



MASTER SERVICES AGREEMENT
(Contract No. [XXXXX])

This agreement dated effective [Effective Date] (this “Agreement”) is between **Trailhead Institute**, a Colorado nonprofit corporation (“Trailhead”), and [Contractor Name], [an individual // a sole proprietor // a [State] [type of entity]] (“Contractor”).

PURPOSE OF AGREEMENT

Contractor has expertise that is useful to Trailhead. Therefore, Trailhead desires to retain Contractor to provide certain services and deliverables to Trailhead as set forth in this Agreement and in any statement of work (“Statement of Work”) issued under this Agreement (collectively, the “Work”).

AGREEMENT

The parties agree as follows:

- 1. Master Agreement.** It is understood and agreed that this Agreement is a master services agreement to establish terms and conditions upon which Contractor will perform the Work for Trailhead. All Work will be acquired on an as-needed basis through issuance of one or more Statements of Work issued in accordance with paragraph 2 of this Agreement (each of which will constitute a separate Statement of Work and each of which is incorporated into this Agreement by this reference).
- 2. Scope of Work.** Contractor agrees to perform the Work described in each Statement of Work in accordance with this Agreement and the objectives, methods, structure, schedule and budget set forth in the Statement of Work. A new Statement of Work will be developed for each new project under this Agreement. Any change made to any Statement of Work, regardless of who initiates it, must be documented in writing and signed by Trailhead before the change is implemented. Each Statement of Work, or change thereto, will become effective when signed and delivered by both parties.
- 3. Use of Federal Funds.** Each party acknowledges that the Project will be funded in whole with federal funds. Accordingly, each party shall conduct its activities relative to the Project

and its obligations under this Agreement in compliance with the terms and conditions of the Award, which will take precedence in the case of any inconsistencies with this Agreement.

- 4. Award Amount.** Contractor will receive a funding equal to the amount stated in each Statement of Work (the “Award Amount”) to support the work described therein. The Award Amount will be subject to the terms and conditions of this Agreement, as well as the provisions of Trailhead’s Manual of Policies and Guidelines for P2P Awards in effect from time to time (the “Award Manual”), which is incorporated into this Agreement by this reference. The Award Manual can be found at [<http://trailhead.institute/resources/awards-toolkit>] and is available upon request from Trailhead.
- 5. Fees and Expenses.** Trailhead shall compensate Contractor for the Work at the rate or amount specified in the applicable Statement of Work. Contractor shall be responsible for all expenses incurred in performing the Work, except those specified in the applicable Statement of Work, which are reimbursable by Trailhead. Any expenses not specified in the applicable Statement of Work must have the prior written approval of Trailhead to be reimbursable by Trailhead. Trailhead’s obligation to pay fees and expenses incurred under this Agreement is contingent upon the Work being reasonably acceptable to Trailhead.
- 6. Invoices and Payment.** Unless otherwise specified in the applicable Statement of Work, funding provided under each Statement of Work will be disbursed monthly on a cost reimbursable basis. Invoices must be in a form acceptable to Trailhead, and must be accompanied by supporting information (e.g., time cards and original receipts) as required by Trailhead. Contractor shall submit its first invoice under a Statement of Work no later than the mid-point of the Term outlined in the Statement of Work. Contractor shall submit its final invoice under a Statement of Work, marked “FINAL,” within 30 days after the Statement of Work term ends. Trailhead will request all missing and necessary supporting information within seven days of receipt of the invoice. In the case of the final invoice, requested documentation must be received by Trailhead within 45 days of this request. Trailhead reserves the right to dispute and withhold payment of any invoice which it determines is incomplete or unsatisfactory, and require Contractor to submit a new invoice or supplement the original. Trailhead shall pay undisputed amounts due net 30 days. However, no payment will be made until Contractor has provided Trailhead with a signed IRS Form W-9.
- 7. Relationship of Parties.** Nothing in this Agreement will be construed to imply a joint venture, partnership or principal-agent relationship between the parties. No party will have the right, power or authority to obligate or bind the other party in any manner whatsoever.

Rather, both parties acknowledge and agree Contractor is being retained as an independent contractor of Trailhead, and none of the principals, employees or subcontractors of Contractor will be considered employees of Trailhead within the meaning of any applicable federal, state or local laws or regulations.

