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# MEMO

APPROVED  
7/15/2024



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DATE: July 9, 2024  
FROM: Matney M. Ellis  
Procurement Director  
TO: Board of County Commissioners  
SUBJECT: Agreement – Pension Technology Group LLC (PTG)

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Submitted for your approval and execution is the attached hosting services agreement between the Board of County Commissioners of the County of Tulsa, Oklahoma on behalf of the Tulsa County Clerk and Pension Technology Group LLC (PTG) for access and use of PTG PensionPro Software to assist in developing, maintaining, and hosting a software system for use in connection with the processing and management of retirement system data, as further described in the attached.

Respectfully submitted for your approval and execution.

MME / dcc

SUBMITTED FOR: The July 15, 2024 BOCC meeting agenda.

CMF# 20241362

**PENSION TECHNOLOGY GROUP LLC**

**Hosting Services Agreement**

JUNE 1, 2024

This Hosting Services Agreement (the “Hosting Agreement”) is made effective as of the date written above (the “Effective Date”), by and between **Pension Technology Group LLC**, a Delaware limited liability company, with a principal place of business at 92 State Street, Suite 600, Boston, Massachusetts 02109 (“PTG”), and **Tulsa County Board of Commissioners**, with a principal place of business at 218 West 6th St., 9th Floor, Tulsa, OK 07119 (the “Customer”).

WHEREAS, PTG is engaged in the business of developing, maintaining and hosting a software system for use in connection with the processing and management of retirement system data, as well as providing related maintenance and support services; and

WHEREAS, PTG operates, directly or through third parties retained by PTG, environmentally-controlled data centers that will host certain Software (defined below) for the benefit of the Customer, and will be maintained in accordance with the terms of this Hosting Agreement; and

WHEREAS, the Customer desires to access and use the Software in accordance with the terms of this Hosting Agreement.

NOW, THEREFORE, in exchange for good and adequate consideration that the parties hereby acknowledge as having been received, the parties agree as follows:

**1. Definitions.**

- A. “Annual Fee” shall have the meaning set forth in Section 2(B) of this Hosting Agreement.
- B. “Business Hours” shall mean PTG’s normal business hours (8:30 am to 5:00 pm Eastern Time) on Business Days, or as updated by PTG from time to time.
- C. “Business Days” shall mean Monday through Friday, except for holidays observed by PTG.
- D. “Customer Data” shall have the meaning set forth in Section 9(A) of this Hosting Agreement.
- E. “Customer Equipment” shall have the meaning set forth in Section 3(B) of this Hosting Agreement.
- F. “Force Majeure Event” shall have the meaning set forth in Section 19 of this Hosting Agreement.
- G. “Hosting Environment” shall have the meaning set forth in Section 3(A) of this Hosting Agreement.

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- H. “Hosting Equipment” shall have the meaning set forth in Section 3(A) of this Hosting Agreement.
- I. “Hosting Service Interruption” shall have the meaning set forth in Section 5(A) of this Hosting Agreement.
- J. “Hosting Support Contacts” shall have the meaning set forth in Section 7(C) of this Hosting Agreement.
- K. “Hosting Support Services” shall have the meaning set forth in Section 7(A) of this Hosting Agreement.
- L. “Implementation Fee” shall have the meaning set forth in Section 2(B) of this Hosting Agreement.
- M. “Initial Term” shall have the meaning set forth in Section 11(A) of this Hosting Agreement.
- N. “Network” shall have the meaning set forth in Section 3(A) of this Hosting Agreement.
- O. “Renewal Term” shall have the meaning set forth in Section 11(A) of this Hosting Agreement.
- P. “Scheduled Maintenance” shall have the meaning set forth in Section 6 of this Hosting Agreement.
- Q. “Software” means the standard PTG software program known as PTG PensionPro™ listed in the attached Exhibit A to this Hosting Agreement, together with all additional updates, customizations, implementations, new releases, or other modifications to the Software, if any, accessed and Used by the Customer under this Hosting Agreement.
- R. “Subcontractors” shall have the meaning set forth in Section 2(A) of this Hosting Agreement.
- S. “Term” shall have the meaning set forth in Section 11(A) of this Hosting Agreement.
- T. “Use” means the Customer’s remote access to and operation of the Software through the Network, which Software is hosted by PTG (or its Subcontractors) on a server located at PTG’s or its Subcontractor’s site.

