



The Safety Alliance agrees to the following general provisions and to the enforceability and binding effect of these terms and conditions against Safety Alliance.

**Contract Documents:** The terms and conditions that will govern any contract with Safety Alliance include the following where applicable:

- Executed Contract
- These Terms and Conditions
- Scope of Work & Specifications
- AWC Retro Participation Agreement
- AWC Retro Program Safety Alliance Policy

**Independent Contractor:** An independent contractor relationship will be created by this Contract. The Parties will be acting in their individual, corporate, or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another in performance of this Contract. Safety Alliance shall not make any claim of right, privilege or benefit as would an employee of WTA under any statute or otherwise, including, but not limited to, RCW Chapter 41.06 or RCW Title 51. Safety Alliance shall indemnify and hold harmless WTA from and against any and all costs (including attorneys' fees) or liabilities (including payroll taxes, penalties or interest) arising out of any assertion that the Safety Alliance is not an independent contractor.

**Payments:** Unless otherwise agreed by the Safety Alliance and WTA, invoices will be paid thirty (30) days from receipt, and subject to WTA's acceptance of the invoiced work and receipt of any required deliverables, goods or services in conformity with the specifications under the Contract. Notwithstanding the above, WTA will adhere to any previously negotiated and agreed upon payment schedule that is memorialized and agreed to in writing and contained or incorporated in an executed contract, including any terms based upon negotiated milestones.

**Taxes: Safety Alliance** will include applicable Washington State sales and local tax as a separate line item on the invoice, excluding Federal Excise Tax, and supply exemption certificate when necessary.

**Inspection and Acceptance:** Services performed for and goods provided to WTA will be monitored and inspected, with payment conditioned upon acceptance by WTA's Project Manager or designee. Acceptance of any portion of the services or goods to be provided does not release the Safety Alliance from liability for faulty workmanship or goods, or failure to comply with all Contract terms and conditions. WTA may inspect all goods and services at any time during the Contract term. WTA may, in its discretion and in addition to all other remedies available to it, reject goods or services not conforming to specifications or other Contract terms. Until delivery & acceptance by WTA, risk of loss or damage to goods or finished work will be with the Safety Alliance unless the loss or damage is caused by WTA's negligence.

**Contract Modifications/Change Orders:** No changes, modifications or amendments to the Contract, including these terms and conditions, prices, quantities, scope of work, or specifications otherwise negotiated or included as part of the Contract or solicitation shall be effective without a prior writing executed by the Parties. Oral changes or modifications are not permitted nor enforceable and will not be paid for by WTA. Only WTA's General Manager, or his/her designee, shall have the authority to alter, amend, modify, add, or waive any section or condition of the Contract on behalf of WTA.

Either party may initiate a change request that is reasonably within the general scope of the Contract. Such changes might include but are not limited to: the method of operations, requirements for record keeping, and emergency service. WTA may add or delete items, services, or locations, provided such items, services, or locations which could reasonably be related to those originally contracted items, services or locations and will not represent a significant increase or decrease in size or scope of the Contract. After receipt of a written change request from WTA, Safety Alliance shall submit any request for equitable adjustment in the Contract Sum and or Contract Time. Any requested adjustment in the Contract Sum must be consistent with the original price and relate to the original scope of work. Any request for adjustment of the Contract Time must be reasonable and demonstrate continued efficiency and productivity. Failure to agree to any



adjustment shall be a dispute resolved through the Dispute Resolution clause; however, nothing shall excuse the Safety Alliance from proceeding with the Work as agreed.

If the time of Safety Alliance's performance is changed due to an act of Force Majeure or the fault or negligence of WTA or anyone for whose acts WTA is responsible, Safety Alliance shall be entitled to make a request for an equitable adjustment in the Contract Time. No adjustment in the Contract Time shall be allowed to the extent Safety Alliance's changed time of performance is due to the fault or negligence of Safety Alliance, or anyone for whose acts Safety Alliance is responsible.

If it is determined a change is necessary and immediately required to avoid causing undue harm to WTA or the public, the Project Manager, or designee may direct Safety Alliance to proceed immediately with a Critical Directive Change or a Field Authority Change on a time and materials basis. A price proposal for the change must be submitted to the Project Manager and approved by WTA in writing no more than ten (10) business days after the authorization is applicable.

Any Change Order to the Contract Sum shall constitute final settlement of all claims that Safety Alliance may have against WTA. Under no circumstances shall WTA pay for indirect or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work whether covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment to the Contract Sum.

If WTA and Safety Alliance are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, WTA shall provide Safety Alliance with its final offer. If Safety Alliance does not accept WTA's final offer within seven (7) calendar days, or the parties are otherwise unable to reach agreement, Safety Alliance's only remedy shall be to file an appeal through the Dispute Resolution clause.

**Supervision and Coordination:** Safety Alliance shall: 1) competently and efficiently, supervise and direct the implementation and completion of all Contract requirements specified herein; and 2) designate a representative for the Work under this Contract to which all communications given by WTA to the representative shall be binding on Safety Alliance.