- 8. Work Performance.** Contractor shall devote the time, attention, knowledge, skills and efforts reasonably required to successfully perform the Work in a professional and timely manner. Contractor shall obtain all licenses and permits required under federal, state and local laws to perform the Work. Contractor shall comply with all federal, state and local laws and regulations that relate to or affect in any manner the performance of the Work, and shall immediately inform Trailhead, in writing, of any notices of violations of such laws or regulations and promptly correct any violations. Contractor shall immediately notify Trailhead in writing and cease expenditures under a Statement of Work if there is reason to believe the goals or deliverables of the Work covered by such Statement of Work can no longer be achieved. In performing the Work, Contractor shall not represent to anyone that Contractor or Contractor's principals, employees or subcontractors is an employee of Trailhead, or that Contractor has authority to contract for or bind Trailhead in any manner. In performing the Work, Contractor shall not engage in any behavior that brings Contractor into public disrepute, contempt, scandal or ridicule, or reflects unfavorably upon the reputation or the high moral or ethical standards of Trailhead. Contractor shall not use or authorize others to use Trailhead's name, logo, endorsement, services or property (including intellectual property) without Trailhead's prior written authorization.
- 9. Meetings, Reports and Inspections.** Contractor shall participate in regular email communications, meetings, briefings, telephone conferences, and other forums reasonably requested by Trailhead so that Trailhead can monitor Contractor's performance under each Statement of Work and provide Contractor with the programmatic and administrative support contemplated by the Project. Contractor shall timely submit all progress reports, technical reports, and financial reports required under the Award Manual, which must be reasonably satisfactory to Trailhead.
- 10. Books and Records.** Contractor shall maintain complete and accurate books, records, and other supporting documents (e.g., time cards and receipts), whether financial or programmatic, which are pertinent to the work performed under each Statement of Work, as described in the Award Manual, for a retention period ending seven years after the final payment is made. Contractor shall make these records available during the retention period for inspection or audit by Trailhead or the respective funder, or their respective agents, upon reasonable notice and at reasonable times.

11. Term and Termination. The term of this Agreement will begin on the effective date and continue until date stated in the Statement of Work, unless earlier terminated as set forth below.

Either party may terminate an outstanding Statement of Work, or all Statements of Work and this Agreement, effective immediately for cause. Cause means (a) a material breach of this Agreement or the applicable Statement of Work by the other party, which the other party fails to cure within 14 days after receipt of written notice stating the nature of the breach; or (b) the other party dissolves or becomes insolvent. If Trailhead is the terminating party, cause also means: (b) Contractor materially fails to perform the Work contemplated by the applicable Statement of Work, and does not remedy such failure to Trailhead's satisfaction within 14 days after receipt of written notice stating the nature of the failure; or (d) Contractor commits any negligent, fraudulent, criminal, malicious or willful act or omission affecting or relating to the Work. The right to terminate this Agreement for cause is in addition to any other rights or remedies the terminating party may have in law or equity.

Trailhead may also terminate an outstanding Statement of Work, or all Statements of Work and this Agreement, without cause, with 30 day's prior written notice to Contractor.

Upon Contractor's receipt of notice of termination of an outstanding Statement of Work for any reason, Contractor shall take all immediate action to cease all further expenditures under the Statement of Work. Further, Contractor shall promptly deliver to Trailhead all data, reports, summaries and other information and material prepared or accumulated by Contractor in performing the Work under the Statement of Work, whether completed or in process.

12. Work Product Ownership. Contractor acknowledges and agrees all work products created or prepared by Contractor in connection with this Agreement (the "**Work Products**") are the sole property of Trailhead, unless otherwise agreed by the parties. Contractor will not violate any right to privacy of any individual, or infringe upon any copyright, trademark, patent, trade secret, right of publicity or other intellectual property right of any person, in performing the work. Both parties acknowledge Contractor may, in creating or preparing the Work Products, use or incorporate certain documents, reports, studies, data records, participant lists, surveys, plans, photographs, images, recordings, materials and other information which existed prior to the effective date of this Agreement ("**Pre-existing Materials**"). Contractor represents and warrants to Trailhead: (a) Contractor either owns or has the right to use and authorize the use of such Pre-existing Materials, except to the extent disclosed in writing to Trailhead; and (b) the use of the Pre-existing Materials will not

violate or infringe any copyright or right of privacy or publicity or any other proprietary right of any person or entity, and will not be defamatory, deceptive or contrary to law.