**2. Hosting Services: Hosting Fee.**

- A. PTG shall contract with Subcontractors who have SOC SSAB 16 Certification with appropriate policies and procedures to comply with standards for the protection of personal information of residents of the State of Oklahoma in accordance with 24 Ok Stat. §§24-161 et seq.

- B. Fees. The Customer will pay an annual access and maintenance fee (“Annual Fee”) as set forth in Exhibit B for Use of the Hosting Environment. PTG will invoice the Customer as set forth in Exhibit B. Notwithstanding the foregoing, in the event that this Hosting Agreement is deemed to be assigned by PTG in accordance with Section 18 of this Hosting Agreement during the Initial Term or any Renewal Term, in no event shall the annual price adjustment of the Annual Fee for the first Renewal Term after such deemed assignment exceed five percent (5%) of the Annual Fee set forth on Exhibit B for the immediately preceding year.

**3. Standard Hosting Equipment: Customer Equipment.**

- A. Standard Hosting Equipment. Unless otherwise agreed to in writing by the parties, PTG, at its sole expense, either directly or through Subcontractors, will provide server hardware, server-resident computer software, including without limitation server operating systems and database engines and managers, security and audit functionality, telecommunications or other network communications, and other equipment (collectively, “Hosting Equipment”) and the Software (together with the Hosting Equipment, the “Hosting Environment”) linking the Hosting Environment to the World Wide Web, Internet or other suitable communications services (“Network”) as are commercially reasonable and necessary to provide the Customer with Use of the Software through the Hosting Environment. The Hosting Equipment will at all times be the property of PTG or Subcontractors.
- B. Customer Equipment. The Customer, at its sole expense, will be responsible for providing the equipment, software, operating systems, telecommunications connections and any other materials necessary for the Customer to access the Network (“Customer Equipment”). In the event that PTG plans to change any aspect of the Hosting Environment that will require a change in Customer Equipment, PTG will notify the Customer reasonably in advance thereof, and the Customer will be responsible for purchasing any new Customer Equipment required by any such change.

**4. Service Level Commitment.**

PTG will provide access to the Software for the Customer via the Hosting Environment on a twenty-four hour a day, seven days a week (24X7) basis, except for Scheduled Maintenance as set forth in Section 6 of this Hosting Agreement, and except for any downtime, delays, loss or interruption of hosting services which are caused by telecommunications or Network service providers outside of PTG’s firewall, a Force Majeure Event, or interruptions or failures caused by the Customer or the equipment or facilities utilized by the Customer.

**5. Service Interruptions.**

- A. The Customer will promptly notify PTG via telephone and the PTG issues log (using the telephone numbers and Web address provided by PTG to the Customer) of any unexpected or unscheduled interruption in the ability of the Customer Use the Hosting Environment (“Hosting Service Interruption”). Except for the exceptions to PTG’s service obligations set forth in Section 4 above, PTG will use commercially reasonable efforts to remedy any Hosting Service

Interruption as promptly as possible.

- B. PTG shall not be required to remedy Hosting Service Interruptions resulting from any exceptions to PTG's service obligations listed in Section 4.

**6. Scheduled Maintenance of Hosting Environment and Software Upgrades.**

PTG or its Subcontractors will periodically schedule the complete or partial shutdown of the Hosting Equipment for maintenance, bug fixes, upgrades, or other reasons ("Scheduled Maintenance"). Scheduled Maintenance may occur Monday through Friday from 12:00 a.m. to 6:00 a.m., Eastern Time, on United States Federal holidays, and on weekends. The Customer shall be notified at least twenty-four (24) hours in advance of any Scheduled Maintenance. PTG or its Subcontractors may perform emergency maintenance services at any time during the Term of this Hosting Agreement without prior notice to the Customer.

