**PROFESSIONAL SERVICES AGREEMENT**

This **PROFESSIONAL SERVICES AGREEMENT** (this "**Agreement**"), dated as of {{the effective date}}, is by and between {{Service Provider}}, a {{type of the company}}, with offices located at {{service provider address}} (address), and {{the client details}} , a {{client type of company}}, with offices located at {{address of the client}}.

**Services**. Service Provider shall provide to Client the services (the **"Services"**) set forth in the annexed **Exhibit A**. Service Provider shall provide the Services (a) in accordance with the terms and conditions set forth in this Agreement; (b) using personnel of required skill, experience, licenses, and qualifications; (c) in a timely, workmanlike, and professional manner; (d) in accordance with the highest professional standards in Service Provider's field; and (e) to the reasonable satisfaction of Client. Nothing in this Agreement shall prevent Client from performing for itself or acquiring from other providers the same or similar services, nor prevent Service Provider from providing the same or similar services to other Clients (subject to confidentiality and intellectual property obligations set forth below). Service Provider shall not subcontract the Services without Client's prior written consent. Any changes to the scope of Services must be agreed by the parties in a written amendment in accordance with 12.7.

**Client's Obligations**. Client shall (a) provide Service Provider with access to Client's premises, office accommodation, and other facilities as may reasonably be required by Service Provider for the purposes of performing the Services; (b) respond promptly to any Service Provider request for information or approvals, subject to Client's reasonable discretion, that Service Provider requires to perform the Services.

## Term and Termination.

* 1. **Term; Renewal**. This Agreement shall commence as of the Effective Date and shall continue thereafter for a period of twelve (12) months, unless sooner terminated pursuant to this 3. Client may renew this Agreement for additional twelve (12) month terms by providing written notice of its intent to renew at least ninety (90) days prior to the end of the then-current term (each a **"Renewal Term"** and together with the Initial Term, the **"Term"**). The terms and conditions of this Agreement during any Renewal Term shall be the same as those in effect at the time of renewal. If Client fails to provide/ timely notice of its intent to renew this Agreement, then this Agreement shall terminate on the expiration of the then-current Term, unless sooner terminated as provided in this Section 3.
  2. **Termination for Convenience**. Client in its sole discretion, may terminate this Agreement, in whole or in part, at any time without cause, by providing at least ten (10) days' prior written notice to Service Provider.
  3. **Termination for Cause**. Either party may terminate this Agreement, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party (a) breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within fourteen (14) days after receipt of written notice of such breach; (b) becomes insolvent; (c) admits its inability to pay its debts generally as they become due; (d) becomes subject to any bankruptcy proceeding which is not dismissed or vacated within ninety (90) days days after filing; (e) is dissolved or liquidated; (f) makes a general assignment for the benefit of creditors; or (g) has a receiver, trustee, custodian, or similar agent appointed by court order to take charge of or sell any material portion of its property or business.
  4. **Effects of Termination or Expiration**. Upon expiration or termination of this Agreement for any reason, (a) Service Provider shall: (i) deliver to Client all documents, work product, and other materials, whether or not complete, prepared by or on behalf of Service Provider in the course of performing the Services; (ii) return to Client all Client-owned property, equipment, or materials in its possession or control; (iii) remove any Service Provider-owned property, equipment, or materials located at Client's locations; and (iv) provide reasonable cooperation and assistance to Client upon Client's written request in transitioning the Services to an alternate service provider; and (b) each party shall return to the other party or destroy, at the other party's discretion, all documents and tangible materials (and any copies, physical or electronic) containing, reflecting, incorporating or based on the other party's Confidential Information and certify in writing

that it has done so; provided, however, that Client may retain copies of any Confidential Information of Service Provider incorporated in the Deliverables or to the extent necessary to allow it to make full use of the Services and any Deliverables.

