

WELLNESS PROGRAM SERVICES AGREEMENT

THIS PROGRAM SERVICES AGREEMENT (this "Agreement") is entered into as of November 18, 2024 (the "Effective Date") by and between GoPivot Solutions, LLC, a Delaware limited liability company ("Company" or "GoPivot"), with its principal place of business at 3565 Piedmont Road, Building 2, Suite 170, Atlanta, GA 30305, and The City of Smyrna ("Client"), a municipality in the state of Georgia with FEIN of 58-6000664 and with its principal place of business at 2800 King St. SE, Smyrna, Ga 30080. GoPivot and Client may be referred to as the "Party" or collectively "Parties".

WHEREAS, Client desires to implement a program for its employees intended to promote certain wellness and other goals and to recognize and reward its employees for their progress in meeting these and other Client goals (the "Rewards Program"); and

WHEREAS, GoPivot offers certain services designed to effectively implement the Rewards Program, including Consulting Services, Hosting Services, Reporting Services, and Fulfillment Services, and Fitness and Nutrition Services.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

- 1. Notices.** All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by USPS return receipt requested or personal delivery by nationally recognized overnight mail private carrier to the mailing address listed below:

If to GoPivot:

GoPivot Solutions, LLC
3565 Piedmont Road
Building 2, Suite 107
Atlanta, GA 30305
Attention: Timothy R. Robinson

If to Client:

The City of Smyrna
2800 King St. SE
Smyrna, Ga 30080

2. TERM AND TERMINATION

2.1 Term. This Agreement shall continue for a term of one (1) year beginning on the Commencement Date (the "Initial Term"). Thereafter this Agreement shall renew for successive one (1) year terms (each a "Renewal Term") unless one party gives notice to the other party at least ninety (90) days prior to the end of the then-current term that this Agreement shall not renew.

2.2 Termination. Either Party may terminate this Agreement upon thirty (30) days prior written notice if the other Party breaches one of the provisions or warranties of this Agreement and fails to correct such breach within thirty (30) days following receipt of written notice specifying the breach. Should Client breach this Agreement for failure to pay fees set forth in **Exhibit B**, GoPivot may terminate this Agreement upon thirty (30) days written notice. After year one of the Initial Term, either Party may terminate this Agreement at any time upon ninety (90) days prior written notice. Such notice shall apply to all individual Reward Programs maintained under this Agreement.

2.3 Effect of Termination. If this Agreement is terminated by Client pursuant to Section 2.1 or 2.2 hereof, GoPivot agrees to continue to provide Fulfillment Services for a period of sixty (60) days, after which time the Awards Points shall expire. If this Agreement is terminated for any other reason, including if this Agreement is terminated for Client's failure to pay the fees due under this Agreement, the Awards Points shall expire immediately. Notwithstanding the foregoing, the parties' rights and obligations under Sections 7, 8 and 9 shall survive termination of this Agreement.

3. PAYMENT PROVISIONS

3.1 Invoicing and Payment. Client agrees to pay the Fees for the Rewards Program as set forth in **Exhibit B**. Invoices for payment of fees will be sent electronically and shall be payable by Client within thirty (30) days of receipt.

3.2 Taxes. GoPivot shall be responsible for any applicable taxes related to the Products delivered to Program Participants in connection with GoPivot's Fulfillment Services hereunder. Client shall be responsible for payment of any taxes which may now or hereafter be levied on the services provided hereunder or the payments made by Client under this Agreement. Notwithstanding the foregoing, taxes or similar liabilities chargeable against the income or gross receipts of either Party shall be paid by such Party against whose income such liabilities are chargeable.

4. REWARDS PROGRAM RESPONSIBILITIES

4.1 Rewards Program Development, Launch and Implementation. Each Party agrees to use commercially reasonable efforts to fulfill their respective duties and responsibilities set forth in the Rewards Program Specifications described in **Exhibit A**.

4.2 Client Systems. Client agrees that Client shall be responsible for providing and maintaining at Client's location Client's own internet access and all necessary equipment, software and other materials needed to access the System and Website through the internet.

4.3 GoPivot Systems. GoPivot agrees to provide and maintain at GoPivot's location the hardware, proprietary software, third party software, and required upgrades needed to provide GoPivot's Hosting Services, and Fulfillment Services, as described in the Rewards Program Specifications set forth in **Exhibit A**.