**7. Hosting Support Services.**

- A. Hosting Support Services. As set forth in Exhibit C, PTG will provide the Customer general support services to help the Customer access the Software ("Hosting Support Services") during the Term.
- B. Hosting Support Hours. PTG will provide Hosting Support Services to the Customer during Business Hours.
- C. Support Contacts. The Customer will identify one primary and one backup contact ("Hosting Support Contacts") for each Customer facility accessing the Hosting Environment. The Hosting Support Contacts shall have sole responsibility for communicating with PTG concerning Hosting Support Services. The Customer may change the identity of the Hosting Support Contacts at any time upon reasonable notice to PTG.

**8. Grant: Restrictions.**

- A. Use Grant: Subject to the terms of this Hosting Agreement, and in consideration of the Customer's obligations under this Hosting Agreement, including without limitation the payment of all fees set forth in this Hosting Agreement, PTG hereby grants to the Customer a non-exclusive, non-transferable right to Use the Software through the Hosting Environment.
- B. Limitations on Use and Access: The Software will be accessible only to directors, officers, employees, and agents of the Customer. PTG will provide the Customer any passwords necessary to access the Hosting Environment.
- C. Restrictions on Use: The Customer shall not use the Software in any manner that is not expressly authorized by this Hosting Agreement or that violates any applicable law. The Customer shall not (i) copy, download, or otherwise reproduce the Software or any other customer's data in whole or in part; (ii) modify, translate, or create derivative works of the Software; (iii) reverse engineer, decompile, disassemble or otherwise reduce the Software to human perceivable form; (iv) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes, or otherwise transfer the Software or the Customer's right to Use the Software; or (v) remove or modify any copyright, trademark, or other proprietary notice of PTG affixed to the media containing the Software or appearing within the Software. PTG

RESERVES ALL RIGHTS NOT EXPRESSLY GRANTED TO THE CUSTOMER UNDER THIS HOSTING AGREEMENT.

- D. Source Code Escrow. Within thirty (30) days of the Customer's final acceptance of the Software, PTG shall deposit the Software source code with Iron Mountain (or other software escrow agent) pursuant to the terms of the source code escrow agreement executed by the parties and the software escrow agent concurrently herewith (the "Source Code Escrow Agreement"). PTG will update the source code after any updates or changes are made to the system.

**9. Customer Data.**

- A. Customer Data. All data supplied by or on behalf of the Customer in connection with the Customer's Use of the Software under this Hosting Agreement shall be defined as "Customer Data." The Customer will be responsible for the accuracy and completeness of all Customer Data provided to PTG. The Customer shall retain exclusive ownership of all Customer Data and such Customer Data shall be deemed to be the Customer's Confidential Information, as set forth in Section 15 of this Hosting Agreement.
- B. Maintenance of Customer Data. PTG will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by PTG. PTG will promptly notify the Customer of any loss, damage to, or unauthorized access of, Customer Data. PTG will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by PTG as a result of its negligence or willful misconduct.

**10. Security Provisions.**

- A. Generally. PTG and its Subcontractors will use commercially reasonable efforts, consistent with industry standards, to provide security for the Software and Customer Data and to protect against both unauthorized access to the Hosting Environment, and unauthorized communications between the Hosting Environment and the Customer's browser. The Customer shall be responsible for maintaining the confidentiality of any passwords and similar authentication mechanisms to which it has access or control. The parties expressly recognize that, although PTG shall take such commercially reasonable steps, or cause such reasonable steps to be taken, to prevent security breaches, it is impossible to maintain flawless security. PTG shall not be responsible for any damage caused by unauthorized destruction, loss, interception, or alteration of any Customer Data by unauthorized persons.
- B. Viruses. PTG represents and warrants to the Customer that the Software and Hosting Equipment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. The first check will take place before first Use by the Customer. PTG or its Subcontractors will regularly update the virus definitions to ensure that the definitions are as up to date as is commercially reasonable. PTG or its Subcontractors will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to the Customer by PTG or a Subcontractor, PTG will promptly notify the Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means PTG and its Subcontractors have used to purge the virus.

