



State of Washington DEPARTMENT OF ENTERPRISE SERVICES <i>Attn:</i> Contracts & Procurement P.O. Box 41411 Olympia, WA 98504-1411	MASTER CONTRACT USAGE AGREEMENT PUBLIC BENEFIT NONPROFIT	
	MCUA No.:	<u>K6581</u>
INSERT PBNP NAME Open Arms Perinatal Services Tax Identification No.: 91-1868021 UBI No.: 601-834-928 Business Contact: Angela Agoo Tel: (206) 723-6868 ext. 124 Email: admin@openarmsps.org	Effective Date:	<u>April 28, 2020</u>

**MASTER CONTRACT USAGE AGREEMENT
FOR PUBLIC BENEFIT NONPROFIT**

This Master Contract Usage Agreement ("Agreement") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Open Arms Perinatal Services, a 501(c)(3) nonprofit corporation ("Public Benefit Nonprofit") and is dated and effective as May 1, 2020.

RECITALS

- A. Enterprise Services, pursuant to RCW 39.26.050(1) and RCW 39.34.055, is authorized to enter into agreements with certain public benefit nonprofit organizations to enable such entities to utilize certain contracts for purchases of goods and/or services administered by Enterprise Services.
- B. The available contracts include competitively solicited and awarded (1) contracts developed and implemented by Enterprise Services on behalf of the State and (2) cooperative purchasing agreements developed or joined by Enterprise Services on behalf of the state (collectively "Master Contracts"). Enterprise Services maintains a list of all such Master Contracts at its Master Contracts Webpage.
- C. Certain of the Master Contracts administered by Enterprise Services are available for use by certain public benefit nonprofit organizations provided such entities satisfy the qualification requirements and have executed a Master Contract Usage Agreement with Enterprise Services. Such public benefit nonprofit organizations must comply with the contractual terms and conditions set forth in the Master Contract executed by Enterprise Services and the counterparty ("Contractor").
- D. Public Benefit Nonprofit desires to contract with Enterprise Services to access and use the available Master Contracts subject to their terms and conditions.
- E. The purpose of the Agreement is to establish the terms and conditions to authorize Public Benefit Nonprofit to use the available Master Contracts.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. **TERM.** The term of this Agreement is sixty (60) months, commencing May 1, 2020 and ending May 31, 2025; *Provided, however, either party may terminate this Agreement upon thirty (30) calendar days' prior written notice.*
2. **PUBLIC BENEFIT NONPROFIT REPRESENTATIONS AND WARRANTIES.** Public Benefit Nonprofit makes each of the following representations and warranties as of the effective date of this Agreement and at the time any order is placed pursuant to any Master Contract that it uses. If, at the time of any such order, Public Benefit Nonprofit cannot make such representations and warranties, Public Benefit Nonprofit shall not place any such order and shall, within three (3) business days notify Enterprise Services, in writing, and terminate this Agreement.
 - a. **PUBLIC BENEFIT NONPROFIT CORPORATION.** Public Benefit Nonprofit represents and warrants that it is a public benefit nonprofit corporation as defined by RCW 24.03.005 such that it is a corporation in which no part of the income of which is distributable to its members, directors, or officers and that it holds a current tax exempt status as provided under 26 U.S.C. § 501(c)(3) or is specifically exempted from the requirement to apply for its tax exempt status under 26 U.S.C. § 501(c)(3).
 - b. **PUBLIC FUNDS.** Public Benefit Nonprofit represents and warrants that it currently receives local, state, or federal funds either directly or through a public agency. For purposes of this section, 'public agency' means (1) any agency, political subdivision, or unit of local government of Washington state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; (2) any agency of Washington state government; (3) any agency of the United States.
 - c. **SUSPENSION & DEBARMENT.** Public Benefit Nonprofit represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
3. **AUTHORIZED USE; FINANCIAL RESPONSIBILITY; & INDEMNITY.** Public Benefit Nonprofit understands and agrees that it shall: (a) only access and use Master Contracts for which public benefit nonprofits are eligible purchasers; (b) deal directly with the Master Contract Contractor (i.e., the vendor, supplier, service supplier, etc.) for any purchases it makes under the Master Contract, as authorized by this Agreement; (c) assume full and complete responsibility, financial and otherwise, for any purchases made pursuant to any Master Contract; and (d) to the fullest extent permitted by law, defend, indemnify, and hold harmless Enterprise Services and its employees and agents from and against all claims, demands, and judgments, including, without limitation, sums paid in settlement of claims, and attorneys' fees arising from any act or omission of Public Benefit Nonprofit or its successors, agents, and subcontractors under this Agreement, except claims caused solely by Enterprise Services' negligence.
4. **RESOLVING PURCHASE DISPUTES.** The parties agree that, if there are any disputes between Public Benefit Nonprofit and a Master Contract Contractor, Public Benefit Nonprofit shall: (a) provide Enterprise Services written notice of the nature of the dispute including the efforts undertaken to resolve the dispute; and (b) unless otherwise provided in the Master Contract, work in good faith with the Contractor to resolve the dispute without the involvement of Enterprise Services. Enterprise Services may, upon request, review and assist in the resolution of a dispute, and, if Enterprise Services chooses to do so, Public Benefit Nonprofit will cooperate with Enterprise Services in that resolution process. Enterprise Services, in its sole discretion, may elect to resolve disputes with a Contractor on behalf of Public Benefit Nonprofit and all other users of the applicable Master Contract. In such event, Enterprise Services' resolution shall be binding.
5. **MASTER CONTRACT AUDITS COOPERATION.** Public Benefit Nonprofit agrees to cooperate with Enterprise Services, the Office of the State Auditor, federal officials, or any third party authorized by law or contract, in any audit conducted by such party pertaining to any Master Contract(s) that Public Benefit Nonprofit has made purchases

from pursuant to this Agreement, including providing records related to any purchases from a Master Contract. Public Benefit Nonprofit also agrees to provide, upon request from Enterprise Services, documentation to confirm its eligibility to use Master Contracts.

6. GENERAL PROVISIONS.

- a. **AGREEMENT AVAILABILITY.** Prior to its entry into force, this Agreement shall be posted on the Enterprise Services' website or other electronically retrievable public source as required by RCW 39.34.040.
- b. **INTEGRATED AGREEMENT.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- c. **AMENDMENT OR MODIFICATION.** Except as set forth herein, this Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party hereto.
- d. **AUTHORITY.** Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- e. **NO AGENCY.** The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Agreement. Neither party is an agent of the other party nor authorized to obligate it.
- f. **ASSIGNMENT.** Public Benefit Nonprofit may not assign its rights under this Agreement without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void.
- g. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules.
- h. **JURISDICTION & VENUE.** In the event that any action is brought to enforce any provision of this Agreement, the parties agree to submit to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- i. **CAPTIONS & HEADINGS.** The captions and headings in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provisions hereof.
- j. **ELECTRONIC SIGNATURES.** A signed copy of this Agreement or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such other ancillary agreement for all purposes.

- k. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Agreement.

EXECUTED AND EFFECTIVE as of the day and date first above written.

OPEN ARMS PERINATAL SERVICES
A 501(c)(3) NONPROFIT CORPORATION

By: 
Name: Angela Agoo
Title: Operations Manager

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: 
Name: Jaime Rossman
Title: Interim Assistant Director, Contracts & Procurement