4.4 Documentation. GoPivot agrees to provide Rewards Program Documentation for use by Client and Program Participants. GoPivot agrees to provide an offering of Products available for Program Participants through GoPivot's Fulfillment Services to redeem Program Participant's properly earned Award Points.

5. ACCESS TO SYSTEM, WEBSITE AND REWARDS PROGRAM CONTENT

5.1 License. Subject to the terms and conditions set forth herein, GoPivot hereby grants to Client and Client hereby accepts a non-exclusive, royalty-free, limited, worldwide license (the "License") to use the System, Website and Work Product for use of Client only in connection with the Rewards Program only during the Initial Term and any Renewal Term of this Agreement. Any use by Client, Program Participants or any other entity of the System, Website or Work Product outside the License expressly granted herein is prohibited.

5.2 Sub-License. The License granted hereunder is sub-licensable only to the extent that Client shall have the right to allow Client's third-party agents to access the System and Website solely for Client's internal use purposes as contemplated by this Agreement so long as Client has entered into a confidentiality agreement with such agents or such agents are otherwise bound by confidentiality with respect to the access and use of such System and Website.

5.3 Online Terms of Use. Client agrees to abide by and the License granted hereunder is subject to the online terms of use of the System and Website as such online terms of use may be posted on such System and Website at the time of use.

6. REWARDS PROGRAM PARTICIPATION

6.1 Use of the Rewards Program. The Rewards Program is provided for the personal use of the Program Participants only and are not to be used for commercial purposes of any party other than Client. Client shall not provide access to the Website to anyone other than its eligible Program Participants.

6.2 Program Participant Disclaimer and Waiver. Each Program Participant must agree to the Health and Exercise Disclaimer in the Website's online terms of use prior to using the Rewards Program. For Client's protection, as part of the process of subscribing to the Rewards Program, GoPivot requires that the Program Participants agree to a waiver of any claims or liability against Client for any injury or illness that may occur out of their use of the Rewards Program or other recommendations, instructions and advice provided through the Rewards Program. In the signup process (and in the Website's online terms of use) GoPivot may also include standard disclaimers and warnings advisable for health or fitness programs generally.

6.3 Employees Who Cannot Participate Due to Health or Other Concerns. For Program Participants who cannot, or do not wish to, perform certain of the activities involved in the Rewards Program, the online profile portion of the Rewards Program will allow the Program Participant to indicate this and to indicate which of the basic activities they cannot or do not wish to perform. The Rewards Program may provide, if requested, a simple form a Program Participant may elect to have signed by their doctor to substantiate a claim of disease or injury if the Client requires substantiation. This option and form is intended to assist the Client in providing reasonable accommodations to and allowing participation by employees who may suffer from disability, disease, injury or other cause interfering with their ability to perform

certain activities. It is the Client's sole responsibility to comply with all applicable federal and state laws, rules and regulations applicable to corporate wellness programs including when and how employees can be required to participate or rewarded for participation and results in programs such as the Rewards Program.

7. WARRANTIES, LIMITATION OF LIABILITY

7.1 Product Warranties. GoPivot agrees to provide manufacturer pass-through warranties, as applicable, for the Products provided to the Program Participants through the Fulfillment Services. During the term of this Agreement, GoPivot warrants (i) that GoPivot will not take any action to limit the warranties provided by the manufacturer of the Products, (ii) GoPivot has good and clear title to the Products, and (iii) that the Products shall be provided to the Program Participants, free from all liens, claims and encumbrances.

7.2 Hosting Services Warranty. GoPivot warrants that, during the term of this Agreement, the Hosting Services will be performed in a professional and workmanlike manner by qualified personnel and without unreasonable unscheduled System downtime.

7.3 System Security. GoPivot agrees to implement security procedures which are customary in the industry for such services as an "ASP" providing similar services. If any Program Participants are found to have breached or attempted to breach and/or defraud the GoPivot System, Website or Terms of Use, Client warrants that Client will reimburse GoPivot for any losses incurred through such breach or fraud by Program Participants.

7.4 No Guarantee of Results. GoPivot does not guarantee or warrant: (i) that Program Participants will continue active participation in the Rewards Program, (ii) that the Rewards Program will achieve or meet any standards or criteria upon which insurers or other vendors or providers of Clients have agreed to provide discounts, refunds, additional services or other consideration for such participation.

