

Safeware Inc. Device Supply and Maintenance Agreement

This agreement ("Agreement") is made by and between Safeware, Inc. ("S.I.") 1107 Wonder Dr., Suite 101, Round Rock, Texas 78681 and WILLIAMSON COUNTY HAZMAT, acting by and through WILLIAMSON COUNTY, TEXAS, a political subdivision of the State of Texas ("COUNTY"), this the ____ day of _____ 2009.

1. Preliminary Statement. S.I. is engaged in the business of supplying, calibrating and maintaining portable gas detection units. COUNTY desires to engage S.I. to provide portable gas detection devices and certain services for COUNTY as described on Schedule A (collectively the "Services").

2. Services. COUNTY hereby engages S.I. to provide the Services according to the specifications set forth on Schedule A-1 (the "Specifications"). The parties may, from time to time, agree that additional services will be provided. Any additional services requested must be described in a Schedule signed by the parties and which recites by its terms that it is incorporated into this Agreement. Each Schedule will be numbered sequentially as Schedule A-1 (attached), Schedule A-2, etc. Unless expressly stated in a Schedule, the terms of a Schedule will not amend or supersede the terms of another Schedule. Reference to Schedule A in this Agreement means each Schedule which, together with this Agreement, forms a separate contract for services.

3. Proprietary Ownership. COUNTY acknowledges and agrees that Deliverables under this Agreement may contain or be created through use of software and other materials used by or useful to S.I. in its business generally, including without limitation various training methods or tools (the "S.I. Materials"). COUNTY acknowledges and agrees that all ownership rights in and to the S.I. Materials shall be the sole and exclusive proprietary property of S.I.

4. S.I. Warranties. S.I. represents and warrants to COUNTY that for a period of ninety days after the initial deployment of any portable gas detection devices, such devices shall be free of material defects in workmanship and will conform in all material respects to the functional descriptions contained in the Specifications.

5. Confidential Information. Each party agrees that it will not disclose to any person any Confidential Information of the other party, or use any Confidential Information of the other party, except as expressly provided for under this Agreement. For purposes of this Agreement, the term "Confidential Information" means all technical, business and other information of a party and its affiliates that derives economic value, actual or potential, from not being generally known to others, including, without limitation, technical or non-technical data, compilations, price and cost information, technical information, financial information, and business process'. For purposes of this Agreement, the S.I. Materials shall be deemed the Confidential Information of S.I., except to the extent made public by S.I.

6. Term; Termination.

(a) Subject to the provisions for termination hereinafter provided, this Agreement shall become effective as of the date and year first above written, and shall continue for a period of twelve (12) months, unless earlier terminated as provided below. Upon mutual agreement of the parties, this Agreement may be renewed for two (2) consecutive years.

(b) Either party shall have the right to terminate this Agreement immediately upon the occurrence of any one or more of the following events: (i) breach by the other party of any material term or provision of this Agreement, and if capable of cure, failure to cure within 30 days of written notice thereof by the non-breaching party; (ii) any proceeding is instituted by or against the other party under any bankruptcy or similar laws for the relief of debtors; or (iii) the appointment of any trustee or receiver for any of the other party's assets.

(c) S.I. shall have the right to terminate this Agreement immediately upon the failure of COUNTY to pay within thirty (30) days any amounts due and payable to it pursuant to the terms of this agreement as specified in "COUNTY Section 1 'Schedule A-1'".

(d) COUNTY may terminate this Agreement for convenience and without cause or further liability upon thirty (30) days written notice to S.I. In the event of termination, it is understood and agreed that only the amounts due to S.I. for goods and/or services provided up to and including the date of termination, will be due and payable. No penalty will be assessed for COUNTY's termination of this Agreement for convenience.

