

SERVICE AGREEMENT

This Software Agreement (this “Agreement”) is made as of October 21, 2021 (the “Effective Date”), between VEPO CROSSCONNEX, a New York limited liability company with a place of business at 3 West Main Street, Elmsford, New York 10523 (“Vendor”), and The Cranberry Township, a Pennsylvania Township with a place of business at 2525 Rochester Road Suite 400, Cranberry Township, PA16066, (“Customer”) (each of Vendor and Customer, a “Party”; together, the “Parties”).

1. Definitions.

- (a) “Services” refers to the services provided by Vendor as described in Exhibit A.
- (b) “Responsibilities” refers to the responsibilities undertaken by Customer as described in Exhibit B.
- (c) “Consideration” refers to the consideration to be provided to Vendor by Customer as described in Exhibit C.
- (d) “Customer Data” refers to data in electronic form input or collected through the Services by or from Customer.
- (e) “Authorized Representative” refers to an individual selected by The Cranberry Township to represent the Water District on all legal and financial decisions. VEPO CrossConnex Authorized representative will be the majority share-holder of the company stock.
- (f) VEPO CROSSCONNEX Software refers to Backflow device testing management software developed by VEPO CrossConnex.
- (g) VEPO CROSSCONNEX Mobile Application refers to mobile software application capable of capturing backflow device testing results and transferring that data to the VEPO CrossConnex hosted servers to be accessed by CrossConnex personnel and the The Cranberry Township.

2. Service & Payment.

- (a) *Services.* Vendor will provide the Services to Customer and Customer will undertake the Responsibilities pursuant to the terms of this Agreement.
- (b) *Payment.* Customer will provide Vendor the Consideration as payment for the Services pursuant to the terms of this agreement.
- (c) Vendor will collect payment from backflow tester submittal fee. Please refer to Exhibit C.

3. Data Management.

- (a) *Access, Use, & Legal Compulsion.* Unless it receives Customer’s prior written consent, Vendor: (i) will not access or use Customer Data other than as necessary to facilitate the Services; and (ii) will not give any third-party access to Customer’s Data. Notwithstanding the foregoing, Vendor may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Vendor will give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort

to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

- (b) *Customer's Rights*. Customer possesses and retains all right, title, and interest in and to Customer's Data, and Vendor's use and possession thereof is solely as Customer's agent.

4. Term & Termination.

- (a) *Term*. This Agreement will continue for 24 months following the Effective Date (a "Term"). Thereafter, this Agreement will renew for subsequent terms ("Terms") of 24 months, unless either party notifies the other of its intent not to renew 90 days or more days before the beginning of the next Term.
- (b) *Termination for Cause*. Either party may terminate this Agreement by written notice, effective in 60 days unless the other party first cures such breach.
- (c) *Effects of Termination*. The following provisions will survive termination of this Agreement: (i) any obligation of Customer to pay for Services rendered before termination; (ii) Disclaimer and Limitation of Liability provisions; and (iii) any other provision of this Agreement that must survive termination to fulfill its essential purpose.

5. Miscellaneous.


- (a) **Disclaimer**. Except for the express warranties specified in this section, THE SERVICE IS PROVIDED "AS IS" AND AS AVAILABLE, AND VENDOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. Without limiting the generality of the foregoing, (i) VENDOR HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; and (ii) Vendor does not warrant that the Services will perform without error or immaterial interruption.
- (b) **Limitation of Liability**. IN NO EVENT: (a) WILL VENDOR have any LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND (b) WILL VENDOR BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES. THE LIABILITIES LIMITED BY THIS SECTION APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (iii) EVEN IF VENDOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If the applicable law limits the application of the provisions of this Section, Vendor's liability will be limited to the maximum extent permissible.
- (c) *Independent Contractors*. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other and neither may bind the other in any way.
- (d) *No Waiver*. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than (i) by an

Authorized Representative and (ii) in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.

- (e) *Force Majeure*. To the extent caused by force majeure, no delay, failure, or default will constitute a breach of this Agreement.
- (f) *Assignment & Successors*. Neither party may assign this Agreement or any of its rights or obligations hereunder without the other's express written consent, except that either party may assign this Agreement to the surviving party in a merger of that party into another entity. Except to the extent forbidden in the previous sentence, this Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.
- (g) *Choice of Law & Jurisdiction*. This Agreement will be governed solely by the internal laws of the State of New York, without reference to such State's principles of conflicts of law. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of New York, NY.
- (h) *Severability*. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- (i) *Entire Agreement*. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof. Neither party has relied upon any such prior or contemporaneous communications.

Vendor

Name: Alan Seiler

Signature: 

Title: Managing Partner

Date: 10/22/2021

Customer

Name: _____

Signature: _____

Title: _____

Date: _____

Exhibit A

Vendor Provided Services

- Install and implement cloud-based software on VEPO CROSSCONNEX hosted servers.
- Upload THE CRANBERRY TOWNSHIP backflow device database to VEPO CROSSCONNEX software.
- Receive all backflow tests submitted through the VEPO CROSSCONNEX Mobile Application from certified backflow testers.
- Provide initial mailing notifications for each location with backflow device(s)
- Provide up to 2 (two) mailings, to each backflow device(s) owner that VEPO CrossConnex does not have an email address or mobile phone number.
- Monitor daily progress of device testing compliance progress system-wide.
- Set up notification for future tests due the following year, notifications to be sent sixty (60) days prior, forty-five (45) days prior, thirty (30) days prior, fifteen (15) days prior, and day of the due date.
- Provide semi-annual reports as required.
- Provide software support and Zoom training as needed.
- Provide any published updates and required maintenance for VEPO CROSSCONNEX Software.
- Maintain database changes in the VEPO CROSSCONNEX Software.
- Collect submittal fee from certified backflow testers for every test that is submitted.

Exhibit B

Customer Responsibilities

- Provide backflow device database.
- Notify certified backflow testers in the area that VEPO CROSSCONNEX Software is being utilized by THE CRANBERRY TOWNSHIP.
- Make best efforts to assist VEPO CrossConnex in capturing device owner emails and cell phone numbers.
- Send notification to seriously delinquent customers with expired test via mail or the VEPO CROSSCONNEX Software.

Exhibit C

Consideration

- \$17.00/per-test certified backflow tester submittal fee paid for by tester/device owner.
- Beginning month 25 of contract agreement, software annual fees will be adjusted annually to reflect increases in the Consumer Price Index (CPI) for all Urban Consumers, U.S. City Average.