7.5 Disclaimer of Other Warranties. EXCEPT FOR THE WARRANTIES SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, TITLE, AND NON-INFRINGEMENT.

7.6 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. CONFIDENTIALITY, NONDISCLOSURE AND INTELLECTUAL PROPERTY

8.1 Confidentiality. In the course of their relationship, the parties may disclose to each other written or electronically communicated or stored information under this Agreement which they deem confidential ("Confidential Information"). Accordingly, the parties hereby agree as follows: (A) each party shall not disclose Confidential Information to any other person, firm or corporation except as provided herein, and shall use the same degree of care to avoid publication or dissemination of such Confidential Information as they employ with respect to

their own information which they do not desire to have published or disseminated; (B) each Party shall not use any Confidential Information except to the extent necessary to fulfill its obligations under this Agreement; and (C) at the conclusion of this relationship or upon demand by the other Party, all Confidential Information, including marketing documents, other written notes, diagrams, memoranda, or notes taken by each Party regarding Confidential Information shall be returned to the other Party or, at the request of the other Party, destroyed. The term "Confidential Information" shall not include, and each Party shall have no obligation with respect to, any information which: (i) is already known to it; or (ii) is or becomes publicly known through no wrongful act of it; or (iii) is rightfully received from a third Party without restriction and without breach of this Agreement; or (iv) is independently developed by it; or (v) is approved for release by written authorization of the other Party.

8.2 Nondisclosure of Client Data. GoPivot acknowledges and agrees that all information with respect to Client and its Program Participants that is disclosed during use of the Hosting Services shall remain the property of Client ("Client Data"), and that GoPivot has only a limited right to use the Client Data as follows: (a) GoPivot may access and disclose the Client Data solely as necessary to provide use of the Hosting Services to Client and the Program Participants under this Agreement, (b) to operate and maintain its Systems, (c) to comply with applicable laws and government orders, and (d) to fulfill or enforce GoPivot's rights or obligations under this Agreement. All such use of the Client Data shall be subject to the confidentiality requirements set forth in this Agreement.

8.3 Intellectual Property. Client agrees that the Website, the System, the Software, the Documentation and the Work Product including but not limited to all text, video, audio, sound, graphics, software, information and other content made available on the Website, and other correspondence, and the "look and feel" of such materials (collectively, the "Intellectual Property"), are protected by applicable intellectual property laws, including but not limited to copyright. Client agrees that Client will not use such Intellectual Property in any way whatsoever except for use of the Rewards Program as contemplated herein. Client agrees that it shall not reproduce in any form or by any means any portion of the Intellectual Property except as is expressly permitted by this Agreement. Client is granted no right or license with respect to any trademarks, registered trademarks or service marks. GoPivot represents and warrants to Client that it owns, or has the rights to: (i) utilize all Intellectual Property and (ii) to provide the rights to use such Intellectual Property to Client and the Program Participants in connection with the Rewards Program, and that such use will not violate or infringe the patent, copyright or trademarks of any third party. To the extent that any third party claims that Client's participation in the Rewards Program violate or infringe such third party's intellectual property rights, GoPivot will at GoPivot's option either (i) alter the Program and/or the Content so as to allow them to be continued to be used with substantially the same functionality and results without infringing such third party's intellectual property rights, (ii) obtain a license to utilize such rights or (iii) allow the Client to terminate the Rewards Program with a refund of amounts paid for any unused portions or term of the Rewards Program.

9. GENERAL TERMS

9.1 Compliance with Laws. Each Party agrees that it shall comply with all applicable laws and regulations.

9.2 Transfer and Assignment. Except as otherwise set forth, the Client may not transfer or assign, by operation of law or otherwise, this Agreement to any other entity without the prior written consent of GoPivot, and any such attempt shall be void.

9.3 Governing Law. This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the laws of the State of Georgia, without regard to the conflict of law principles or regard to the United Nations Convention on Contracts for the International Sale of Goods and shall be deemed to be executed in Atlanta, Georgia.