**Subcontractors:** Safety Alliance shall perform at least 75% of the work with its own organization.

All subcontractors must be pre-approved by WTA before they begin work. WTA reserves the right to investigate subcontractor responsibility prior to confirming award, if subcontractors are known. WTA will not approve change orders to the proposal or final contract price for replacing rejected subcontractors.

Prime contractors are required to provide a copy of the sub-contract or purchase order to WTA. Any sub-contract will contain the same language as required in the Terms and Conditions.

Before the sub-contractor starts, shall submit the following documents:

- Insurance requirements listed herein or furnish proof of inclusion of the Prime Contractors insurance.
- Provide proof that all individuals are properly licensed, certified, and/or bonded to perform the contracted scope where applicable.

Safety Alliance will be jointly and severally, and vicariously liable to WTA for any work performed by its subcontractors, and responsible for the work of, including, but not limited to the adequacy, timeliness, efficiency, and sufficiency, its subcontractors. All subcontractors will have sufficient knowledge, skill, and experience to perform the work contracted to them.

WTA will not be held responsible for the contractual relationship between subcontractors and Safety Alliance. Safety Alliance will maintain and monitor all subcontractor performance, payment, project delivery requirements, and relationships as they pertain to the Prime's ability to successfully complete a project.

**Service of Notice:** All Contract notices, orders, directions, requests, waivers, and other communication must be in writing. Verbal notices will not be accepted. Notice is considered received within five (5) business days after issue. Notice may be

given via fax, email, posted at the work site or mailed to the Safety Alliance at the address provided in the Contract. If mailed, any form of communication will be deemed to have been given to and received by the Safety Alliance five (5) business days after the postmark date.

**Suggestions to Contractor:** Any plan or method of work suggested by either party, but not specified or required in writing under the Contract or confirmed through written change order, will be performed at the risk and responsibility of the Safety Alliance. WTA assumes no liability for work performed outside the scope of the Work or a written and executed change order.

**Safety Measures:** All work under this Contract will be performed in a safe manner. The Safety Alliance will be solely responsible for conditions of the job site, including safety of all persons and property during performance. This requirement will not be limited to normal working hours. The Safety Alliance will exercise every precaution at all times for the prevention of accidents and the protection of people and property.

**Compliance with Laws:** Safety Alliance and all subcontractors shall comply with all applicable federal, state, and local laws and ordinances and regulations, including the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1970 (WISHA), Washington State Department of Labor and Industries (WA-LNI) and the standards and regulations issued. WTA will not make adjustments for loss of time or disruption of work caused by any actions against the Safety Alliance. If the Contract is financed with FTA assistance, it must comply with applicable federal requirements including Buy America, Lobbying, and debarment. Any applicable law or regulation change will apply to the Work as required.

Safety Alliance shall give the notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the Work. Safety Alliance shall be liable for violations of the law in connection with work it/he/she provides. If the Safety Alliance observes that any applicable drawing, specification, or other portions of the Work are contrary to any laws, ordinances, rules or regulations, WTA must be notified promptly in writing. WTA shall promptly review the matter and, if necessary, issue a change order or take any other action necessary to bring about compliance with the law, ordinance, rule or regulation in question. Safety Alliance agrees not to perform Work known to be contrary to any laws, ordinances, rules or regulations.

**Access to Records and Sites of Project Performance:** All records prepared, generated or used by Safety Alliance or its agents, employees and subcontractors relating to the Contract are subject to being a "Public Record" under RCW Chapter 42.56, and therefore disclosable subject to a properly submitted public records request under this statute. In addition, as a recipient of state and federal funds, WTA agrees to provide, and require its Safety Alliance and sub- contractors at each tier to provide, sufficient access to inspect and audit all books, records, accounts, reports, and job sites relating to the Work to the:

- a. U.S. Secretary of Transportation or the Secretary's duly authorized representatives;
- b. Comptroller General of the United States, and the Comptroller General's duly authorized representatives;
- c. Washington State Auditor's Office and their duly authorized representatives; and
- d. WTA, member agencies, and its Contractors.

Safety Alliance and sub-contractors at each tier will maintain all books, records, accounts and reports relating to the Project for no less than seven (7) years after the date of Contract termination, expiration, or completion. In the event of litigation or settlement of claims arising from the performance of this Contract, in which case Safety Alliance agrees to maintain all books, records, accounts and reports relating to the project until conclusion of all such litigation, appeals, claims or exceptions related thereto.

**Licenses, Permits and Taxes:** Safety Alliance shall obtain all permits and licenses, pay all charges, fees and taxes, and give all notices necessary to perform the services for or provide the goods called for under the Contract to WTA.

