

**STANDARD SERVICE PROVIDER TERMS AND CONDITIONS AGREEMENT**  
**Version 10/10/07**

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ by and between Safeway Inc., a Delaware Corporation "Owner" and \_\_\_\_\_ ("Contractor") whose address is \_\_\_\_\_ and whose Vendor Number is \_\_\_\_\_.

**1) General Terms and Conditions**

- A) As used in this Agreement, the word "Owner" or "Safeway" means Safeway Inc. and any of its subsidiaries, partnerships, its directors, officers, agents and employees, whether it is the Owner or lessee of the premises where the work is to be performed. The word "Contractor" and "Service Provider" means the Contractor and any of its subsidiaries, partnerships, its directors, officers, agents and employees. The term PIC refers to the person who is in charge of store operations at the time Contractor is in Owner's building. Persons In Charge include but are not limited to Store Manager, Co-Manager, Assistant Manager, Store Stocking Supervisor, etc.
- B) Except as otherwise provided in this agreement, the terms and conditions set forth in this Agreement shall apply to all current and future goods and services (collectively, the "work") provided by Contractor to Owner in connection with maintenance, service, and repair at Owner's locations.
- C) Either party may cancel this agreement with a 30 day written warning during which time the other party may work to correct specific problems to the satisfaction of the other party. In the event corrections are not satisfactory the agreement will cancel.
- D) Contractor shall furnish all necessary licenses, labor, materials, services, equipment required in the completion of the work and shall obtain and pay for all necessary permits and fees. In addition Contractor shall obtain necessary authorizations from governmental agencies, adjacent property Owners, and landlord
- E) Owner shall not control, direct, or supervise Contractor personnel or sub-contractors engaged by the Contractor
- F) All personnel of the Contractor performing services under this Agreement shall be employees of the Contractor or its agent and not employees of Owner. Contractor shall, and Owner shall not, have the right to hire, transfer, layoff, promote, suspend, discipline, and discharge any of its employees working at Owners location. Contractor agrees to abide by all applicable Federal, State, and Municipal laws regarding compensation and conditions of employment for employees of Contractor who perform services pursuant to this Agreement. Contractor further agrees to require that any subcontractor who Contractor may retain to perform services pursuant to this Agreement will agree to comply with all applicable Federal, State, and Municipal laws regarding compensation and conditions of employment.
- G) Contractor assumes full and sole responsibility for the payment of all compensation and expenses for its personnel, and shall withhold and pay all applicable State and Federal employment taxes, including, without limitation, self-employment taxes, unemployment insurance taxes, Federal income tax withholding, disability insurance and Social Security taxes (collectively "Employment Taxes"). Upon request of Owner, Contractor or its agent shall provide Owner with documentation Owner deems necessary to establish that Contractor has paid all compensation required by law for the services provided and has properly withheld and/or paid all Employment Taxes in accordance with the applicable laws.
- H) Contractor assumes full and sole responsibility for compliance with all laws regulating the employment relationship with respect to personnel retained by Contractor to perform services under this Agreement, including obtaining appropriate evidence of eligibility to work in the United States of America, procuring and paying the insurance premium to provide coverage for such personnel under applicable State Workers Compensation laws and the payment of all straight time and overtime wages to such personnel in compliance with Local, State, and Federal wage and hour laws. Moreover, Contractor agrees that all of its

subcontractors similarly will comply with all laws regulating the employment relationship with their employees. Owner agrees to comply with all laws forbidding discrimination in employment on the basis of race, sex, national origin, religion, age, disability or any other basis prohibited by the law of the State in which the services are to be performed. Upon request of the Owner, Contractor shall provide verification that it has complied with the requirements of the foregoing sentence. At Owner's option, Owner may request Contractor or its agent to produce documentation verifying compliance with this section at Owner's place of business or may send Owner's representative to perform an audit of pertinent records maintained by Contractor or its agent.