9.4 Dispute Resolution and Arbitration. The parties agree to meet and confer in good faith through informal discussions to resolve any disputes with respect to this Agreement. If the parties are unable to resolve a dispute through such discussions, the parties agree that any such unresolved dispute shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. All such arbitration proceedings shall take place in Atlanta, GA. Any award entered by the arbitrator(s) shall be final and binding and judgment upon such award may be entered in any court having jurisdiction thereof. The fees and expenses of the arbitration and arbitrator(s) shall be borne equally by the parties. Each Party shall pay its own fees and costs relating to any arbitration proceedings, including attorneys' fees.

9.5 Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect. Headings in this Agreement and any Exhibit hereto are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.

9.6 Waiver. The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

9.7 Relationship Between the Parties. GoPivot is an independent contractor; nothing in the Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

9.8 Force Majeure. No Party shall be liable for any default or delay in the performance of its obligations under this Agreement if such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God or any other cause beyond the reasonable control of such Party (provided the non-performing Party is without material fault in causing such default or delay). The non-performing Party shall be excused from performance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its commercially reasonable efforts to recommence performance. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two (2) business days of the inception of such delay) and describe in reasonable detail the circumstances surrounding such delay.

9.9 Definitions. The definitions set forth in this Section 9.9 shall apply to this Agreement. Capitalized terms used in this Agreement and not defined in Section 9.9 shall have the meaning ascribed to such term within the applicable provision hereof.

- a. **"Award Points"** shall have the meaning set forth in **Exhibit A**.
- b. **"Commencement Date"** shall have the meaning set forth in **Exhibit A**.
- c. **"Documentation"** shall mean the written and online collateral describing the Rewards Program for use by Program Participants as more particularly described in **Exhibit A**.
- d. **"GoPivot Services"** shall mean the services provided by GoPivot in connection

with the Rewards Program as more particularly described on **Exhibit A**, and include "Consulting Services," Hosting Services," "Reporting Services," and "Fulfillment Services" each as defined in **Exhibit A**.

- e. **"Effective Date"** shall have the meaning set forth in the initial paragraph hereof.
- f. **"Products"** shall mean the products that Program Participants can redeem for Award Points as described in **Exhibit A**.
- g. **"Program Participants"** shall mean the participants that Client shall designate as authorized to earn Award Points.
- h. **"Program Manager"** shall mean the person or persons authorized by the Client to access the System on behalf of the Program Participants.
- i. **"Software"** shall mean the computer software known as "gTrack" or GoPivot's platforms in object code form, owned by GoPivot and used by GoPivot to deliver the Hosting Services.
- j. **"System"** shall mean that part of GoPivot's computer hardware and operating systems, including servers and other equipment, proprietary software (including Mobile App) and third party licensed software used and maintained by GoPivot which GoPivot designates available for Client and Program Participants to access as part of the GoPivot's services under this Agreement.
- k. **"Website"** shall mean that portion of GoPivot's website which GoPivot designates available for Client and Program Participants to facilitate the Rewards Program contemplated under this Agreement and may include a private-label website as mutually agreed between the parties as contemplated in **Exhibit A**.
- l. **"Work Product"** shall mean all HTML files, Java files, graphics files, data files, technology scripts and programs, both in object code and source code form, all documents, Documentation, Rewards Program content and any other deliverable prepared for Client by GoPivot in accordance with the terms of this Agreement.

9.10 Entire Agreement. This Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.

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

GoPivot Solutions, LLC:

CLIENT:

BY: _____

BY: _____ (signature)

NAME: Timothy R. Robinson

NAME: Derek Norton

TITLE: Chief Financial Officer

TITLE: Mayor

EXHIBIT A

REWARDS PROGRAM SPECIFICATIONS

1. REWARDS PROGRAM DEVELOPMENT, LAUNCH AND IMPLEMENTATION. GoPivot and Client agree to work together to develop the components of Client's Rewards Program, as follows:

1.1 Timeline. The Rewards Program launch date to Program Participants will be January 1, 2025, or as soon as administratively feasible thereafter (the "Commencement Date").

1.2 Define Metrics and Award Point Levels. GoPivot will work with Client as directed by Client's Program Manager to compile the initial set of employee metrics intended to meet Client's goals for Program Participant behaviors and determine appropriate Award Point levels for the Rewards Program designed to incent the desired Program Participant behaviors. An "Award Point" is a scoring mechanism denoting accomplishment of Client-desired behaviors. The number of Award Points granted is determined in accordance with the Program Guide. An Award Point has no cash value. Accumulated Award Points may be redeemed by active Program Participants for the Products and other incentives depicted in the on-line virtual marketplace.