Contractor will continue to retain the same right, title and interest in and to the Pre-existing Materials. However, Contractor hereby grants Trailhead a worldwide, non-exclusive, royalty-free, irrevocable, perpetual license, with rights to sublicense, to use the Pre-existing Materials solely as part of the Work Product. This paragraph will survive expiration or early termination of this Agreement.

13. Trademark Ownership and Use. All trademarks, service marks, trade names and trade dress used by Trailhead (collectively, the “**Marks**”) are and shall remain the sole property of Trailhead. Contractor shall not use the Marks without Trailhead’s prior written permission (which may be granted or denied in Trailhead’s sole discretion). This paragraph will survive expiration or early termination of this Agreement.

14. Insurance. Contractor shall obtain and maintain, at its own cost and expense, throughout the term of this Agreement: (a) worker’s compensation insurance in conformity with applicable law for any employees who perform work on Contractor’s behalf under this Agreement; and (b) such other policies of insurance relating to the Work (e.g., general liability or automobile insurance), insuring against such risks, in such amounts, with such policy provisions and with such companies, as may be reasonably satisfactory to Trailhead. In the case of the latter, the policies must name Trailhead and its agents as a loss payee or additional insured (as the case may be); provide that the insurance is primary insurance as to any other insurance in force; and provide the policy will not be canceled without 30 days’ prior written notice from the insurer to Trailhead. Upon Trailhead’s request, Contractor shall furnish Trailhead with certificates of coverage and proof of premium payments.

15. Limitation on Liability. Contractor is solely responsible for and is liable to Trailhead for the acts and omissions of Contractor and anyone performing work on Contractor’s behalf. CPFHE shall not be liable to Contractor or any other person for any indirect, special, consequential, or punitive damages (including without limitation lost profits, whether they are considered direct or indirect damages) based on any causes of action arising under or related in any way to this Agreement, or the Work performed under this Agreement, regardless of whether Trailhead was aware of the possibility of such damages. Further, the extent of Trailhead’s liability under this Agreement shall not exceed the maximum compensation amount specified in the applicable Statement of Work. This paragraph will survive expiration or early termination of this Agreement.

16. Indemnification. Each party agrees to indemnify and hold harmless the other party, and the other party’s trustees, directors, officers, employees, volunteers, agents, personal

representatives, successors and assigns, from and against any and all claims, liabilities, damages, losses and expenses (including reasonable attorneys' fees and costs of investigation or defense) directly, indirectly, wholly or partially arising from or in connection with: (a) any breach of this Agreement by the other party; or (b) if the indemnifying party is Contractor, any act or omission of Contractor or anyone performing work on Contractor's behalf arising from or related in any way to the Work performed under this Agreement. This paragraph will survive expiration or early termination of this Agreement.

17. Dispute Resolution. In connection with any dispute between the parties arising under or related in any way to this Agreement, the parties agree to negotiate in good faith to resolve the dispute. If the dispute is not resolved by negotiation within 14 days, the parties agree to engage in good faith mediation to resolve the dispute. Such mediation must be administered by a qualified mediator to be mutually acceptable to the parties, either in person at a mutually acceptable location, or remotely through a mutually acceptable method. The parties will share equally the cost of the mediation, which must be no more than one day in duration. If the dispute is not resolved by mediation within a period of 60 days, either party is free to initiate proceedings in a court of competent jurisdiction. This paragraph will survive expiration or early termination of this Agreement.

18. Notice. All notices and communications required under this Agreement must be in writing, and will be considered given when delivered personally to the recipient, sent by fax or e-mail to the recipient (with verification of delivery or receipt), sent to the recipient by reputable overnight courier service (charges prepaid, with delivery confirmation), or sent by United States registered or certified mail (charges prepaid, with return receipt requested), addressed to the recipient at the following address, or such other address as the recipient may have furnished to the other party in writing.