- I) Owner shall have no obligation to provide Contractor or its employees or agents with any employee benefits now, or hereafter, established for employees of Owner such as life, health and medical insurance programs or pension and profit sharing plans. Employee and agents of Contractor shall have no right to contribute to any of Owner's benefit plans now, or hereafter, established for employees of Owner.
- J) Before requesting payment from Owner, Contractor shall pay in full all Contractor's employees performing the work, all material suppliers furnishing materials, and all subcontractors employed by Contractor. Owner may require as a condition of payment that Contractor furnish evidence satisfactory to Owner that all Contractor's employees performing work, all material suppliers furnishing materials, and all subcontractors employed by Contractor have been paid in full and have released any lien rights.
- K) At all times during the progress of service, all service technicians are required to maintain the area in which he/she is working in an orderly condition, free from any debris resulting from the execution of service (i.e. empty fluid containers, parts' boxes, old batteries, etc.).
- L) Contractor will make sure that work being performed will not adversely affect food safety. If work is being performed in a food production area that has exposed food the Contractor will not perform such service until such time as the store has taken reasonable precautions to protect the food from contamination. **At no time will a Contractor use drain cleaning equipment in a space where food production is underway or food is left exposed and uncovered.**
- M) Contractor will not park their service vehicles in spaces that are close to the stores front doors except in cases where heavy items are being brought to the store. When those heavy items are safely in the store the Contractor will move their service truck to a space that is not close to the front doors. Close spaces are those that are within a 120-foot radius of the front doors.
- N) Owner may at any time request that Contractor remove a specific worker from Owner's work place. Furthermore Owner may bar that individual from working at any Safeway owned location until Contractor has satisfactorily, subject to Owner's approval, remedied the situation that prompted Owner to request the removal of said individual.
- O) Owner is not responsible to replace lost or damaged tools that are provided by Contractor in the normal course of the work provided.
- P) Owner reserves the right to add or delete stores from any contract coverage at its sole discretion with a written 30-day notice. Stores that are closed for business by Owner will automatically be removed from this list effective the date of closing even if Owner has not formally notified Contractor. Prorata adjustments for closed stores will be made for prepaid services that are no longer needed.
- Q) Contractor shall not remove or alter any part of the building structure in performance of this agreement without first gaining approval from Owner's representative.
- R) Contractor is an independent Contractor, and Owner is not accountable in any manner for any violation of City, County, State or Federal laws, ordinances or regulations, or for injury, death, loss or damage arising from any cause in performance of such work.
- S) Contractor shall indemnify, defend, and hold Owner harmless from and against: any and all claims, losses, damages, liabilities, and expenses (including the costs of investigation and attorney's fees) in connection with any claim or cause of action arising from any act or omission of Contractor its employees, agents, and representatives, in the performance of its obligations under this Agreement, except where the claim, loss or damage is caused by the sole negligence of the Owner.

- T) Contractor shall not be liable for any damages, food loss or loss of business to Owner, caused by obsolescence, acts of God, strikes, threats, intimidation, violation, trespassing on premises by a third party, lockouts, moving contingencies, fires, accidents, acts of government or invasion, bombardment, any special incidental or consequential damages resulting from use of equipment or any act arising beyond the control and without the fault or negligence of Contractor.
- U) Contractor is responsible to make sure any final inspection that may be required as a result of a permit is obtained.
- V) Unless otherwise agreed upon, if within 30 calendar days after the date of completion of the work, any part of the material or workmanship furnished by Contractor or by any subcontractor shall prove to be defective, Contractor agrees to replace or repair the defective part to the satisfaction of Owner and without cost to Owner, upon receipt of written or verbal notice of such defect from Owner. No payment made or inspection performed by Owner under this Agreement shall be considered as evidence of either performance of such work or acceptance of defective work or materials.
- W) Contractor guarantees that all goods and materials installed in Owner's buildings or property and services provided by Contractor in Owner's buildings or property will, meet all Federal, State, and local requirements.
- X) Contractor shall furnish hazardous materials classifications, as well as the Bureau of Explosives certifications, where required (Code of Federal Regulations Title 49 Parts 100-199).
- Y) Owner is working on improvements to the Work Order and invoice process, which may or may not make use of emerging technologies as well as fax transmissions, e-mail communications, and or wireless applications. Contractor will make every effort to accommodate the changes in information transfer and procedures. Contractor will be notified as soon as possible of impending hardware and software changes. Owner reserves the right to revise the invoice and payment procedures by written notice to Contractor.
- Z) This Agreement may only be amended and the terms of this Agreement may only be waived or modified by a written agreement signed by Contractor and the manager of the Owner's Maintenance Department for the Division in which the work is performed. Any store manager or other store employee may not amend this agreement, and any purported amendment, which is not in writing and signed by the manager of Owner's Maintenance Department for the Division in which the work is performed, shall be null and void. All provisions or agreements, either verbal or written, which may be inconsistent with the terms and conditions of this Agreement, are hereby superseded and not binding upon the parties to this Agreement.
- AA) Notwithstanding the foregoing, Contractor and Owner may from time to time enter into written construction contracts or other written agreements for work other than maintenance, service, and repair and which is not the responsibility of the manager of Owner's Maintenance Department for the Division in which the work is performed, and nothing in this agreement shall be deemed to render such other written construction contracts or agreements invalid.
- BB) Each party understands that listing the other as a customer, vendor, client, or otherwise, has value, and therefore agrees that neither party shall use the other party's name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, advertising, promotion or sales literature, press releases, trade shows, posters, reference lists, or similar public announcements), without the other party's prior written consent in each instance. Nothing herein requires either party to agree to the issuance of any press releases, public announcements or other such use.
- CC) In the event that there are any change in conditions, increase in obligations, differences, inconsistencies or conflicts between this Agreement and any terms and conditions that may be contained in invoices and/or transactional documents, this Agreement shall control."