1.3 Documentation Development. GoPivot will consult with Client to develop a Program Guide (the "Program Guide") that accurately and correctly communicates the Rewards Program criteria and Award Point level for each metric. GoPivot will be responsible for making any necessary updates or corrections to the Program Guide and present it for approval and distribution by the Program Manager. GoPivot will provide an on-line virtual marketplace listing available Products for which the Program Participants may redeem their Award Points.

1.4 Website Functionality. On or before the Commencement Date, GoPivot will make available to Client a password-protected Website and System with the functionality that meets the mutually agreed goals of the Rewards Program, which may include: private-label website; self-reporting functionality for Program Participants to report on behavior metrics; tracking of Rewards Program metrics; and an on-line points page stating the current number of points available for redemption, activities completed, and redemptions made.

1.5 Website Access. Mutually agreed upon communications with registration credential instructions will be sent to all Program Participants. During registration, Program Participants will choose their unique username and password. Thereafter, passwords can be changed by the Participant or GoPivot with proper authorization from the applicable Program Participant.

1.6 Activate Program Participant's Award Points accounts. GoPivot will set up and activate Awards Points accounts for those Client employees designated by Client as Program Participants.

1.7 Earning and Tracking Award Points. Program Participants will earn Award Points as specific objectives are achieved for each metric of the Reward Program. GoPivot's proprietary software will be used to process results and award points on a monthly basis based on the approved measures and award levels which will be set forth in the Program Guide.

1.8 Redemption of Award Points. Program Participants with “active and valid” Award Points accounts may redeem their Award Points for Products and other incentives offered in the on-line virtual marketplace until such Awards Points expire in accordance with Section 2.3 of the Agreement. Provided, however, Program Participants that terminate from the Rewards Program during the term of this Agreement shall have thirty (30) days to redeem all Award Points which have been awarded but which have not yet been redeemed so long as this Agreement remains in effect during such extended redemption period; at the end of such extended redemption period, all unredeemed Awards Points shall expire.

1.9 Reporting. Client’s Program Manager will have on-line access to a reporting portal where real time and historical reports are available. Program Participants will have access to their accounts via the System whereby they can see their Award Points activity.

2. CLIENT RESPONSIBILITIES

2.1 Designate Program Manager. Client shall designate a representative who shall coordinate and manage the Rewards Program on behalf of the Client. Client may replace the Program Manager, from time to time during the term of this Agreement, by providing GoPivot with written notice of the replacement Program Manager.

2.2 Designate Initial Program Participants. Client shall deliver to GoPivot in a mutually acceptable format in accordance with the timeline developed in section 1 above, those designated Client employees who will be Program Participants with an “active and valid” Award Points account. An “active and valid” Award Points account refers to Program Participants who meet Client’s criteria for Rewards Program participation and Award Point redemption as of the date of GoPivot’s receipt of any given redemption request.

2.3 Regularly Update Program Participant List. Client shall provide to GoPivot in a mutually acceptable format updates to its Program Participants by the 5th business day of each month during this Agreement such that Client shall ensure that the Program Participants are only those active employees of Client as of the last day of the month for any given reporting period. Updates may also be provided more frequently.

2.4 Provide Applicable Rewards Program Tracking Data. Client agrees to provide (or make available) to GoPivot program-tracking data in a mutually agreed upon format by the 5th business day of each month for those Reward Program metrics that are not self-reported by Program Participants.

3. GoPivot RESPONSIBILITIES

3.1 Consulting Services. GoPivot will provide consulting services to Client including the following: (A) GoPivot will assist in the development of the Rewards Program, metric determination, and Award Point assignment designed to incent Client-desired behaviors; and (B) GoPivot will provide an on-line Program Guide (in form and substance satisfactory to Client) that informs the Program Participants of how the Rewards Program operates and the benefits provided.