**Civil Rights Requirements and Discrimination:** Safety Alliance shall not discriminate on the basis of race, religion, creed, color, national origin, gender, gender identity or expression, sexual orientation, marital status, sensory, mental,

or physical disability, veteran status, medical condition, ancestry, or other basis prohibited by local state, or federal law, unless based upon a bona fide occupational qualification in the performance of this Contract, or in any hiring or employment resulting from this Contract. Safety Alliance shall comply with the Federal Civil Rights Act of 1964, the Equal Employment Opportunity Act, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, and their regulations. Safety Alliance shall include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

**Personal Liability:** In no event shall any official, officer, employee, or agent of the WTA be personally liable or responsible for any term or condition of this Contract or statement whether expressed or implied, and Safety Alliance waives any such claim that it may have arising from the Contract.

**Assignment:** This Contract may not be assigned by Safety Alliance to a third party without the prior written consent of WTA which shall be in its sole discretion. WTA may terminate the contract for convenience as outlined herein. A conveyance of more than fifty percent (50%) of the ownership interest in Safety Alliance shall constitute an "assignment" which must be approved by WTA. In the event of an unauthorized assignment by Safety Alliance, WTA may terminate the Contract for convenience as outlined herein. Involuntary assignment of the Contract due to bankruptcy or receiver appointment from Safety Alliance's insolvency is considered breach of the Contract and subject to termination. WTA may assign the Contract without need for any consent of Safety Alliance.

The grants, covenants, conditions and claims, rights, powers, privileges and liabilities obtained in the Contract Documents will transfer from the Safety Alliance and WTA to their respective heirs, executors, administrators, successors and assigns.

**Project Time Limit:** All goods and services shall be provided within negotiated time periods. Modifications to any time periods or the Contract Time will only be granted by WTA if Safety Alliance is delayed by causes outside of its/his/her control, such as weather, nature, labor stoppages, or Force Majeure event. No portions of the Work where acceptable quality or efficiency will be affected by unfavorable conditions shall be performed while those conditions exist.

If work falls ten (10) calendar days or more behind the accepted schedule, Safety Alliance agrees to take all reasonable actions, including some or all of the following, to return the project to the accepted schedule:

1. increase manpower in quantities and crafts;
2. increase the number of working hours per shift, shifts per working day, working days per week, or amount of equipment, or any combination thereof; or
3. reschedule activities.

If requested, Safety Alliance will propose a schedule revision to WTA's Project Manager demonstrating a plan to make up the lag in progress, return the project to the accepted schedule and insure completion of the Work within the Contract Time. The schedule shall be adjusted upon a revised schedule only if approved by WTA in writing. All actions to return the project to the accepted schedule are at the Safety Alliance's expense.

The Safety Alliance shall pay all costs, expenses and fees, including attorneys' fees, incurred by WTA which result from the Safety Alliance's action to return the project to its accepted schedule. Safety Alliance agrees WTA may, in its discretion, deduct such charges from payments due the Safety Alliance. It is further understood and agreed that monitoring, reviewing, and reporting project status and progress by WTA's Project Manager shall not relieve the Safety Alliance of responsibility for planning and managing work according to the original schedule.

If Safety Alliance fails to work for more than seven (7) business days as called for under the Contract, and is not excused, WTA may terminate the Contract and complete the Contract on its own or through another contractor. In such event, Safety Alliance shall be responsible for all expenses reasonably incurred by WTA in completing the Work, above and beyond the original Contract sum, and all legal, or other costs associated with the Contract termination.

**Delays and Extensions of Time:** Safety Alliance waives claims for damages for any hindrance or delay in performing

under the Contract, except those incurred for unreasonable delays caused by WTA. WTA may, in its discretion, grant Safety Alliance equivalent extensions of time caused by any hindrance or delay, under the following circumstances:

- Delay caused by any suit or other legal action by someone other than Safety Alliance against WTA, unless the delay exceeds ninety (90) calendar days. In such instance, WTA may, upon written request of the Safety Alliance, either negotiate a Contract termination or grant a further extension of time, whichever is in the best interest of WTA.
- Time lost due to inclement weather which could not have been reasonably anticipated by Safety Alliance, but only subject to the approval of WTA. Delays due to weather conditions which are not abnormal (precipitation as rain, hail, or snow, low temperature, a windstorm, ice, snow, and other weather conditions that could reasonably have been anticipated from the National Weather Service historical records of the general locality of the Work) shall not be regarded as unavoidable as the Safety Alliance agrees to plan his work with prudent allowances for potential interference by normal weather conditions.
- Should abnormal conditions prevent the work from beginning at the usual starting time or prevent the Safety Alliance from proceeding with seventy-five percent (75%) of the normal labor and equipment force for a period of at least five (5) hours per day, and the crew is dismissed as a result, they will not be charged for a working day.
- Time lost due to a strike, fire, flood, a natural disaster, or events which are unavoidable, not the fault of or are beyond the control of the Safety Alliance.

It is understood and agreed by the Safety Alliance and WTA that extensions due to unavoidable delays will be granted only for delays involving controlling operations preventing project completion within the specified Contract Time.

Except for WTA caused delays, the Safety Alliance's only remedy for unavoidable delays shall be a request for an extension of time. If WTA later determines that there was an excusable reason for untimely performance, it may in its discretion allow Safety Alliance to continue work under a new performance schedule or terminate for convenience.