- C. PTG and Subcontractor shall provide and maintain standardized security protection mechanism and systems in use by PTG and Subcontractor equivalent to SOC SSAB 16. Certificate with the necessary and appropriate policies and procedures to comply with the standards for the protection of personal information of residents of the State of Oklahoma in accordance with 24 OK Stat. §§24-161 et seq. PTG acknowledges that it is liable to maintain the security and privacy of Customer Data and may be held liable for a breach of its security which results in the improper or unauthorized release of Customer Data.
- 11. Security Incident or Data Breach Notification:** PTG and Subcontractor shall inform Customer of any security incident or data breach.
- A. Incident Response: PTG and Subcontractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law. Discussing security incidents with Customer should be handled on an urgent as needed basis, as part of PTG's and Subcontractor's communication and mitigation processes and mutually agreed upon, defined by law.
  - B. Security Incident Reporting Requirements: PTG and Subcontractor shall report a security incident to Customer identified contact set forth in Exhibit C immediately as defined in Exhibit C of this Agreement.
  - C. Breach Reporting Requirements: If PTG or Subcontractor has actual knowledge of a confirmed data breach that affects the security of any of Customer's Data that is subject to applicable data breach notification law, PTG and Subcontractor shall (1) promptly notify the appropriate Customer identified contact set forth in Exhibit C within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.
- 12. Breach Responsibilities:** This section only applies when a data breach occurs with respect to personal data and Customer Data within the possession or control of PTG and/or Subcontractor.
- A. PTG and Subcontractor, unless stipulated otherwise, shall immediately notify Customer identified contact set forth in Exhibit C by telephone in accordance with the agreed upon security plan or procedures if it reasonably believes there has been a security incident.
  - B. PTG and Subcontractor, unless stipulated otherwise, shall promptly notify Customer identified contact set forth in Exhibit C within 2 hours or sooner by telephone, unless shorter time is required by applicable law, if PTG or Subcontractor confirms that there is, or reasonably believes that there has been a data breach. PTG and Subcontractor shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
  - C. Unless otherwise stipulated, if a data breach is a direct result of PTG and/or Subcontractor's negligence or its breach of its obligations under this Hosting

Agreement, including their failure to encrypt personal data and Customer Data or otherwise prevent its release, PTG and Subcontractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by Oklahoma law; (3) credit monitoring services required by Oklahoma or federal law; (4) a website or toll-free numbers and call center for affected individuals required by Oklahoma law - all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by PTG and Subcontractor based on root cause.

**13. Term: Termination.**

- A. Term. The initial term of this Hosting Agreement shall begin upon the Effective Date and shall extend through one (1) year after the Effective Date. Upon completion of the Initial Term, this Hosting Agreement shall automatically renew annually for additional one-year terms (each a "Renewal Term") or either party provides the other party with written notice of its desire to terminate this Hosting Agreement at least sixty (60) days before the start of any Renewal Term. The period of the Initial Term and all Renewal Terms of this Hosting Agreement shall be referred to collectively as the "Term."
- B. Termination for Default. Either party has the right to terminate this Hosting Agreement if the other party is in default of any material obligation under this Hosting Agreement, which default is incapable of cure, or which, being capable of cure, has not been cured within sixty (60) calendar days after receipt of written notice of such default (or such additional cure period as the non-defaulting party may authorize in writing). In the event of an alleged default of a material obligation that is disputed by one of the parties, such 60-day period shall not begin to run until the dispute is submitted to each party's authorized executive officers pursuant to Section 16(A) and the negotiations under Section 16(A) are unsuccessful in resolving the dispute.
- C. Termination for Acts of Insolvency. Either party may terminate this Hosting Agreement by written notice to the other party, and may regard the other party as in default of this Hosting Agreement, if the other party makes a general assignment for the benefit of creditors, files a voluntary petition for bankruptcy protection, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.
- D. Termination for Convenience: After the Initial Term, the Customer may terminate this Hosting Agreement for convenience upon sixty (60) days advance written notice to PTG, provided that no reimbursement or refund shall be made by PTG to the Customer for any fees paid by the Customer during the Term.
- E. Effect of Termination. In the event this Hosting Agreement is terminated:
  - a. The rights granted to the Customer under this Hosting Agreement will immediately terminate, and at either party's request and option, the other party will either promptly return and provide to the requesting party any