* 1. **Survival**. The rights and obligations of the parties set forth in this 3.5 and 3.4, 5, 6, 7, 8, 10, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

## Fees and Expenses; Payment Terms.

* 1. **In General**. In consideration of the provision of the Services by the Service Provider and the rights granted to Client under this Agreement, Client shall pay the fees as follows:
     1. **Professional Services Fee**. The Professional Services Fee shall be $250,000.00, which shall be paid to Service Provider in equal bi-weekly installments of $9,615.38.
     2. **EOS Reimbursement**. Client shall pay for Service Provider’s first year of Entrepreneurial Operating Systems (EOS) Worldwide Training and Franchise fees of $50,000. ($35,000.00 – setup/bootcamp + $1,200/mos for twelve (12) months), provided Service Provider meets the conditions set forth in Exhibit A.
  2. **Invoicing and Payment**. Service Provider shall issue invoices to Client as indicated in the Exhibit for fixed price Services. Each invoice shall also include a detailed breakdown of reimbursable expenses incurred in connection with the applicable Services. Client shall pay all properly invoiced amounts due to Service Provider as set forth in this Agreement and the attached Exhibit A. All payments hereunder shall be in US dollars and made by check or wire transfer.
  3. **Taxes**. Client shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Client hereunder except for any taxes imposed on, or with respect to, Service Provider's income, revenues, gross receipts, personnel, or real or personal property or other assets.

## Intellectual Property.

* 1. Except as set forth in 5.2, all intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, **"Intellectual Property Rights"**) in and to all documents, work product and other materials that are delivered to Client under this Agreement or prepared by or on behalf of Service Provider in the course of performing the Services (collectively, the **"Deliverables"**) shall be owned exclusively by Client. Service Provider agrees and will cause its Service Provider personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for Client. To the extent that any of the Deliverables do not constitute a "work made for hire," Service Provider hereby irrevocably assigns and shall cause its personnel to irrevocably assign to Client all Intellectual Property Rights worldwide in the Deliverables. The Service Provider shall cause its personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such Service Provider personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables.
  2. All Intellectual Property Rights in all documents, data, know-how, methodologies, software, and other materials provided by or used by Service Provider in performing the Services and developed or acquired by the Service Provider prior to this Agreement (collectively, "**Pre-Existing Materials"**) shall be owned exclusively by Service Provider and its licensors. Service Provider hereby grants Client a perpetual, fully paid-up, royalty-free, non-transferable (except in accordance with 12.5), non-sublicensable, worldwide, non-exclusive license to use, display, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell and otherwise exploit] any Pre-Existing Materials to the

extent incorporated in or otherwise necessary for the use of the Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by Service Provider.

## Confidential Information.

* 1. All non-public, confidential or proprietary information of either party (**"Confidential Information"**), including, but not limited to, information about such party's business affairs, products, services, methodologies, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"), whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, or otherwise learned by the Receiving Party in connection with this Agreement, and whether or not marked, designated, or otherwise identified as "confidential," is confidential, solely for use in performing this Agreement and may not be disclosed or copied unless authorized by the Disclosing Party in writing. The Receiving Party shall protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of the Receiving Party's breach of this Agreement; (b) is obtained by the Receiving Party on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; (c) the Receiving Party establishes by documentary evidence, was in its possession prior to the Disclosing Party's disclosure hereunder; (d) was or is independently developed by the Receiving Party without using any of the Disclosing Party's Confidential Information; or (e) is required to be disclosed under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction.
  2. The Receiving Party shall be responsible for any breach of this Section 6 caused by any of its employees, contractors, agents, or representatives. At any time during or after the term of this Agreement, at the Disclosing Party's written request, the Receiving Party shall promptly return, and shall require its Representatives to return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Each party's obligations under this 6 will survive termination or expiration of this Agreement for a period of three (3) years, except for Confidential Information that constitutes a trade secret under any applicable law, in which case, such obligations shall survive for as long as such Confidential Information remains a trade secret under such law.