WTA may grant an extension of time if an extension is in WTA's best interest. A condition for granting any such extension shall be Safety Alliance's payment of WTA's actual costs, damages and fees (including but not limited to attorneys' fees) incurred because of the delay and/or extension, including, but not limited to, charges for engineering, staffing, inspection, general supervision, and overhead incurred during the extension.

#### **Force Majeure**

- No Liability.** Neither party will be liable for performance delays nor for non-performance due to causes that were not reasonably foreseeable, unavoidable and (a "Force Majeure") beyond its/his/her reasonable control, except for payment obligations for services or goods previously received by WTA.
- Best Efforts to Cure.** In the event of a threatened default or default caused by a Force Majeure the defaulting party shall nonetheless exercise its/his/her best efforts to avoid and cure such default.
- Right to Terminate.** In the event that a Force Majeure prevents performance thereunder for a period in excess of ninety (90) calendar days, then the non-defaulting party may elect to terminate this Contract and/or cancel or suspend any Purchase Orders thereunder by a written notice to the defaulting party.

For purposes of this Agreement, a Force Majeure shall be an event that prevents the Safety Alliance from proceeding with at least seventy-five percent (75%) of its/his/her normal labor and equipment force for at least five (5) hours per day toward completion of any current controlling item on an accepted critical path schedule, and such was outside the control of the Safety Alliance. Such causes include, but are not limited to, war, riot, government action, act of God or public enemy, damage to or destruction of facilities, strike, a labor dispute, plague, pandemic, epidemic, or apocalypse.

**Suspension of Contract:** WTA may, at any time and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days by written notice to the Safety Alliance. Safety Alliance shall resume performance within fifteen (15) calendar days of written notice from WTA.

**Termination for Convenience:** WTA may terminate all or part of this Contract by providing written notice, when in WTA's best

interest. In such case, Safety Alliance shall deliver to WTA any goods and/or work completed, and equipment or property of WTA. Safety Alliance will invoice WTA for services provided prior to termination, or goods accepted by WTA, within thirty (30) days of receiving notice of termination for convenience and shall be entitled to the Contract price for such accepted services or accepted goods. WTA reserves the right not to pay invoices submitted past thirty (30) calendar days.

**Notice of Breach of Contract:** The parties will immediately notify one another in writing once the notifying party becomes aware of any breach of this Contract, or commission of an error or omission. Any work done by Safety Alliance after such discovery and before an acceptable remedy has been bilaterally agreed on and documented as a Change Order as outlined above will be done at the Safety Alliance's risk and with no obligation by WTA to pay for any services or products provided.

**Opportunity to Cure:** Where Safety Alliance has breached this Contract, WTA may, in its sole discretion, allow Safety Alliance up to thirty (30) calendar days to cure the breach, unless another timeframe is otherwise negotiated and agreed on between the Parties. In such case, WTA will detail in writing what the Safety Alliance must do to remedy the breach and the timeframe to complete the remedy.

**Default:** If Safety Alliance breaches any term of the Contract and fails to cure such breach within any cure period that WTA may allow, WTA may terminate this Contract for default by providing three (3) days written notice to Safety Alliance. Safety Alliance may invoice WTA for goods and services provided and accepted by WTA prior to termination at the Contracted price. WTA reserves the right not to pay invoices submitted past thirty (30) days. In addition to the right to terminate, WTA may seek and recover any other available remedies allowed by law against Safety Alliance and its sureties caused by default. These remedies include procurement of replacement goods or services from another provider, attorneys' fees, and/or recovery of its damages, attorneys' fees and costs from Safety Alliance or other administration costs as necessary.

If WTA later determines that there was an excusable reason for Safety Alliance's breach, it may in its discretion allow Safety Alliance to continue work under a new performance schedule or terminate for convenience.

**Dispute Resolution:** Safety Alliance must recognize the following procedures in terms of any dispute relating to the interpretation, enforcement or alleged breach of the Contract by WTA:

1. WTA Administrative Review. Safety Alliance must first submit a request for administrative review of the dispute to the WTA Project Manager, who shall determine whether the request is within his/her authority, and if so, whether to grant Safety Alliance's relief. If Safety Alliance is not satisfied with the Project Manager's decision, then it/he/she shall submit a request for administrative review of the dispute to the WTA Procurement within ten (10) business days following the Project Manager's decision. Procurement shall determine whether the request is within his/her authority, and if so, whether to grant Safety Alliance's relief.

If Safety Alliance is not satisfied with Procurement's decision, then it/he/she may submit a request for administrative review of the dispute to the Finance Director or Designee within ten (10) business days after receipt of Procurement's decision. The request to the Finance Director may be made via certified mail, facsimile, or email and will be considered received within three (3) business days of the post mark or send date. Such notice shall include a detailed account of the legal and factual grounds of the protest, all relevant documents, and the Safety Alliance's desired outcome. The Finance Director will provide a written determination within sixty (60) business days of notification unless a resolution is time sensitive in which case a decision will be made within ten (10) business days. If a written decision is not provided within sixty (60) business days or a period agreed upon by the parties, then the Safety Alliance's claim shall be deemed denied by WTA. If Safety Alliance is dissatisfied with the Finance Director's decision, then Safety Alliance shall file an appeal to WTA's General Manager within ten (10) business days of receipt of the Finance Director's decision. The General Manager will make a written determination to the Safety Alliance that shall be final and conclusive within thirty (30) business days. If a written decision is not provided within thirty (30) business days or a period agreed upon by the parties, then the Safety Alliance's claim shall be deemed denied by WTA's General Manager. The General Manager's decision will be considered the final decision of the Administrative Review.

