# AFFINITY PARTNERSHIP AGREEMENT

This Referral Agreement (this "Agreement") is made and entered into as of_____(the "Effective Date") by and between **Nexbillpay, LLC** ("NEXBILLPAY"), and **Ohio Rural Water Association, 55 Whites Road, Zanesville, OH 43701.** (ORWA).

**RECITALS**

1. NEXBILLPAY is a registered Member Service Provider and Independent Sales Organization as defined by MasterCard rules and Visa operating regulations, respectively, for certain sponsoring member banks of MasterCard and Visa.
2. NEXBILLPAY provides Merchants the ability to establish a Merchant account through which NEXBILLPAY provides Payment Processing Services.
3. ORWA is a nonprofit trade association with a mission of facilitating the professional and efficient operation of water and wastewater systems throughout the State of Ohio.
4. The Parties desire to enter into an arrangement to connect NEXBILLPAY with ORWA members and other eligible water and wastewater systems for purposes of marketing NEXBILLPAY Merchant services program through the referral program described in this Agreement.

5. From time to time, ORWA enters into various other affinity agreements and as such, does not provide for exclusive rights to our endorsement of their specific products. Other similar/competing vendors might likewise be promoted by ORWA as affinity partners.

**AGREEMENT**

In consideration of the foregoing and the covenants and conditions contained herein, the parties agree as follows:

1. Definitions. When used herein (including the recitals set forth above), the following terms shall have the meanings set forth below. Each definition in this Agreement includes the singular and the plural and the word "including" means "including but not limited to."
    a. "Card Association Rules" means the bylaws, rules, regulations, orders and interpretations issued by the respective Card Associations applicable to the performance of Payment Processing Services and related matters, as amended from time to time by the respective Card Associations.
    b. "Card Associations" means Visa, MasterCard and any other association or card issuer having proprietary rights to and clearing and oversight responsibilities with respect to any credit or debit card used to effect transactions for which any Payment Processing Services are provided pursuant to this Agreement, and includes any debit card network utilized to authorize and settle any debit card used to effect transactions for which any Payment Processing Services are provided pursuant to this Agreement.
    c. "ORWA Marks" means the trademarks, trade names and logos of ORWA.
    d. "Confidential Information" means all proprietary, secret or confidential information or data relating to either party and their operations, employees, products or services, clients, customers or potential customers, and includes the merchant pricing and marketing plans related to the Payment Processing Services, the Program Standards, and the terms of this Agreement.
    e. "Referred Merchants" means any active association member who is referred to Nexbillpay by the ORWA and becomes a direct customer of Nexbillpay, either by referral or direct solicitation.
    f. "NEXBILLPAY Marks" means the trademarks, trade names and logos of NEXBILLPAY, LLC
    g. "Insolvency Event" occurs, with respect to any party, when such party:
        i. is dissolved, becomes insolvent, generally fails to pay or admits in writing its inability generally to pay its debts as they become due;
        ii. "Term" means the Original Term together with any Renewal Term or any other extension of this Agreement.
        iii. "Visa" means, individually or collectively, as appropriate, Visa U.S.A. Inc. or Visa International

or either of their successors or assigns.

2. Marketing. From the Effective Date of this Agreement, ORWA will market appropriate NEXBILLPAY products to its members, for purposes of generating referrals to NEXBILLPAY, as described below.

   a. NEXBILLPAY will provide ORWA with a monthly report on referrals closed.

   b. ORWA will provide space on its website for marketing and executing the referral program.

   c. ORWA will distribute (or permit NEXBILLPAY to distribute) NEXBILLPAY's marketing materials to ORWA's members at such times and in a manner to which the Parties agree.

   d. Any use by ORWA or NEXBILLPAY of the other's name, trade and service marks, trade names, copyrights, logos, symbols, brand names, or other intellectual property rights will require prior written consent of the other party and will be used only for purposes of marketing the referral program.

   e. Neither Party will issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement without the prior written consent of the other Party.

   f. Names and Marks.

