under due and proper authority, have entered into this Agreement as of the Effective Date.

**WEST LAFAYETTE WASTEWATER TREATMENT UTILITY**

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CHECKFREE SERVICES CORPORATION**

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A**  
**Settlement Account Instructions, Fee Schedule, Operational Details**

**Section 1 - Credit (of Payments) to Client by CheckFree**

Client Financial Institution to be credited: \_\_\_\_\_  
Client Account Number at Financial Institution: \_\_\_\_\_  
Client Account Name: \_\_\_\_\_  
ABA / Routing Number: \_\_\_\_\_

**Section 2 – Debit (collections) from Client by CheckFree for Returned Items**

Client Financial Institution to be debited: \_\_\_\_\_  
Client Account Number at Financial Institution: \_\_\_\_\_  
Client Account Name: \_\_\_\_\_  
ABA / Routing Number: \_\_\_\_\_

**Section 3 – Fee Schedule**

**Implementation Fee: \$0.00**

**Per Item Fee: \$0.00**

**Custom Development and Maintenance:**

(Above and beyond standard implementation under this Agreement)

Any post-implementation development, maintenance, alterations, changes and/or additional requests, or Client requested data preparation and/or reporting will be charged at \$250.00 per hour. All such projects and requests will be subject to an applicable statement of work process, and only projects and requests within the scope of CheckFree development will be considered; additional fees will be determined depending upon the nature of the project or request.

**Telecommunications:**

Telecommunication costs are the responsibility of Client. Should out-of-pocket telecommunication costs be incurred by CheckFree, they will be documented and invoiced at cost to Client. CheckFree will provide notice to Client prior to any such cost being incurred.

Note: If, upon termination or expiration of this Agreement, the parties desire to maintain an electronic remittance relationship, the parties must enter into a separate mutually agreed upon remittance agreement (with a mutually agreed upon remittance method, which may be different than that under this Agreement, and with mutually agreed upon pricing, which may be higher than that under this Agreement) prior to termination or expiration of this Agreement.

**Section 4 – Mutually Agreed Upon Operational Details**

Single Electronic Payment Limit: \$1,000.00  
CheckFree File Transmission Time: \_\_\_\_\_