2. **Mandatory Mediation.** If Safety Alliance r is dissatisfied with the General Manager's decision, then it/he/she may submit a Notice of Intent to Mediate to WTA within thirty (30) calendar days following receipt of the General Manager's decision. The parties shall mutually agree upon a mediator and conduct a good faith mediation to occur in Bellingham, Washington. If the parties cannot agree on a mediator, then Safety Alliance r shall commence an action within the Superior Court of the State of Washington to seek appointment of a mediator. Such action shall be at Safety Alliance's expense. Such mediation shall occur on a date mutually agreeable to the parties, but no later than sixty (60) days following receipt of Safety Alliance's Notice of Intent to Mediate.
3. **Arbitration.** Any action to interpret, enforce or for an alleged breach of the Contract shall be subject to binding arbitration to occur in Bellingham, Washington, pursuant to the American Arbitration Association's ("AAA") Construction Industry Arbitration Rules if the Contract is for construction services, or AAA's Commercial Arbitration Rules in all other cases. Either party may institute such proceeding by providing a Notice of Intent to Arbitrate, or pursuant to RCW Chapter 7.04A. Any arbitration ruling shall be final and may be memorialized as a judgment or challenged under the procedures of RCW Chapter 7.04A. The parties shall equally split the cost of the arbitration, including the arbitrator's fees. The arbitrator shall have the authority to award the prevailing party its/his/her portion of arbitration costs and fees as part of any final ruling.
4. **Contractor's Conditions to Commence Arbitration and Limitation of Action.** Any arbitration by Safety Alliance against WTA shall be conditioned upon its/his/her presentment and participation in a WTA administrative review process, and mediation. Safety Alliance r shall commence any arbitration proceeding within the applicable statute of limitations. Notwithstanding the above, WTA agrees that any applicable period of limitations within which the arbitration must be commenced shall be delayed during any administrative procedure process and for ten (10) business days following any mediation, so long as Safety Alliance submits a request for administrative review to the Project Manager of the dispute ***Procurement & Contracts*** prior to expiration of the applicable statute of limitations and timely submits a Notice of Intent to Mediate.
5. **Contractor's Obligation to Continue Work.** Pending final decision of any administrative review, mediation or arbitration, Safety Alliance shall proceed diligently with the performance of the Contract, unless WTA, in its discretion, terminates the Contract.

**No Waiver of Rights by WTA:** WTA's failure to immediately enforce any of its rights shall not be a waiver of its rights to seek enforcement of such right, or to enforce any other rights or remedy under the Contract for any other breach by Safety Alliance.

**Applicable Law, Jurisdiction Venue, and Attorneys' Fees:** This Contract is executed and governed in interpretation and performance by the laws of the State of Washington. Any action to enforce the Contract shall be filed in the Superior Court for the State of Washington, Whatcom County, and Safety Alliance waives any objection to the jurisdiction and venue of this Court. In any action to enforce or interpret this Contract, the prevailing party shall be entitled to recover, in addition to all other remedies, its reasonable attorneys' fees and costs incurred.

**Refusal to Execute Contract:** Similarly, Safety Alliance's failure to furnish a performance specific bond, or provide proof of insurance within fifteen (15) days of Contract award or other negotiated time frame, may result in withdrawal of the award, and award the Contract to another bidder/proposer or resolicit.

**Severability:** If any portion of this Contract is legally unenforceable or invalid, that portion may be renegotiated by the parties. The remaining portions of the Contract shall remain in full force and effect.

**Joint Venture and Partnering:** In the event the Safety Alliance is a partnership or joint venture of two (2) or more people or entities, each partner and/or joint venture party shall be jointly and severally liable for all grants, covenants, provisos and claims, rights, powers, privileges, and liabilities of the Contract. Notice given by WTA under this Contract given to one partner or joint



venture partner shall be deemed notice to all partners and/or joint venture partners.  
WTA bears no responsibility for notifying all partners or joint venture partners.

**Counterparts:** Original signatures transmitted and received via electronic transmission of a scanned document (e.g. PDF or similar format) are true and valid signatures for all purposes of this Agreement and shall bind the parties to the same extent as that of an original signature. Signatures submitted electronically must be fully legible to be valid.

**Warranties & Guarantees:** Safety Alliance guarantees that goods and services will meet all specification requirements. Goods and services provided by Safety Alliance will be warrantied for a minimum of (1) year after final acceptance of the Work or the date of possession unless agreed upon otherwise.