3.2 Hosting Services. GoPivot will provide hosting services to Client including the following: (A) GoPivot will develop and produce a mutually agreed custom program to interface with Client's systems and other tracking systems; (B) GoPivot may provide a mutually agreed private-label website for the Rewards Program available to Client and Program Participants that will maintain all Rewards Program data; (C) GoPivot will maintain Award Points account for each Program Participant and update such account with Award Points earned in accordance with the Rewards Program requirements as set forth in the Program Guide; and (D) GoPivot will use commercially reasonable efforts to adequately maintain, and upgrade as necessary, its software and hardware in order to provide commercially reasonable availability of the System providing the Hosting Services. Should performance issues arise with the System which interrupt the Hosting Services that are determined to be caused by the Internet Service Provider (ISP) that is hosting the GoPivot System, then notwithstanding anything to the contrary set forth in this Agreement, GoPivot agrees to take necessary steps to restore the level of connectivity and performance to industry standard acceptable levels. Performance issues would include the unavailability of the website or the Hosting Services provided by the website for an extended period of time (more than two business days), or degraded application performance such that it was no longer reasonable to expect the Program Participants to access the website and use the Hosting Services for their intended purpose. Should the website be unavailable for any reason, GoPivot shall provide prompt notice to the Program Manager.

3.3 Reporting Services. GoPivot will provide reporting services to Client via an on-line portal where real-time reporting is available on key important data points. Additionally, other historical reports are available that track the progress of the Rewards Program.

3.4 Fulfillment Services. GoPivot will provide fulfillment services to Client including the following: (A) GoPivot will receive and verify the accuracy of requests for Award Point redemptions for Products from Program Participants; (B) for verified orders, GoPivot will order the requested Product for shipment to the Program Participant's home address or the address designated by the Program Participant; (C) for those Products that may be unavailable or discontinued, GoPivot will attempt to contact the Program Participant and discuss any substitute Product and GoPivot will place this substitution order within three (3) business days from approval by the Program Participant of the substitution; (D) shipment of Products will be made within ten (10) business days from the date GoPivot has received the order and will be shipped via commercially reasonable means to meet delivery specifications; (E) if, within 30 days after a Program Participant's receipt of a Product, the Program Participant or Client notifies GoPivot that such Program Participant determines that it does not want the Product or that the Product is defective (such notice, hereinafter the "Return Notification"), GoPivot shall replace the returned, defective or missing Product with new replacement Product and, if no replacement Product is available, with a Product which is equivalent in value and acceptable to Client or the Program Participant (as applicable), with such replacement to take place within twenty (20) days of the Return Notification; and (F) GoPivot shall be responsible for the payment to any third party vendor or the appropriate governmental authorities (as applicable) of all purchase price, sales tax, shipping and other charges associated with Products ordered by the Program Participants. The Program Participants shall not be financially obligated to pay any fees associated with ordering or delivery of the Products (including, without limitation, the cost of the Product itself, transportation, brokerage, duty or taxes).

3.5 Nutrition and Fitness Services.

(a) Online Services. GoPivot will provide online, user-profile-driven exercise and nutrition plans provided on a daily basis, which may be at the Website and on an accompanying mobile Nutrition and Fitness Services application (the “Mobile App”). Program Participants can measure their fitness level through a FitIn, a self-administered fitness assessment involving four components. This fitness assessment allows Program Participants to generate a fitness score (“FitScore”) to benchmark their fitness level against others their age and gender, and to measure improvement over time. After Participants enroll in the Rewards Program and complete their user profile, they will gain access to their corresponding exercise and nutrition plans, as well as GoPivot’s entire library of exercise and nutrition content.

(b) Challenges. GoPivot’s platform provides Program Participants the ability to participate in program-wide challenges. Program Participants may participate as individuals, or members of a team. GoPivot will work with Client to create customize challenges within the existing parameters of the platform.