7. Limitation of Liability. In no event shall the aggregate liability of S.I. in connection with this Agreement for any and all loss, claim, damage or liability, whether in contract or in tort, or under any other theory (including, without limitation, negligence and strict liability), exceed the amount of COUNTY's actual and direct damages. UNDER NO CIRCUMSTANCES SHALL S.I. BE LIABLE FOR INJURY OR DEATH DUE TO IMPROPER OR MISUSE OF SUPPLIED EQUIPMENT. UNDER NO CIRCUMSTANCES SHALL S.I. BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES SUFFERED BY COUNTY OR ANY OTHER PARTY IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF WHETHER OR NOT SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Miscellaneous.

(a) Mediation. The parties to this Agreement will work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to this Agreement, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within thirty (30) days following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). A single mediator engaged in the practice of law, who is knowledgeable about subject matter of this Agreement, will conduct the mediation under the then current rules of the AAA. Any mediation under this Agreement shall be conducted in Williamson County, Texas. All costs involved in the mediation shall be borne equally between the parties, except that each party shall bear its own attorneys fees. Nothing herein is intended to prevent either party from seeking any other remedy available at law including seeking redress in a court of competent jurisdiction. This provision shall survive the termination of this Agreement.

(b) Force Majeure. Neither party shall be liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments due hereunder) if such default or delay is caused, directly or indirectly by forces beyond such

party's control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, interruptions of transportation or communications, supply shortages.

(c) Independent Contractor. The parties acknowledge that the relationship of S.I. to COUNTY is that of an independent contractor, and that nothing contained in this Agreement shall be construed to place COUNTY and S.I. in the relationship of principal and agent, master and servant, partners or joint ventures. S.I. shall not have, expressly or by implication, or represent itself as having, any authority to make contracts or enter into any agreements in the name of COUNTY, or to obligate or bind COUNTY in any manner whatsoever.

(d) Venue and Governing Law. Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

(e) Headings. The headings as to contents of particular articles and sections are inserted only for convenience and are in no way to be construed as part of this Agreement.

(f) Amendments. This Agreement shall not be modified or amended except by another agreement in writing executed by the parties hereto.

(g) Severability. All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.

(h) Notices. All notices and demands required or contemplated hereunder by one party to the other shall be in writing and shall be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the addresses or facsimile numbers set forth below their signatures. Either party may change its address or facsimile number for the purpose of this Agreement by notice in writing to the other party as provided herein.

(i) Waiver. No failure or delay on the part of any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.

(j) Texas Public Information Act. To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that COUNTY, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to COUNTY as to whether or not the same are available to the public. It is further understood that COUNTY's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that COUNTY, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to COUNTY by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

(k) Payment. COUNTY's payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall be paid by COUNTY within thirty (30) days from the date of the Williamson County Auditor's receipt of an invoice.

(l) Right to Audit. S.I. agrees that COUNTY or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of S.I. which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. S.I. agrees that COUNTY shall have access during normal working hours to all necessary S.I. facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. COUNTY shall give S.I. reasonable advance notice of intended audits.

(m) Appropriation of Funds by COUNTY. COUNTY believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. S.I. understands and agrees that the COUNTY's payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.

(n) Successors and Assigns; Assignment. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns. No party to this Agreement may assign or transfer its interest in or obligations under this Agreement without the prior written consent of all parties to this Agreement.

(o) Counterparts. Any number of counterparts of this Agreement may be signed and delivered, each of which will be considered an original and all of which, together, will constitute one and the same instrument.


(p) Entire Agreement. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first above written.

Safeware Inc.