Safety Alliance shall, upon the receipt of notice in writing from WTA, promptly correct any defective work or replace defective goods. If the defect cannot be corrected, or if the corrected work or good has been rejected by WTA, the Safety Alliance shall promptly remove it and replace it with non-defective work or goods at no cost to WTA. WTA is hereby authorized to make such corrections if, ten (10) business days after giving of such notice to the Safety Alliance, the Safety Alliance has failed to make or undertake the corrections or removal/replacement with due diligence. In case of an emergency where, in the opinion of the General Manager, delay could cause serious loss or damage to WTA property, staff, or the public, corrections or replacements may be made prior to or concurrent with notice being sent to the Safety Alliance. All fees, costs and expenses in connection with such corrections or replacement, including costs for professional services, will be charged to the Safety Alliance. For the corrected or replaced defect, this guarantee shall be extended for a period equal to the time of correction or replacement.

No material, supplies, equipment, or items shall be purchased by Safety Alliance subject to any chattel mortgage, conditional sale, or other agreement by which an interest or in any part is retained by the seller or supplier. Safety Alliance shall warrant good title to all materials, supplies, equipment and items installed or incorporated in the Work. Upon completion, Contractor shall deliver the same, together with all improvements and accessories constructed or placed free from any claims, liens, or charges. Neither the Safety Alliance, subcontractors, nor any person, firm, or corporation furnishing any material or labor covered by this Contract shall record, assert, claim or place any lien against WTA or upon any real or personal property, improvement or accessory of WTA. Nothing, however, shall prevent persons furnishing materials or labor to recover funds under any bond given by the Safety Alliance for the claiming party's protection or any rights under any law permitting recovery against an issued bond. The provisions of this paragraph shall be made a part of all subcontracts and material contracts including goods or services when no formal contract is entered into.

All work, services and materials furnished under this Contract are subject to all warranties or guarantees arising by operation or law and shall conform to the requirements herein, including any manufacturer's warranty.

Safety Alliance shall furnish to WTA any guaranty or warranty furnished as a normal trade practice in connection with the Safety Alliance's purchase of any goods and services; provided such guaranty or warranty shall be in addition to those specific requirements for particular materials or work items indicated elsewhere in the Contract Documents.

Safety Alliance warrants to WTA as follows in association with the services or goods to be provided:

- a. Safety Alliance and all its/his/her employees and subcontractors shall be knowledgeable and have proper training to provide the proposed services or goods, and will safely operate any and all equipment associated with the Work;
- b. Safety Alliance will timely pay all wages, salaries, invoices and other compensation or amounts due and owing to its employees, agents, subcontractors and others who provide services or goods to WTA on Safety Alliance's behalf;
- c. all equipment used by Safety Alliance and subcontractors will be suitable to provide the services or goods; and
- d. all services or goods provided by Safety Alliance and subcontractors to WTA shall be in conformity with all specifications, terms and conditions of the Contract Documents.

Safety Alliance warrants to WTA that it has the right and all necessary licenses to provide the services or goods and that

such services or goods will be of the highest quality; free from liens, infringements and defects, be in conformance with the Contract Documents. In addition to any other obligation to indemnify, defend and hold harmless, Contractor will save and hold WTA harmless, defend and indemnify WTA from all loss, damage, and expense due to liens or adverse claims against WTA for all goods and services provided under the Contract. All services or goods not so conforming to these standards shall be considered deficient. Such duty to defend, indemnify and hold harmless WTA shall extend to any claim made by an employee of Contractor, and to this limited extent, Contractor waives any exclusivity protection provided by the Industrial Insurance Act, RCW Title 51.

**Liens:** Contractor shall not allow any liens or other encumbrances to be placed on WTA real or personal property, and shall timely pay any and all amounts due and owing to suppliers, sub-Contractors and others. WTA may demand a certification or lien waiver as a condition of payment of any amounts due and owing to the Safety Alliance.

Safety Alliance shall defend, hold harmless and indemnify WTA from and against any lien that may be asserted, recorded, filed or alleged by any supplier, sub-Contractor or other person arising out of the provided services. In the event a lien is placed against the real or personal property of the WTA, Safety Alliance shall immediately remedy the lien by paying such lien in full, and also pay any related expenses. The Safety Alliance's obligation to defend, hold harmless, indemnify and to pay all liens and related expenses shall exist whether or not any injuries, liens or damages are due to Safety Alliance's actions, negligence, or caused by the inherent nature of the provided services.

The mention of specific duties or liabilities imposed on the Safety Alliance shall not be construed as a limitation or restriction of general duties or liabilities imposed by the Contract. Reference to specific duties or liabilities is made for the purpose of explanation.