      i. ORWA Names and Marks. During the Term of this Agreement to the extent reasonably necessary, or mutually determined to be desirable, to promote Payment Processing Services to Merchants and otherwise perform under this Agreement, ORWA hereby grants to NEXBILLPAY a limited, non-exclusive, non- transferable, royalty-free right to use ORWA Marks for such use; provided, however, that NEXBILLPAY will obtain ORWA's prior written approval of such use, which will not be unreasonably withheld. Notwithstanding the foregoing, ORWA hereby gives NEXBILLPAY prior written approval to make oral references to ORWA in telesales efforts with respect to the provision of Payment Processing Services to Referred Merchants.

      ii. NEXBILLPAY Names and Marks. During the Term of this Agreement to the extent reasonably necessary, or mutually determined to be desirable, to promote Payment Processing Services to Merchants referred by ORWA, NEXBILLPAY hereby grants to ORWA a limited, non-exclusive, non-transferable, royalty-free right to use the NEXBILLPAY Marks for such use; provided, however, that ORWA will provide a prior full disclosure to NEXBILLPAY of any proposed use and obtain NEXBILLPAY prior written approval of such use, which will not be unreasonably withheld. Notwithstanding the foregoing, NEXBILLPAY hereby gives ORWA prior written approval to make oral references to the NEXBILLPAY Marks with respect to the promotion of Payment Processing Services to ORWA's Merchant customers.

      iii. Ownership. The parties acknowledge that NEXBILLPAY holds the exclusive, right, title and interest in and to the NEXBILLPAY Marks and all related products and services. Nothing herein shall transfer to ORWA any ownership or other interest in or to the NEXBILLPAY Marks, and any and all goodwill associated with the use of the NEXBILLPAY Marks will inure to the benefit of NEXBILLPAY. ORWA will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title and interest. The parties acknowledge that ORWA is the owner of ORWA Marks and all related products and services. Nothing herein shall transfer to NEXBILLPAY any ownership or other interest in or to ORWA Marks, and any and all goodwill associated with the use of ORWA Marks will inure to the benefit of ORWA.

3. Obligations of ORWA.

   a. Merchant Contract. ORWA and its employees are prohibited from misrepresenting any term of any Merchant Contract for the provision of Payment Processing Services.

   b. Rules and Regulations. ORWA must abide by the Program Standards in its referral of Merchants to NEXBILLPAY.