By: _____
Name: _____
Title: _____
Remit To Address:
Safeware Inc.
P.O. Box 64465
Baltimore, MD 21264-4465
Telephone No.: 512-671-7068
Facsimile No.: 512-238-7679
E-mail Address ssummers@safewareinc.com
Date: _____

Williamson County, Texas

By:  _____
Name: Dan A. Gattis
Title: Williamson County Judge
Address for Notice:
Williamson County Judge
Dan A. Gattis (or Successor)
710 Main Street, Suite 101
Georgetown, Texas 78626
Facsimile No.: (512) 943-1662
Date: 1-27-10

Bill To Address:
Williamson County Finance Director
Attn: Finance Director
710 Main Street, Suite 301
Georgetown, Texas 78626
Facsimile No.: _____
E-mail Address: _____
Date: _____

Schedule A-1 3- Year Maintenance Agreement

This Schedule is made pursuant to the terms of the Device Supply and Services Agreement dated _____ between COUNTY, and Safeware, Inc. ("S.I.").

The following outlines the equipment and services contemplated under this agreement by S.I. in addition to the responsibilities assigned to COUNTY under this agreement.

S.I.

1. List of Equipment to be maintained:

- (a) One (1) Qrae Plus 4-gas monitors with O2, LEL, CO and H2S; with pump
- (b) Two (2) Mini Rae 2000 pid With 10.6 lamp
- (c) One (1) Multi-Rae + 4 gas monitor with pid (sensors to include CO,CL2, LeL,O2,10.6 pid with pump),
- (d) One (1) Multi-Rae + 4 gas monitor with pid(sensors to include CO,H2S,LeL,O2,10.6 pid with pump)
- (e) Two (2) Area-Rae monitors (sensors to include CO,Cl2,LeL,O2,10.6 pid with pump)
- (f) Two (2) area-Rae Gamma monitors(sensors to include CO,H2S,LeL,O2,10.6 pid with pump)
- (g) Seven (7) Rae-link modems
- (h) One (1)Rae colormetric pump
- (i) Two (2) Ludlum 2241rk-3

2. List of Supplied Equipment:

- (a) S.I. will provide Two(2) 58 liter cylinder of multi-gas mix per year.
- (b) Two (2) 103 liter cylinders of Isobutylene per year
- (c) One (1) 58 liter cylinder of chlorine per year
- (d) Nine (9) boxes of Rae draw tubes per year
- (e) Two (2)demand flow regulators

3. Service and Maintenance responsibilities: 'Performance Standards'

- (a) Every 30 days Air Instrumentation will come on site to a specified location to inspect clean, and calibrate the instrumentation outlined in section 1.a.
- (b) S.I. will perform repairs for damage occurring during normal usage of equipment. Any repair for damage above \$700.00, **excluding sensors**, will be considered abuse and will be the responsibility of the owner.
- (c) S.I. will maintain all service records and provide a copy of those records to COUNTY's Haz-Mat Chief or designee any time S.I. performs maintenance on any equipment covered under this Agreement.
- (d) S.I. will be responsible for any and all sensor replacement, should a sensor fail to calibrate
- (e) S.I. will provide loaner units for the items listed in S.I. (a-i) in the event of unit failure between service intervals (within 24 hours).

4. Training

- (a) Upon execution of this Agreement and within a reasonable period of time, S.I. will provide 2 hours minimum of training per shift for the equipment listed in 1a. S.I. will also provide a minimum of 2 hours of annual training per shift on the equipment for the duration of the term of the Agreement.

COUNTY

1. Monthly Fee for Equipment and Service

- (a) For a total of \$12,750.00 per Year

2. Prompt Return of monitors for calibration and service

- (a) COUNTY employees will endeavor to return equipment for service in a timely manner in the supplied containers.

3. Responsibility for lost, stolen or destroyed equipment

- (a) COUNTY agrees to be responsible for the replacement costs of any supplied equipment that is lost, stolen or destroyed while in its possession. **S.I. will repair or replace equipment that is damaged in the normal course of use.**

4. Prompt Return of equipment at the termination of this agreement

- (a) COUNTY agrees to promptly return ALL of the equipment supplied under the terms of this agreement following the termination of said agreement, whether that occurs at the conclusion of the contract or under the terms in Section 7 of the agreement.

Effective Date: _____

Safeware Inc.

COUNTY

Signature Date

Signature Date

Print Name Title

Print Name Title