## **2) Insurance Requirements for Service Provider**

- A) Workers' Compensation and Employer's Liability: insurance or self-insurance indicating compliance with any applicable labor codes, acts, laws, or statutes, State or Federal, where Contractor performs work. Employer's Liability insurance shall not be less than \$1,000,000 for injury or death each accident.

- B) Commercial General Liability coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage “occurrence” form, with no coverage deletions.
- i) The limit shall not be less than \$2,000,000 each occurrence / \$2,000,000 general aggregate for bodily injury, property damage and personal injury including bodily injury and property damage. Coverage shall be extended to provide care, custody and control of SAFEWAY property.
  - ii) Coverage shall:
    - a) By “Additional Insured” endorsement add as insured SAFEWAY INC, and any of its subsidiaries, partnerships, its directors, officers, agents, and employees with respect to the liability arising out of the work performed by or for the Contractor.
    - b) Be endorsed to specify that that the Contractor’s insurance is primary and that any insurance or self-insurance maintained by SAFEWAY INC. shall not contribute with it.
- C) Business Auto coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto form covering Automobile Liability, code 1, “any auto”.
- D) Business Auto coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto form covering Automobile Liability, code 1, “any auto”.
- i) The limit shall not be less than \$1,000,000
- E) Crime Insurance shall cover loss to money and securities of Safeway’s while in the Contractor’s possession. Coverage shall provide for losses caused by the actual destruction, disappearance, wrongful abstraction theft, or dishonest acts of the employees of the Contractor or any other person authorized by the Contractor to have custody.
- i) The limit shall not be less than \$250,000 each occurrence.
- F) Before commencing performance of Work, Contractor shall furnish SAFEWAY INC, with certificates of insurance and endorsements of all required insurance for Contractor. The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written notice has been given to SAFEWAY INC. A person authorized to encumber that company must sign the documentation.
- i) Insurer to bind coverage on its behalf and shall be submitted to:  
  
SAFEWAY INC.  
Attn:Corporate Risk Management  
5918 Stoneridge Mall Rd.  
Pleasanton, CA 94588
- G) A copy of all such insurance documents shall be sent to Owner’s Maintenance Manager for each division in which Contractor provides service.

### **3) Procedures for Service Requests and Invoicing**

- A) If all or any part of work provided by Contractor is to be performed on a time and material or cost-plus basis, the following provisions shall apply:
- i) All labor supplied by Contractor shall be charged to Owner at the rates established in writing between Owner and Contractor.
  - ii) Materials shall be charged to Owner at rates established in writing between Owner and Contractor.
  - iii) Properly prepared and certified time sheets or service tickets that have been signed by the store person in charge shall substantiate all labor charges.
  - iv) Material not from inventory and equipment rental charges shall be substantiated by copies of paid invoices sufficient to prove the charges being passed through to Owner.