EXHIBIT B

SCHEDULE OF FEES

- A. **Rewards Implementation Fee:** Promptly upon execution of this agreement, Client shall pay \$2,000.00 for initial Rewards Program implementation.
- B. **Deposit:** Promptly upon execution of this agreement, Client shall pay to GoPivot a deposit in the amount of \$2,000.00 (the "Deposit"). Such Deposit is non-refundable to Client; however the Deposit shall be applied on a pro-rata basis to the first twelve (12) invoices of the Initial Term to Client for Award Points earned.
- A. **Program Charges:** Client will be invoiced at a minimum of \$1,500.00 per month ("Monthly Minimum") until the Award Points issued value exceeds the monthly minimum at which point, for each Program Participant, Client shall pay GoPivot the amount of \$0.01 per each Award Point issued. The Program Charge for each Program Participant will be charged when such Program Participant reaches the specified behavior in the Program Guide (such goals to be set by Client prior to Rewards Program implementation for such Program Participant). GoPivot will invoice Client monthly for all Award Points awarded to Program Participants. Aside from the Monthly Minimum, there will be no Program Charge for any Program Participant who does not achieve designated goals for Awards Points.
- C. **Travel Expenses:** If a GoPivot employee is required to travel to Client's location, Client agrees to reimburse GoPivot for reasonable travel expenses, including without limitation, airfare, lodging, meals, rental car, mileage reimbursement (at the prevailing federal rate) and taxi. Upon request GoPivot shall provide Client a copy of all receipts for which reimbursement is being sought.
- D. **No Consultation Fee:** GoPivot shall not charge Client for any consultation fee in connection with this Rewards Program and hereby waives such fee.
- E. **No Per Employee Per Month (PEPM) Maintenance Fee:** There are no additional fees to Client for on-going maintenance for the term of this Agreement. This includes input and processing of data for new hires, transfers, terminations, as well as criteria updates, point reallocations, rollups, data tracking modifications and employee setups for existing Program Participants.
- F. **Customizations:** Customizations to marketing materials beyond standard configuration options will be scoped and fees will be proposed, based on development time for the project at a rate of \$125/hour. Custom Reporting will have a one-time fee of \$500 per report created. After the report is built, the report can be delivered monthly to the client at no additional cost.

APPENDIX 1

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is effective as of the October 25, 2024 (hereinafter the “Effective Date”) by and between The City of Smyrna (“Client” or “Covered Entity”), on behalf of GoPivot Solutions, LLC (hereinafter “Business Associate”).

WHEREAS, the Department of Health and Human Services (“HHS”) has promulgated regulations at 45 C.F.R. Parts 160-164, implementing the privacy and electronic security requirements set forth in the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“HIPAA”);

WHEREAS, Client may qualify as a “Covered Entity” as defined by HIPAA.

WHEREAS, Business Associate acknowledges that certain provisions of HIPAA have been amended in ways that directly regulate Business Associate’s obligations and activities with respect to Protected Health Information;

WHEREAS, HIPAA provides, among other things, that Covered Entity is permitted to disclose Protected Health Information to Business Associate and allow Business Associate to obtain and receive Protected Health Information, if Covered Entity obtains satisfactory assurances in the form of a written contract that Business Associate will appropriately safeguard the Protected Health Information; and

WHEREAS, Business Associate will create, receive, maintain, or transmit certain Protected Health Information in conjunction with the services being provided by Business Associate to Covered Entity (the “Services”), thus necessitating a written agreement that meets the applicable requirements of HIPAA. Both parties have mutually agreed to satisfy the foregoing regulatory requirements through this Agreement.

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions; Applicability.

(a) All terms not defined herein shall have the meaning ascribed to them in HIPAA.

(b) This Agreement shall apply only to the extent that Business Associate creates, receives, maintains, or transmits Protected Health Information for, to, or on behalf of Covered Entity.

(c) HITECH Act. "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009.

2. Obligations and Activities of Business Associate.

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.

(b) Business Associate agrees to use commercially reasonable and appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware. In event of a Breach of Unsecured Protected Health Information by Business Associate or any of its officers, directors, employees, or subcontractors, Business Associate shall promptly notify Covered Entity in accordance with 45 C.F.R. 164.410.

(d) Business Associate and Covered Entity agree to mitigate, to the extent practicable, any harmful effect that is known to it arising out of a use or disclosure of Protected Health Information in violation of the requirements of this Agreement.

(e) Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agrees to substantially similar restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access to Protected Health Information in a Designated Record Set, in the time and manner Required by Law, to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 C.F.R. 164.524. Business Associate may impose a reasonable cost-based fee for the provision of copies of Protected Health Information in a Designated Record Set in accordance with 45 C.F.R. 164.524(c)(4).

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the time and manner Required by Law.

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate, on behalf of Covered Entity, available to the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with HIPAA.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528 and the HITECH Act.