## Representations and Warranties.

* 1. **Mutual**. Each party represents and warrants to the other party that: (a) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder; and (b) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
  2. **Service Provider**. Service Provider represents and warrants to Client that: (a) it shall perform the Services in a professional and workmanlike manner in accordance with best industry standards for similar services and in compliance with all applicable laws, and shall devote adequate resources to meet its obligations under this Agreement; (b) the Services and Deliverables shall conform in all material respects with the specifications and will be performed to Client's reasonable satisfaction; and (c) to Service Provider's knowledge the Services and Deliverables, and Client's use thereof, do not and will not infringe any Intellectual Property Right of any third party.
  3. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, (A) EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND (B) SERVICE PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

## Indemnification.

* 1. **General**. Each party (**"Indemnifying Party"**) shall indemnify, defend, and hold harmless the other party and its officers, directors, employees, agents, affiliates, successors, and permitted assigns] (**"Indemnified Party"**) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and costs, incurred by Indemnified Party (collectively, **"Losses"**), arising out of or resulting from any claim of a third party arising out of or occurring in connection with: (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from Indemnifying Party's willful, fraudulent or grossly negligent acts or omissions; or (b) Indemnifying Party's negligence, willful misconduct, or breach of this Agreement, including but not limited to breach of any representation or warranty made by Indemnifying Party in this Agreement.
  2. **Intellectual Property Infringement**. Service Provider shall defend, indemnify, and hold harmless the Client Indemnitees from and against all Losses based on a claim that any of the Services or Deliverables or Client's receipt or use thereof infringes any Intellectual Property Right of a third party; provided, however, that Service Provider shall have no obligations under this 8.2 with respect to claims to the extent arising out of

(a) any instruction, information, designs, specifications, or other materials provided by Client in writing to Service Provider; (b) Client's use of the Deliverables in combination with any materials or equipment not supplied to Client or specified by Service Provider in writing; or (c) any modifications or changes made to the Deliverables other than by Service Provider.

**LIMITATION OF LIABILITY**. EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT, INDEMNIFICATION OBLIGATIONS, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR: (A) ANY LOSS OF USE, REVENUE, OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) DIRECT DAMAGES OF MORE THAN ONE AND A HALF TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**Insurance**. During the Term and for a period of one (1) year after expiration or termination of this Agreement for any reason, Service Provider shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers, that includes, but is not limited to: (a) Commercial General Liability with limits no less than $2,000,000.00 per occurrence and 5,000,000.00 in the aggregate, including bodily injury and property damage and products and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Service Provider under this Agreement; (b) Worker's Compensation with limits no less than the minimum amount required by applicable law; and (d) Errors and Omissions/Professional Liability with limits no less than $2,000,000.00 per occurrence and $5,000,000.00 in the aggregate. Upon Client's request, Service Provider shall provide Client with a certificate of insurance from Service Provider's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Client as an additional insured. Service Provider shall provide Client with ten (10) days' advance written notice in the event of a cancellation or material change in Service Provider's insurance policy. Except where prohibited by law, Service Provider shall require its insurer to waive all rights of subrogation against Client's insurers and Client or the Indemnified Parties.

**Force Majeure**. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from events outside of the party's reasonable control (**"Force Majeure Events"**), including but not limited to: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities. The affected party shall resume performance under this Agreement as soon as reasonably practicable after the Force Majeure Event has been resolved or terminated.

## Miscellaneous.

* 1. **Independent Contractors**. The parties are independent contractors, and nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between them. Neither party shall be authorized to contract for or bind the other party in any manner whatsoever.
  2. **No Publicity**. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other party.
  3. **Notice**. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party; and (b) if the party giving the Notice has complied with the requirements of this Section.
  4. **Entire Agreement; Order of Precedence**. This Agreement, together with all Schedules and Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule or Exhibit, then the terms of this Agreement shall control unless expressly set forth otherwise in the applicable Schedule or Exhibit.
  5. **Assignment**. Neither party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement, including by operation of law, change of control, or merger, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
  6. **No Third-Party Beneficiaries**. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.
  7. **Amendment and Modification; Waiver**. This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each party hereto. No failure to exercise any rights, remedy, power or privilege (**"Right(s)"**) arising from this Agreement shall operate or be construed as a waiver thereof. No single or partial exercise of any Right hereunder precludes any other or further exercise thereof or the exercise of any other Right.
  8. **Severability**. No invalidity, illegality, or unenforceability of any provision herein in any jurisdiction, shall affect any other term or provision of this Agreement or invalidate or render such provision unenforceable in any other jurisdiction. If any provision is determined to be invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.
  9. **Governing Law: Submission to Jurisdiction**. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the state or federal courts in the County of New York, State of New York and each