- B) Contractor agrees to keep a FAX machine and provide the telephone number for that FAX machine to Owner to receive service requests or orders for merchandise from Owner. If Contractor is able to receive service requests via e-mail, Contractor shall be responsible to supply Owner with their current e-mail address.
- i) Under normal circumstances, Owner will send Contractor a Work Order form via FAX, and/or e-mail.
- C) Owner is using web-enabled software for managing service calls. Owner will maintain a web site for a main point of communications with Contractor. Owner's web site is referred to as the Vendor Portal. Contractor is expected to use the Vendor Portal whenever possible. When Contractor accesses the Vendor portal there will be three choices to make,
- i) **Pick up** call which means the Contract accepts the work Order and will attempt to complete the requested work
  - ii) **Needs Attention** which means that the Contractor is unable to complete the service call or needs approval for an estimate. Contractor will select a reason from the list provided by the software and provide sufficient explanation to justify the delay.
  - iii) **Completed** which means that the work is finished. Contractor will update costing and labor information using the Vendor Portal
- D) The initial Work Order sent to Contractor via fax or e-mail will indicate a status of "**New**" in the Work Order Details section which means it is waiting for Contractor to access the Vendor Portal and "**Pick up**" the call.
- E) If Contractor is unable to access the Vendor Portal, Contractor may call the RFSC and verbally "**Pick up**" the call.
- F) Once a call is "Picked up" by Contractor the status of the call is changed to "**Open**" which means Contractor has accepted the call and will attempt to complete the requested work.
- G) If Contractor is unable to "**Pick up**" a call Contractor is required to access the Vendor Portal and change the status of the call to "**Needs Attention**" and then select "**Needs Reassignment**" form the list of offered reasons **and call** the RFSC to let them know the call cannot be "Picked up".
- i) If Contractor is unable to access the Vendor Portal Contractor may call the RFSC and verbally update the call.
  - ii) If a Contractor is not able to "Pick up" a call in a reasonable time Owner reserves the right to reassign the call to an alternate service provider.
- H) Except in the case of an after hours emergency Contractor should not respond to a service call without first accessing the Owner's Vendor Portal and "Picking up" the call or calling the RFSC to verbally pick up the call.
- I) In the event of an emergency, Owner may call Contractor to initiate a service and subsequently send the Work Order form that contains the Work Order Number at a later time.
- J) If the Contractor is unable to complete the work assigned for any reason Contractor is required to access the Vendor Portal and up date the status of the call to "**On Hold**" and then select the reason from the list offered. Contract must enter comments sufficient to explain the reason for not completing the work. If Contractor is unable to access the Vendor Portal, Contractor may call the RFSC and verbally update the call
- K) If the work Contractor is going to do is expected to exceed Owner' approved spending limit. Contractor is required to access the Vendor Portal and update the status of the work Order to "Needs Attention " select the needs estimate status and provide sufficient detail for RFSC to make a decision. If Contractor is unable to access the Vendor Portal, Contractor may call the RFSC and verbally update the call.
- L) Upon completion of requested work, Contractor will present Contractor's service ticket to Owner's PIC for a store stamp and a signature. It is required that the Contractor's service technician provide sufficient information that: This information should be filled in "**BEFORE**" Owner's PIC is asked to provide a store stamp and signature for the work.