(j) Business Associate agrees to provide to Covered Entity, upon request and in the time and manner Required by Law, an accounting of disclosures of an Individual's Protected Health Information, collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528. If Covered Entity requests an accounting of an Individual's Protected Health Information more than once in any twelve (12) month period, Business Associate will impose a reasonable fee for such accounting in accordance with 45 C.F.R. 164.528(c).

(k) Business Associate agrees to comply, where applicable, with Subpart C of 45 CFR Part 164 to maintain the security of the Electronic Protected Health Information and to prevent unauthorized uses or disclosures of such Electronic Protected Health Information. Business Associate shall report to the Covered Entity any Security Incident that results in the unauthorized use or disclosure of Protected Health Information of which it becomes aware.

3. Permitted Uses and Disclosures by Business Associate.

(a) Business Associate may use or disclose Protected Health Information to perform its obligations and services to Covered Entity, provided that such use or disclosure would not violate HIPAA if done by Covered Entity.

(b) Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate or as otherwise permitted by HIPAA.

(c) Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity.

4. Covered Entity's Obligations and Permissible Requests.

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. 164.520, as well as any changes to that notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate, in writing, of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522.

(d) Covered Entity warrants and represents that it shall provide to, or request from, the Business Associate only the minimum Protected Health Information necessary for Business Associate to perform or fulfill a specific function required or permitted hereunder.

(e) Covered Entity warrants and represents that it shall notify Business Associate if it receives Protected Health Information not relating to Covered Entity and shall immediately destroy and not further use or disclose such Protected Health Information.

(f) If Protected Health Information is transmitted by electronic transfer or sent in physical media by or on behalf of Covered Entity, Covered Entity shall transmit all such Protected Health Information to Business Associate in an encrypted format, to be mutually agreed by the parties.

(g) Covered Entity represents and warrants that it has the right and authority to disclose Protected Health Information to Business Associate for Business Associate to perform its obligations and provide services to Covered Entity.

(h) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would violate HIPAA, other applicable laws, or Covered Entity's privacy notice, if done by Covered Entity.

5. Term and Termination

(a) Term. The provisions of this Agreement shall take effect as of the Effective Date, and shall continue so long as Business Associate provides the Services.

(b) Termination for Cause. Upon the parties mutual agreement that there has been a material breach by a party which does not arise from any breach by the other party, the non-breaching party shall provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within a mutually agreeable time, or immediately terminate this Agreement if cure of such breach is not possible.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall request, in writing, Protected Health Information that is in the possession of subcontractors of Business Associate.

(2) In the event Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall extend the protection of this Agreement to such Protected Health Information and limit further uses or disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. Miscellaneous.

(a) Regulatory References. A reference in this Agreement to a section in HIPAA means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, the parties agree to negotiate in good faith to amend the Agreement as necessary to comply with such law or regulation.

(c) Survival. The obligations of Business Associate under section 5(c)(2) of this Agreement shall survive the termination of this Agreement.

(d) Interpretation; Entire Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both parties to comply with HIPAA. This Agreement shall be subject to the terms and conditions of any agreements regarding the Services; provided, however, that in the event of any inconsistency or conflict between this Agreement and any agreements regarding the Services, the terms, provisions, and conditions of this Agreement shall govern and control. This Agreement and any agreements regarding the Services constitute the complete agreement between the parties relating to the matters specified in this Agreement, and supersede all prior representations or agreements, whether oral or written, with respect to such matters.

(e) No third party beneficiary. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

(f) Limitation of Liability. In no event shall either party to this Agreement be liable for any indirect, special, incidental, consequential, or punitive damages or for any lost profits arising out of or relating to any services provided by Business Associate or its affiliates. The aggregate liability of Business Associate, its affiliates, and its and their employees arising out of or relating to this Agreement shall be the limit of liability set forth in the underlying Professional Services Agreement between GoPivot Solutions, LLC and Client. This provision applies to the fullest extent permitted by applicable law and to all causes of action, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation, and other torts. It is understood and agreed that for purposes of calculating losses under this provision, such losses shall be net of any Losses under the Professional Services Agreement between Client and GoPivot Solutions, LLC, if applicable.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

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

GoPivot Solutions, LLC

Client:

BY: _____

BY: _____

(signature)

NAME: Timothy R. Robinson

NAME: Derek Norton

TITLE: Chief Financial Officer

TITLE: Mayor