Notice To Trailhead:

Trailhead Institute
Attn: Sarah Lampe, Chief Operating
Officer
1385 S Colorado Blvd, Suite 622
Denver, CO 80222
contracts@trailhead.institute
303-910-4682 (phone)
303-861-4415 (fax)

Notice To Contractor:

[Contractor Name]
[Address/Suite Number]
[City/State/Zip]
[Email]
[Phone Number] (phone)
[Fax Number] (fax)

19. General Provisions.

Governing Law, Venue. This Agreement is to be governed in all respects by the laws of Colorado, without giving effect to its conflicts of law principles. The parties consent and submit to venue and exclusive jurisdiction in the federal and state courts located in the Denver metropolitan area, and to service of process, under Sections 13-1-124 and 13-1-125, Colorado Revised Statutes, as amended.

Non-assignment. Contractor may not assign any rights or obligations under this Agreement without Trailhead' prior written approval. Subject to this limitation, this Agreement will bind the parties and inure to the benefit of their respective successors, assigns and legal representatives.

Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement, and supersedes any prior understanding between them. No representations, arrangements, understandings or agreements exist except as expressed in this Agreement. In the event of a conflict between this Agreement and any Statement of Work, the terms of this Agreement will prevail, unless the Statement of Work expressly references the specific provision in this Agreement to be modified by the Statement of Work and specifies a different agreement between the parties.

Amendments, Waivers. Except as otherwise provided in this Agreement, this Agreement may be amended only by a written instrument signed by both parties. If for any reason one party does not insist upon strict adherence to any provision of this Agreement, or waives a breach of this Agreement by the other party, such party will not be prevented from pursuing remedies or insisting upon strict performance for a future breach of the same or another provision.

Severability. If a court having jurisdiction determines any provision of this Agreement to be unenforceable, the remaining provisions will nevertheless remain enforceable to the fullest extent allowed by law, and the court may replace the provision in question with a lawful provision that most nearly embodies the original intention of the parties.

Survival. In addition to any other paragraphs which expressly provide they will survive expiration or termination of this Agreement, paragraphs 7 and 11 and this paragraph (including all subparagraphs hereunder) will also survive.

Counterparts. The parties may execute this Agreement in counterparts, which taken together will constitute one instrument. A signature may be delivered by fax or may be scanned and e-mailed, and such fax or scanned signature will be accepted and effective as an original signature.

[Signature Page to Follow]

The parties have executed this Agreement to be effective as of the date first written above.

Trailhead Institute

Contractor:

[Trailhead Authorized Official, Title]

[Contractor Name, Title]

Dated: _____

Dated: _____

Statement of Work No. [XXX]
to
Contract No. [XXXXX]
(Federal Funds)

This Statement of Work is being issued under that certain Master Services Agreement dated [Effective Date] (the “**Agreement**”) between **Trailhead Institute**, a Colorado nonprofit corporation (“**Trailhead**”), and **[Contractor Name]**, [an individual // a sole proprietor // a [State] [type of entity] (“**Contractor**”).

[All // A portion] of the Work performed under this Statement of Work is being performed pursuant to a subaward of federal funds (the “**Subaward**”), with Trailhead ([insert unique entity identifier]) serving as the pass-through entity and Contractor ([insert unique entity identifier]) serving as the subrecipient. Specifically, the following information applies to the Subaward:

Trailhead Principal Investigator:
Prime Recipient Organization:

Prime Recipient Principal Investigator:
Prime Federal Award No:
FAIN:
Federal Awarding Agency:
Prime Federal Award Issue Date:
Total Amount of Prime Federal Award:
CFDA No:
CFDA Title:
Project Title:
Total Amount Funded by this Subaward:
[Total Amount Obligated to Contractor:]

- 1. Master Services Agreement.** This Statement of Work is incorporated by reference into and is subject to all of the terms and conditions of the Agreement. In the event of a conflict between the Agreement and this Statement of Work, the terms of the Agreement will prevail, unless this Statement of Work expressly references the specific provision in the Agreement to be modified by the Statement of Work and specifies a different agreement between the parties. All capitalized terms that are used but not defined in this Statement of Work have the respective meanings given to them in the Agreement.
- 2. Term of Statement of Work.** The term of this Statement of Work will begin effective [insert beginning date] and continue until the earlier of (a) successful completion of the Services

and acceptance by Trailhead of all Deliverables described below; (b) early termination of this Statement of Work under the terms of the Agreement; or (c) **[insert ending date]**.