- i) Details the hours worked clearly indicating start and finish time
  - ii) Provides a clear and concise description of the work completed
  - iii) Indicates if the work was avoidable by the store and suggestions on how to correct the problem
  - iv) Details on the materials used
- M) The store stamp and signature from the PIC will indicate that the work has been completed to the satisfaction of the store PIC. Owner's Maintenance Department has final approval rights and may still challenge the work completed.
- N) Contractors who choose to use **Purchasing Cards** for payment for services will need to be approved by Owners Maintenance Department and be able to pass the "**Job Authorization Number**" along with their cost information to the credit card company. This is commonly referred to as level two service with your credit card company.
- O) If a Contractor and Owner have agreed to use a Purchasing Card for payment for services the following provisions are required.
- i) In order for a Contractor to use Purchasing Cards as a method of payment Contractor must be able to bill all work originating from RFSC by Purchasing Card.
  - ii) Owner is not able to accept some Purchasing Card purchases and some invoice transactions.
  - iii) When the work is completed The signed and stamped Contractor's service ticket, must be faxed or an image of the service ticket in a PDF file format may be e-mailed to RFSC by Contractor in a timely manner.
  - iv) Contractor must access Owner's Vendor Portal and change the status of the work Order to "Completed". And update the costing information.
  - v) After both Owner and Contractor agree the work is completed, signed service documents are received by Owner, and the prices are agreed upon, a "**Job Authorization Number**" that is randomly generated will be issued to Contractor by Owner by fax or e-mail.
  - vi) The entire authorization number is a requirement for payment of service charges by Purchasing Card.
- P) Paper invoices presented to Safeway for payment by Contractor must include the following information:
- i) A copy of the signed Contractor's "**Service Ticket**" (Unless an original invoice was prepared at the time of service and it was signed and stamped by the store.)
  - ii) A completed "**Refrigeration/HVAC Service Information Worksheet**" if refrigeration or HVAC work has been performed.
- Q) Invoices submitted for work performed under a fixed price **Service Contract** at the agreed upon service contract amount will include the following information:
- i) A list of all locations included on the invoice
  - ii) The amount to be charged per location.
- R) For work performed that **is** included in the scope of the service contract, Contractor will access the vendor portal and complete the checklist for the PM service work performed
- S) Work performed that **is not** included in the scope of the service contract will be billed, as the work is performed and according to Section 3 of this agreement.
- T) In the event that **Preventative Maintenance** (PM) work is not included in the price of a service contract, PM service work will be invoiced separately from the service contract.
- i) PM checklists with a store authorization signature for each location serviced are required to be attached to the PM invoice in order for Contractor to receive payment unless they are being paid for using a Purchasing Card.
  - ii) In the case of Purchasing card PM payments, Contractor still needs to fax in a copy of a signed service ticket indicating the PM work was completed.
  - iii) Owner reserves the right to withhold payment of the PM service invoice until such time as the required checklists are presented.

- U) Service work that is paid for using a P-Card must not be invoiced also. Service work that is paid for using a paper invoice must not also be charged on the P-Card system.
- V) Contractor will not submit invoices for service work that has taken place more than 90 days prior to the date the invoices are submitted without first receiving written approval from Owner. Owner will not be required to pay for work that has not been invoiced and presented for payment to Owner within at least 90 days from the time the work was completed unless prior approval has been granted by Owner.
- W) Unless otherwise agreed to in writing between Owner and Contractor invoice payment terms will be 30 days from the receipt of an invoice not 30 days from the invoice date.

**4) Requirements for Contractors Who Provide Refrigeration and/or HVAC Services or Work with Refrigerant Gases and or Compressors**

- A) Contractor agrees to completely fill out Owner's "**Refrigeration/HVAC Service Information Worksheet**" every time refrigerant gases are added or removed from Owner's refrigeration or HVAC systems.
- B) Billing for compressor replacements shall be separate from other service invoices and include at a minimum the following items before payment can be tendered:
  - i) A completed Owner supplied "**Refrigeration/HVAC Service Information Worksheet.**"
  - ii) Contractor's **Service ticket** signed by authorized store personnel detailing labor charges including mechanic's name, hours worked, make, model, and serial number of old compressor, and make, model, and serial number of the replacement compressor.
  - iii) Copy of Contractor's **invoice from supply house** documenting the cost of the replacement compressor.
  - iv) Copy of **documentation on the core credit** received for the old compressor.
  - v) The listed documentation must be received by RFSC prior to issuing a "**Job Authorization Number**"
- C) If Owner and Contractor have a service contract in force:
  - i) Contractor will provide Owner with a copy of the "**Refrigeration/HVAC Service Information Worksheet**" for every service call made at every location covered under the service contract for the billing period being invoiced.
  - ii) Owner may withhold payment until such time as the required "**Refrigeration/HVAC Service Information Worksheets**" are presented in satisfactory detail in a medium that is satisfactory to Owner.
- D) Contractor will maintain Owner's **Refrigeration Service Log** at the Owner's individual stores serviced by Contractor. The **Refrigeration Service Log** will be prominently displayed inside the compressor room in a weatherproof box or container. It is Contractor's responsibility to procure a satisfactory container for the **Refrigeration Service Log** if none is present at Owner's store.
- E) Contractor will have a complete refrigerant database on all locations serviced by Contractor. Contractor will develop refrigerant charge information for refrigeration and HVAC systems at Owner's locations serviced by Contractor from field inspections and RS sheets if Owner is unable to provide the required refrigerant charge information. Owner will provide access to the RS sheets that are in Owner's possession for the locations that are being serviced by Contractor. Contractor will provide Owner a copy of the refrigerant information database for each location
  - i) Contractor will make sure the refrigerant charge information for each system is prominently posted in Owner's compressor room in a weatherproof cover
- F) If either party for any reason terminates the contract, the last scheduled payment may be withheld until all service history and "Refrigeration/HVAC Information Worksheets" are provided in satisfactory detail and format to the Owner.
- G) Owner reserves the right to withhold payment on any invoice until such time as the Owner is satisfied that reasonable effort have been taken to find and repair any refrigerant leaks.