4. Obligations of NEXBILLPAY.
   a. Sales Support. NEXBILLPAY shall quote all applicable fees to ORWA's referred, qualified merchants, provide such merchants with an application and merchant agreement and provide assistance as needed to such merchants in the completion of those forms.
   b. Merchant Underwriting. NEXBILLPAY will perform credit reviews on prospective Merchants for Payment Processing Services, and ORWA understands that NEXBILLPAY will not accept any prospective Merchant that does not meet the Program Standards. NEXBILLPAY will assume the risks associated with the Payment Processing Services relationship for Referred Merchants. Nothing herein shall require NEXBILLPAY to accept, solicit, or continue to process, any prospective Merchant that does not qualify under NEXBILLPAY Program Standards.
   c. Performance of Merchant Contract; Pricing. NEXBILLPAY will require each approved Merchant to enter into a Merchant Contract with NEXBILLPAY. NEXBILLPAY will (i) be responsible, at its expense, for performing all its obligations under Merchant Contracts, (ii) bear all credit-related risks under Merchant Contracts, (iii) provide customer service to Referred Merchants for the Payment Processing Services, and (iv) determine all pricing charged to Referred Merchants for the Payment Processing Services.
5. Merchant Relationships.
   a. NEXBILLPAY Exclusive Rights with Respect to Merchants. As between ORWA and NEXBILLPAY, NEXBILLPAY will have the exclusive right to provide, and to receive the economic benefits from providing, Payment Processing Services to all Referred Merchants. Nothing in this Agreement gives any rights to ORWA with respect to the provision of Payment Processing Services to any Referred Merchant or to the Merchant Contracts. ORWA will not take or facilitate any action that gives or relinquishes to any person or entity any rights inconsistent with NEXBILLPAY rights under this Agreement or that diminishes NEXBILLPAY rights under this Agreement.
   b. Authority; Ownership. NEXBILLPAY will have full and exclusive authority to negotiate with each Referred Merchant to establish, modify, terminate or extend the terms and conditions of any Merchant Contract with such Referred Merchant. ORWA understands and agrees that it will in no way be responsible for, have an ownership interest in or be a party to the Merchant Contract between NEXBILLPAY and any Referred Merchant. Merchant Contracts with Referred Merchants and the rights and obligations thereunder may be modified, terminated or assigned by NEXBILLPAY, in whole or in part, in its sole discretion, subject only to specific limitations, if any, established in the applicable Merchant Contract.
6. Relationship Management. During the Term of this Agreement, NEXBILLPAY will maintain a designated relationship manager to work jointly with ORWA to maintain and grow the Payment Processing Services business and otherwise facilitate the services and transactions contemplated under this Agreement.
   a. Residual Payments; Conditions of Payment.
      i. Residual Payments. NEXBILLPAY shall pay to ORWA Monthly residual payments as set forth on Exhibit A hereto ("Residual Payments").
      ii. Payment. During the Term of this Agreement, on or about the 30th day of the month following a complete calendar month, NEXBILLPAY shall pay to ORWA Residual Payments for the preceding month. NEXBILLPAY may make any or all payments due to ORWA through the National Automated Clearing House Association and its automated clearing house services. ORWA agrees to cooperate with NEXBILLPAY in doing so or **by mail with paper check.**
      iii. Inspection of Records. Upon reasonable request, NEXBILLPAY shall provide to ORWA for inspection all relative data or provide access to NEXBILLPAY data files that support the amounts used to calculate the Residual Payment amount.
      iv. Form W-9. ORWA must provide NEXBILLPAY with a completed Internal Revenue Service Form W-9 to receive payment for any Residual Payments under this Agreement.

7. Ownership of Data. The parties acknowledge and agree that the Referred Merchants are customers of NEXBILLPAY, with regard to the Payment Processing Services, and that NEXBILLPAY may use the contact information provided by such Referred Merchant for any reason, pursuant to applicable law, including phone number, address, and e-mail address.
    a. Non-interference Obligation. During the term of this Agreement and for two years thereafter, ORWA will not do anything with the exception of referencing its published affiliated vendor list to facilitate or encourage, directly or indirectly through a third party, any Referred Merchant to terminate or non-renew its Merchant Contract.
    b. Right of NEXBILLPAY to Act Separately. Nothing in this Agreement will restrict NEXBILLPAY ability to act as an agent, partner, joint venture or independent contractor for or with any other entity or to act on its own behalf in connection with the provision of Payment Processing Services or otherwise, including actions that are competitive with ORWA.
    c. Compliance with Laws, Card Association Rules. Each party will comply with all applicable laws and regulations, including Card Association Rules, in the provision of their respective services hereunder. The Card Association Rules shall control to the extent of any inconsistency with the terms and conditions of this Agreement. NEXBILLPAY and ORWA shall cooperate with each other and with NEXBILLPAY Sponsoring Card Association Member to complete and to maintain during the term of this Agreement any necessary registrations of ORWA with the respective Card Associations.
    d. Term; Termination.
        i. Term. This Agreement is effective as of the Effective Date and will continue in full force and effect for an initial term of three (3) years (the "Original Term"), unless otherwise terminated as provided herein. After the Original Term, this Agreement will automatically renew for additional periods of one (1) year (each a "Renewal Term") unless either party provides the other written notice of its intent not to renew no less than thirty (30) days prior to the end of the Original Term or then- current Renewal Term.
        ii. Termination by NEXBILLPAY. NEXBILLPAY may terminate this Agreement:
            a. immediately if any Insolvency Event occurs with respect to ORWA;
            b. upon ten (10) days prior written notice if ORWA breaches any material representations, warranties, obligations, or covenants in this Agreement and fails to cure such breach within sixty (60) days after written notice to ORWA of the breach.
        iii. Termination by ORWA. ORWA may terminate this Agreement:
            a. immediately if any Insolvency Event occurs with respect to NEXBILLPAY; or
            b. upon ten (10) days prior written notice if NEXBILLPAY breaches any material representations, warranties, obligations, or covenants in this Agreement and fails to cure such breach within sixty (60) days after written notice to NEXBILLPAY of the breach.
        iv. Regulatory Demand. NEXBILLPAY or ORWA may terminate this Agreement upon thirty days (30) written notice to the other if Visa, MasterCard or any federal or state regulatory agency having jurisdiction over the subject matter of this Agreement makes a demand that NEXBILLPAY or its sponsoring Card Association member discontinue or substantially modify the Payment Processing Services program.
        v. Effect of Termination. Upon termination of this Agreement:
            a. Cessation of Marketing Activities. ORWA will promptly discontinue its promotion and recommendation of NEXBILLPAY Payment Processing Services. Each party will promptly cease use of the other party's ORWA Marks or NEXBILLPAY Marks, as applicable.
            b. Non-interference. For 1 year after the effective date of termination, ORWA will comply with the Non-interference Obligation.