party irrevocably: (a) submits to the exclusive jurisdiction of such courts; and (b) waives any objection to such courts based on venue or inconvenience; and (c) waives any right to trial by jury. The prevailing Party in any litigation under this Agreement shall be entitled to recover its reasonable attorneys’ fees in addition to any award from the Court.

* 1. **Equitable Relief; Cumulative Remedies**. Each party acknowledges that a breach of 5 (Intellectual Property Rights; Ownership) or 6 (Confidentiality) may cause the non-breaching party irreparable damages, for which an award of damages may not be adequate compensation. In the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief without the need to post a bond, security, or undertaking. Except as expressly set forth in this Agreement, the right and remedies under this Agreement are cumulative and in addition to any other rights or remedies available at law or in equity or otherwise.
  2. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

**UP THERE GROWTH, LLC**

By Name:

Title:

**THRIVEABILITY, LLC**

By Name:

Title:

1. **Implementation Transition**

**EXHIBIT A SERVICES**

* + Service provider shall take over implementations of existing Thriveability Clients, and proceed to create a business model for Thriveability to build a team of multiple EOSIs.
  + Six (6) Thriveability Implantations to be transitioned to Service Provider

# Customer Portal

* + Create and launch online customer portal, which may include public/private and access tier based content for general users, clients only, and client specific content.

# EOS Infuse Program

* + Create and take to market an offering that will further infuse EOS concepts and tools into companies, with 4 companies signed up for 6 month terms by the end of 2023.
  + In depth review of ALL existing accounts to see where each specifically needs help, including direct interviews and/or focus with clients. Find commonalities and tailor solutions around what the critical mass needs.
  + Potentially involve other well-established EOSIs in the research portion
  + Explain/Educate FULL Organization on WTH is EOS and its tools.
  + Assist in Seat Change Transitions/Onboard New Hires to “In Process” EOS Implementations
  + Align/Connect/Coach “users” to their organization’s vision/goals

# Thriveability Executive Conferences

* + Organize and run two Thriveability Executive Conferences in 2023

# Thriveability Office Opening

* + Assist in the Opening, oversight, and operatation of new Thriveability office.

1. **Additional Duties** (as further agreed by the Parties)
   * Liase with Chief Financial Officer on the creation and implementation of framework and classification for formal budget and Profit and Loss statements/reports.
   * Start/Host Thriveability Podcast
   * Create Non-Profit Offering (after Infuse)
   * Internal Processes for Exec Admin
   * Oversee Marketing
   * Investment Portfolio - X # of investments on BHAG

# Revenue Share

* + Service Provider shall compensate Thriveability 50% of the first year session fees, for Service Provider’s first 6 clients (not acquired via Thrivaebility).
    - Illustration: For example, if the average per-day rate for the first 6 clients Service Provider acquires is $5,000, and $25,000 annual for 5 sessions, Service Provider would compensate Thrivability $2,500 for each of those days, $12,250 for the first year, for Service Provider first 6 clients.
    - Thrivability and Service Provider will agree upon attainable goals for the 2023 year from the Integrator/Implementation Apprentice role (X number of implementations taken over, Y number of users/companies in "Infuse" offering) prior January 1, 2023 and to be revisited/revised/reconfirmed on April 1, 2023. If on January 1, 2024 80% of those goals have NOT been met, Service Provider agrees to reimburse Thrivability for the first year EOS fees in full ($50,000), no later than January 1, 2025.