- 3. Description of Services/Deliverables.** **[Insert description of objectives, methods, structure, schedule and budget of project and related services and deliverables.]**

The Work does _____ does not _____ **[check one]** include R&D.

- 4. Fees and Expenses.** **[For any Work payable from the Subaward, indicate whether award is on cost-reimbursement basis, and include budget that includes indirect cost rate]**

- 5. Invoices and Payment.** All invoices will be submitted using Contractor's standard invoice. For any portion of the invoice amount payable from the Subaward, at a minimum, the invoice must include current and cumulative costs (including cost sharing), the Subaward number, and the certification required by 2 C.F.R. 200.415(a). Payment for any Work payable from the Subaward is contingent upon funding provided by **[insert agency]** under the Prime Federal Award, and passed through by Trailhead under the Subaward. Further, all payments made from the Subaward will be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against Contractor, and Trailhead reserves the right to reject an invoice, in accordance with 2 C.F.R. 200.305.

- 6. Reports.** **[Insert any required reports; if any payment will be made from the Subaward, make reference to Federal Prime Award on Schedule 2 if that agreement requires specific reporting].** For any Work payable from the Subaward, a certificate of completion, in accordance with 2 C.F.R. 200.201(b)(3), will be submitted within 30 days after the end of the project period to Trailhead.

- 7. Federal Funds Requirements.** With respect to the Subaward, Contractor agrees to comply with the additional terms and conditions specified in the attached Schedule 1 and with the additional terms and conditions of the Prime Federal Award attached as Schedule 2 (both of which are incorporated into this Statement of Work and the Agreement by this reference and take precedence in the case of any inconsistencies with this Statement of Work or the Agreement). **[Insert any other requirements, such as specific agency requirements]** **[Contractor will incorporate the terms and conditions of Schedule 1 and Schedule 2, as applicable, into any contract or award agreement into which it enters.]** Any obligations under Schedule 1 or Schedule 2 will survive expiration or early termination of this Agreement.

- 8. Other.** **[Add other relevant commitments/expectations.]**

The parties have executed this Statement of Work as of the dates specified below:

Trailhead Institute:

Contractor:

[Trailhead Authorized Official, Title]

[Contractor Name, Title]

Dated: _____

Dated: _____

Schedule 1

Federal Funds Flow-Down Requirements

1. Federal Funds Certifications and Public Policy Requirements. Contractor certifies and agrees as follows:

- a. **Lobbying.** No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence the same persons describe in the preceding paragraph in connection with this Federal contract, grant, loan, or cooperative agreement, Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," to Trailhead.

Contractor will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subawards, and contract under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly. This certification is a material representation of fact upon which reliance is place when this transaction is made or entered into. Making this certification is prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- b. **Debarment, Suspension.** Neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in the Subaward by any Federal department or agency.
- c. **Cost Principles, Audit and Access to Records.** Contractor will comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as applicable to Contractor (located at <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=6375bd49a8be0a382a2100b06ec3cff5&ty=HTML&h=L&mc>

=true&n=pt2.1.200&r=PART#se2.1.200_1501), will provide notice of the completion of required audits and any adverse findings that impact the Subaward as required by parts 200.501-200.521, and will provide access to records as required by parts 200.336, 200.337 and 200.201 as applicable.

- d. **Financial Conflicts of Interest.** Contractor will comply with the requirements of 42 CFR part 50, Subpart F, which promotes objectivity in research by establishing standards to ensure that the design, conduct, and reporting of research funded under Public Health Service grants or cooperative agreements will not be biased by any conflicting financial interest of an investigator. The financial conflicts of interest policy of ____ Trailhead or ____ Contractor [check one] will apply. If applying its own financial conflicts of interest policy, by execution of this Agreement, Contractor certifies that its policy complies with 42 CFR Part 50. Contractor will disclose any known or perceived conflicts of interest to Trailhead immediately.
- e. **Clean Air Act and Federal Water Pollution Control Act.** Contractor will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

Schedule 2
Prime Federal Award