c. Residual Payments will no longer continue.
d. Merchant Contracts. Nothing herein shall transfer to ORWA any ownership or other interest in or to the Merchant Contracts and termination of this
e. Agreement shall not affect the status of such Merchant Contracts, which will be owned free and clear by NEXBILLPAY.

8. Confidentiality.
   a. General Obligations. NEXBILLPAY and ORWA acknowledge that each may discover or learn Confidential Information about the other and their customers during the course of this Agreement and in connection with the transactions contemplated hereunder. The party receiving the Confidential Information shall: (i) maintain it in confidence, except to the extent necessary to carry out the purposes of this Agreement, in which event written confidentiality restrictions shall be imposed upon the parties to whom such disclosures are made; and (ii) use at least the same degree of care in maintaining its secrecy as it uses in maintaining the secrecy of its own confidential information, but in no event less than a reasonable degree of care.
   b. Exceptions. Information shall not be considered Confidential Information to the extent, but only to the extent, that such information is: (i) already known to the receiving party free of any restriction at the time it is obtained; (ii) subsequently learned from an independent third party free of any restriction and without breach of this Agreement; (iii) or becomes publicly available through no wrongful act of the receiving party; (iv) independently developed by the receiving party without reference to any Confidential Information of the other; or (v) required to be disclosed by law.
   c. Remedy. If either party breaches this Section 13, the non-breaching party will suffer irreparable harm and the total amount of monetary damages for any injury to such party will be impossible to calculate and therefore an inadequate remedy. Accordingly, the non-breaching party may (i) seek temporary and permanent injunctive relief against the breaching party or (ii) exercise any other rights and seek any other remedies to which the non-breaching party may be entitled to at law, in equity and under this Agreement for any violation of this Section 13.
9. General Indemnification. Each party shall indemnify and save harmless the other from any liabilities, lawsuits, penalties, claims or demands (including the costs, expenses and reasonable attorney's fees on account thereof) arising out of (a) third party claims related to such party's performance under this Agreement or related to such party's products or services, unless due to the gross negligence or intentional misconduct of the other party;
   (b) such party's use or disclosure of data provided by or related to a Referred Merchant; and (c) third party claims for any actual or alleged infringement of any patent, copyright, trademark, trade secret or other proprietary or intellectual property rights of any person relating to ORWA Marks or the NEXBILLPAY Marks, as applicable.
10. Limitation of Liability. Except for liability under Sections 7 and 9, the cumulative aggregate liability of either party for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever and regardless of the form of action or legal theory, shall be limited to the actual direct out-of-pocket expenses that are reasonably incurred by such other party and shall not exceed one hundred thousand dollars ($100,000).
11. Exclusion. IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR LOST PROFITS, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL DAMAGES OR THE LIKE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER EITHER PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
12. Publicity. Any communications and notices to third parties and all other publicity concerning the transactions contemplated by this Agreement shall be jointly planned and coordinated by the public relations/communications

departments of ORWA and NEXBILLPAY. Unless required by applicable law, neither party shall disseminate or make public or cause to be disseminated or made public any information regarding the transactions contemplated hereunder without the prior written approval of the other party, which approval shall not be unreasonably withheld.