**Indemnification/Hold Harmless:** Safety Alliance shall defend, hold harmless and indemnify WTA, and its agents, employees, representatives, and Board members against and from any all claims, demands, suits, judgments, defense costs, injury to or death of any and all persons(s) and on account of all property damages of any kind, whether tangible or intangible, real and/or personal liability or damages of any kind arising out of: (a) Safety Alliance's goods or services provided to WTA; (b) actions or business operations of Safety Alliance, its/his/her sub- Contractors, their property, employees or agents, or caused in whole or in part by the Contractor, its sub- Contractors, their property, employees, or agents;; (c) Safety Alliance's actions taken under the Contract, or for any breach of the Contract; (d) Safety Alliance's alleged infringement of any intellectual property rights; or (e) Safety Alliance's negligence, errors or omissions, misconduct, violation of any law, unpaid wages or services.

Safety Alliance will defend itself at its own expense in any lawsuit. Such duties shall apply to any claim covered by the above obligation and brought by an employee of Safety Alliance, and in this limited context, Safety Alliance waives any exclusivity protection under any industrial insurance or worker's compensation laws, including, but not limited to, the Washington State Industrial Insurance Act, RCW Title 51.

The Safety Alliance's liability, and/or duty to indemnify, hold harmless or defend shall not be dependent upon whether or not such damage or injury is caused by Safety Alliance negligence, or whether or not such damage or injury is caused by the inherent nature of the services provided.

If a lawsuit that falls within the terms of this indemnity, duty to defend and hold harmless provision ensues, WTA is entitled to select counsel to represent it, and the Safety Alliance shall pay directly all costs, attorneys' fees, and expenses associated with the representation and defense provided to WTA. If judgement is rendered or settlement made requiring payment of damages by WTA, its officers, agents, employees, and volunteers, the Safety Alliance shall pay any judgment amount or award of any other amounts and attorneys' fees or costs.

**No Limitations on Contractor Liability:** Safety Alliance shall be liable for damages and injury to persons caused by Safety Alliance's performance of this Contract or providing of services or goods to WTA. Safety Alliance shall be liable for any and all damages and injuries suffered by WTA for any breach by Safety Alliance of this Contract, including, but not limited to

consequential or incidental damages. Under no circumstances shall there be any limitation on Safety Alliance's liability, or cap on the amount of any damages recoverable against Safety Alliance for any breach of this Contract (WA State Constitution, Article VIII, Section 7 "Credit Not to be Loaned").

**Public Records Obligations:** WTA complies with RCW Chapter 42.56. This Contract and any other documents relating to this Contract or services or goods provided by Safety Alliance will be disclosed if a Public Disclosure Request (PDR) is submitted. Under no circumstances shall there be any "confidentiality" obligation imposed against WTA. If WTA receives any PDR that includes a request for all or a portion of this Contract or any documents relating to the Contract or services or goods provided by Safety Alliance, WTA is required to comply with this request under RCW Chapter 42.56, subject to any exception that may apply to WTA. Nonetheless, any information provided by Safety Alliance labeled "Confidential" or "Proprietary" but does not, in WTA's opinion, fall into an exception from public disclosure, will be initially withheld and WTA will notify Safety Alliance of the request. WTA will continue to withhold the confidential or proprietary labeled materials for a total of fourteen (14) days after providing notice. Thereafter, WTA shall release the confidential or proprietary labeled materials pursuant to the PDR, subject to any court order or injunction that Safety Alliance may obtain.

Safety Alliance shall reimburse to WTA all costs and attorneys' fees WTA incurs in any legal action instigated by Safety Alliance or arising from dealing with Safety Alliance's labeling of any documents as "Confidential" or "Proprietary."

**Limitations of Liability:** WTA is unable to agree to any limitation of liability in the event of a claim or issued judgment through the performance of a contract. This is considered a gift of public funds, and is unenforceable by the Washington State Constitution<sup>1</sup>

**Public Disclosure Law:** WTA complies with RCW Chapter 42.56. All proposals and contract documents will be disclosed if a Public Disclosure Request (PDR) is submitted, unless a proper exception applies. It is Proposers responsibility to be familiar with RCW Chapter 42.56 and what WTA's confidentiality limitations are.

WTA will not execute non-disclosure agreements.

Any information provided by Proposer labeled "Confidential" or "Proprietary" but does not, in WTA's opinion, fall into an exception from public disclosure, will be initially withheld and WTA will notify Proposer of the request. WTA will continue to withhold the confidential or proprietary labeled materials for a total of fourteen (14) days after providing notice. Thereafter, WTA shall release the confidential or proprietary materials pursuant to the public records request, subject to any court order or injunction that Proposer may obtain.

The Proposer assumes all costs of any legal actions, and shall reimburse WTA for administrative, expert and costs and attorneys' fees it incurs arising from dealing with bidder's labeling of any portion of the bid as "Confidential" or "Proprietary," including those arising from any legal action commenced by bidder. Submission of a bid is agreement with this section.