- H) Contractor shall supply to Owner and keep current no less frequently than once a year a copy of each Contractor's employee's EPA refrigerant handling certification card that clearly states the level of certification and the words "as required by 40CFR, part 82, subpart f". Contractor further certifies that the company issuing the certification card provided to Owner is in good standing with the EPA and is not listed on the EPA list of certification programs that are not approved.
- I) Contractor shall supply Owner with an inventory of recovery units that will be used at Owner's locations. This list shall include model number, serial number, and date of purchase. Contractor further certifies that at least one EPA approved recovery unit is available either at the store or on the service mechanic's truck for every service call performed.
- J) Contractor will follow EPA approved procedures and evacuate DOT 39 disposable refrigerant cylinders to at least 4 psig prior to puncturing the cylinders in preparation for acceptable mutually agreed upon means of disposal.
- K) Contractor is responsible in ensuring that Contractor's employees are sufficiently trained in EPA procedures and requirements that if asked by Owner or an EPA inspector that mechanic could at all times:
  - i) Present their certification cards on demand
  - ii) Recite the required recovery vacuum levels for the types of refrigerant gas used at that location.
  - iii) Recite the leak trigger rates for the over 50 pound EPA equipment classifications.
  - iv) Truthfully state that they perform leak checks on their recovery units and calibrate their gauges.
  - v) Demonstrate the proper use of a recovery unit.
- L) Contractor agrees to use refrigerant supplied by Owner and to provide Owner with a physical inventory of refrigerant provided to Contractor by Owner no less frequently than every four weeks.
  - i) The inventory will include at a minimum details of the following information:
    - a) How much and what type of refrigerant gas was on hand at the start of the inventory period?
    - b) How much and what types of refrigerants were added to the inventory?
    - c) Where, how much and what types of refrigerants were removed from inventory?
    - d) Where was the refrigerant taken from inventory used?
    - e) How much and what type of refrigerant is in the ending inventory?
  - ii) Contractor agrees to allow Owner access to Owner's refrigerant gas inventory at any time.
  - iii) Contractor will replace any shortage in refrigerant gas inventory kept at Contractor's place of business with like kind and quality refrigerant gas.
- M) As an authorized service agent for Owner, Contractor will be required to guarantee compliance with the provisions of the Clean Air Act. Owner's continued use of Contractor's services is dependent upon Contractor following the requirements of the Clean Air Act and any other applicable statutory provisions.
- N) Contractor will save and hold harmless, Owner, from any fines or penalties that are assessed by any governmental agency arising out of Contractor's services performed on or about Owner's premises and/or equipment related to violations of the Clean Air Act.
  - i) Your indemnification shall include attorney's fees and court costs expended by Owner in connection with the foregoing.
- O) When replacing parts and components Contractor shall use "Like for Like" parts. In particular wherever Owner has ECM style fan motors installed Contractor will replace an ECM style fan motor with another ECM style fan motor of equal or superior efficiency.

**TERMS AND CONDITIONS ACCEPTANCE:**

<b>Owner:</b> _____	<b>Contractor</b> _____
<b>Signed by:</b> _____	<b>Signed by:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____