13. Relationship of Parties. This Agreement shall not constitute, give effect to or otherwise imply a joint venture, partnership, employment, agency or formal or informal business organization of any kind. The parties are acting hereunder as independent contractors.
14. Governing Law. This Agreement shall be construed in accordance with, and governed by, Alabama law but excluding laws that direct the application of another jurisdiction's laws.
15. Assignment. Neither this Agreement nor any rights, duties or obligations under it are assignable by ORWA or NEXBILLPAY, by operation of law or otherwise, in whole or in part, without the prior written consent of the other party; provided, however, that the rights, duties and obligations of NEXBILLPAY hereunder may be assigned, in whole or in part, to an affiliate without consent from ORWA. Subject to the foregoing, all of the terms and provisions hereof will be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.
16. Entire Agreement; Amendment; Waivers. This document contains the entire agreement between the parties and supersedes any previous understandings, commitments or agreements, oral or written, with respect to agreement between the parties. Neither party has entered into this Agreement by reason of or in reliance on any representations of fact or opinion not fully stated herein. No alteration of or amendment to this Agreement shall be effective unless in writing and signed by an authorized representative of each party. No failure on the part of any party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.
17. Notices. All notices which either party may be required or desire to give to the other party will be in writing and will be given by personal service, facsimile, first class mail, registered mail or certified mail (or its equivalent), or overnight courier to the other party at its respective address or facsimile number set forth below.
18. Force Majeure. If either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the party invoking this provision, the affected party's performance shall be excused and the time of performance shall be extended for the period of the delay or inability to perform due to such occurrence.
19. Severability. To the extent that any provision of this Agreement conflicts with governing law or any provision is held to be null, void, or otherwise ineffective or invalid by a court of competent jurisdiction, (a) such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants, and restrictions of this Agreement will remain in full force and effect.
20. No Third-Party Beneficiaries. The parties do not intend for any Merchants or other third parties to be third-party beneficiaries of this Agreement.

Execution and delivery of this Agreement by electronic exchange of executed copies shall constitute a valid and binding execution and delivery of this Agreement by such party. The parties to this Agreement have caused it to be executed by their duly authorized officers as of the date set forth below.

| | |
|---|---|
| ORWA: Ohio Rural Water Association (ORWA) | Nexbillpay, LLC |
| By:_____ | By:_____. |
| Name: _____ | Name:_____. |
| Title:_____ | Title:_____. |

**EXHIBIT A – Residual Payments to ORWA for Payment Processing Services (Nexbillpay)**

Monthly payments to ORWA shall equal **10 %** of Net Processing Revenue from ALL ORWA members attributable to Referred Merchants or direct solicitaion from the date of execution of the agreement and moving forward. ("Residual Payments").

"Net Processing Revenue" means all Income received by NEXBILLPAY on Open Accounts during the applicable period, including those in collections, minus any deductions, offsets or withholdings from such Income, including without limitation: (i) Card Association interchange, fees, dues, penalties, deductions and assessments; (ii) sponsor bank fees, charges, deductions, offsets and overhead costs; and (iii) processing fees, charges and costs.

"Income" consists of the following items to the extent received by NEXBILLPAY on all Open Accounts: (1) all discount fees (qualified, mid-qualified, and non-qualified) on Discover, MasterCard, Visa, Diners Club/Carte Blanche, debit and JCB transactions; (2) transaction fees, (3) batch header fees, (4) address verification service fees, (5) monthly minimum fees, (6) customer support fees, (7) statement fees, (8) monthly Merchant Club fees, (9) American Express residuals, (10) JCB fees, (11) chargeback/retrieval fees, (12) convenience fees and (13) annual fees.

"Open Account" means any Referred Merchant that has been classified as "open" on a NEXBILLPAY settlement platform and has not been cancelled or terminated.

ORWA: Ohio Rural Water Association (ORWA)

By: _____

Title: _____

Nexbillpay, LLC

By: _____

Title: _____