#### **Public Records Application to Documents of Vendor**

As a public contract, all records prepared, generated or used by a successful vendor or its/his/her agents, employees and subcontractors relating to the Contract and associated work will be subject to being a "Public Record" under RCW Chapter 42.56. Proposer, if selected, shall maintain and retain all such records in a manner that is accessible and WTA shall have the right to review and inspect such records upon request, for a term of three (3) years following completion of the Contract work. All records subject to a public disclosure request will be provided to a requester. WTA may only refrain from disclosing any record based upon an exemption that is applicable to WTA, and will not refrain from disclosing any record under an exemption that may be personal to the Proposer. Proposer will need to seek judicial approval to prevent such disclosure, at its expense. Proposer, if

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<sup>1</sup> Washington State Constitution, Article VIII, Section 7

selected, shall insert this provision in all contracts with subcontractors or agents providing services relating to the Contract.

**Insurance:** Safety Alliance shall procure and maintain for the duration of this Agreement and for a period of not less than 6 years insurance against claims for injuries to persons or damage to property that may out of or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-contractors or sub-Consultants.

Before beginning work on the project described in this Agreement, Safety Alliance shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum). WTA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and limits carried by or available to the Safety Alliance or (2) the minimum insurance requirements shown in this Agreement, whichever is greater.

1. **Commercial general liability and umbrella and/or excess liability.** Safety Alliance shall maintain commercial general liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. If necessary, to obtain the required limits, commercial umbrella or excess liability is permitted. Coverage shall be least as broad as Insurance Services Office (ISO) Occurrence form CG 00 01 including, but is not limited to, contractual liability, products and completed operations, property damage, and employer's liability.
  - Acceptable Additional Insured Endorsements for Ongoing Operations liability are coverage forms at least as broad as the ISO CG 2010 or CG 2026 specifically naming WTA on the endorsement; or the CG 2033 or CG 2038 "Automatic" forms.
  - Acceptable Additional Insured Endorsements for Completed Operations liability are coverage forms at least as broad as the ISO CG 2037 specifically naming WTA on the endorsement; or the CG 2039 or CG 2040 "Automatic" forms.
  - "Automatic" coverage forms CG 2033 for Ongoing Operations and CG 2039 for Completed Operations are not allowed from any subcontractors of the Safety Alliance that do not have a written Contract or Agreement with WTA.
2. **Business auto coverage** for any auto no less than a \$1,000,000 each accident limit at least as broad as Insurance Services Office (ISO) commercial auto form (CA 00 01, CA 00 05, CA 00 12, CA 00 20). If necessary, to obtain required limits, commercial umbrella or excess liability is permitted.
3. **Professional liability insurance** with no less than \$2,000,000 per occurrence or claims made basis, \$2,000,000 aggregate. See also D below.
4. **Workers compensation** coverage as required by the State of Washington.
5. **Employers liability** insurance not less than \$1,000,000 per occurrence.
6. **Electronic Data Liability Insurance.** If Safety Alliance is providing access to a web portal that WTA will utilize, Safety Alliance shall maintain electronic data liability insurance and/or Technology Errors and Omissions coverage. This coverage shall be maintained with a limit of liability of not less than \$2,000,000. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Safety Alliance and shall include, but not be limited to, liability arising out of the loss, loss of use of, damage to, corruption or, inability to access, or inability to manipulate electronic data, infringement of copyright, trademark, trade dress, invasion of privacy violations, transmission of virus/malicious code; information or personal data theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations.

Acceptability of Insurers – Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to WTA.

Claims Made Policies – If any of the Professional Liability or Electronic Data or Technology Errors and Omissions policies provide coverage on a claims-made basis:

- A. The Retroactive Date must be shown and must be before the date of the contract or the beginning of the contract work.
- B. Insurance must be maintained, and evidence of insurance must be provided for at least six (6) years after the completion of work.



- C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Safety Alliance must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

The Safety Alliance is responsible for the payment of any deductible or self-insured retention (SIR) that is required by any of the Safety Alliance's insurance. Any SIR must be disclosed to and approved by WTA. If WTA is required to contribute to the deductible under any of the Safety Alliance's insurance policies, the Safety Alliance shall reimburse WTA the full amount of the deductible. The policy language shall provide, or be endorsed to provide, that the SIR may be satisfied by the named insured WTA.

It is the intent of this contract for the Safety Alliance's insurance to be considered primary in the event of any loss, damage or suit. WTA's own comprehensive general liability policy shall be considered excess coverage in respect to WTA. Additionally, the Safety Alliance's commercial general liability policy must provide cross-liability coverage as would be achieved under a standard ISO separation of insureds clause.

Safety Alliance shall request from his insurer a modification of the ACORD certificate to include language that written notification will be given to WTA for any cancellation, suspension or material change in the 's coverage at least 30 days in advance of such cancellation, suspension or material change, except for non-payment of premium, then 10 days advance notice shall be given.

Waiver of Subrogation – Safety Alliance hereby grants to WTA a waiver of any right to subrogation which any insurer of said Safety Alliance may acquire against WTA by virtue of the payment of any loss under such insurance. Safety Alliance agrees to obtain any endorsement that may be necessary to affect its waiver of subrogation, but this provision applies regardless of whether WTA has received a waiver of subrogation endorsement from the insurer.

Subcontractors – Safety Alliance shall require and verify that all subcontractors or subconsultants maintain insurance meeting all the requirements herein.