Confidential Information provided under this Hosting Agreement;

- b. PTG will promptly deliver to the Customer a back-up copy of the latest version of the Customer Data that it has on the Hosting Environment. The Customer shall be charged a reasonable service fee for such backup copy, based on time and materials;
  - c. PTG will provide transition services to the Customer in connection with the transfer of hosting of the Software to a third party or to the Customer's site. The Customer shall be charged a reasonable service fee for such services, based on time and materials;
  - d. The expiration or termination of this Hosting Agreement for any reason will not relieve the Customer of its obligation to pay any amount due and owing before the date of expiration or termination and will not affect any other rights or liabilities of the parties which may have accrued before the date of expiration or termination;
  - e. In the event of a termination by Customer prior to the expiration of the Term due to PTG's default under Section 13(B) above and/or Customer's lack of fiscal appropriations for the complete Tenn and, except as otherwise provided in this Hosting Agreement, as Customer's sole remedy for such default, PTG shall promptly refund to Customer the pro-rata portion of the Annual Fee paid by Customer to PTG for the then current year of the Term, calculated by dividing the current Annual Fee by the number of months remaining in the then current year. For the avoidance of doubt, nothing in this Section 13(E)( e) shall be read to relieve PTG or Subcontractor from their obligations under Sections 9, 10, 11, 12, 15 and 17 of this Hosting Agreement;
  - f. In the event that termination of this Agreement is due to PTG's ceasing to operate as a business, becoming insolvent, or the subject of a bankruptcy proceeding, then Customer shall have the option to withdraw the code for the Software pursuant to the terms of the Software Escrow Agreement; and
  - g. Sections 1, 9, 12, 13, 14, 15, 20 and this Section 11(E) shall survive termination.
- F. Customer's Notice Regarding Fiscal Appropriations. In connection with Customer's fiscal appropriation process for the amounts payable under this Hosting Agreement during the Term hereof, Customer shall promptly notify PTG of any failure to obtain the necessary fiscal appropriation to fully fund the fees due PTG hereunder for the remainder of the Term.

#### **14. Warranties and Representations.**

- A. Representations and Warranties of both Parties. Each party represents and warrants that (a) it has the authority to enter into and perform its obligations under this Hosting Agreement, (b) all necessary actions, corporate or otherwise, have

been taken to authorize the execution and delivery of this Hosting Agreement, which constitutes a valid and binding obligation upon each party, subject to applicable laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

- B. Customer Representations and Warranties. The Customer represents and warrants that it shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting Environment:
- a. any information that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, or libelous, or promotes such activity;
  - b. any site information, content or other information or material that infringes any intellectual property rights of any third party, violates any contractual or fiduciary relationships, or is otherwise objectionable to a third party; or
  - c. any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

The Customer further represents and warrants that its shall maintain and store a copy of all Customer Data delivered to PTG during the Term of this Hosting Agreement.

- C. PTG Representations and Warranties. PTG represents and warrants the following:
- a. The product and services provided under this Agreement are designed for processing and management of retirement system data and do not infringe a third party's patent or copyright or other intellectual property rights.
  - b. PTG and Subcontractor will protect Customer's Confidential Information from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own Confidential Information and, in any event, will use no less than a reasonable degree of care in protecting such Confidential Information.
  - c. The execution, delivery and performance of the Agreement and any ancillary documents and the consummation of the transactions contemplated by the Agreement or any ancillary documents by PTG will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between PTG and any third parties retained or utilized by PTG to provide goods or services for the benefit of Customer.
  - d. PTG and Subcontractor shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or though the Hosting Environment any material that contains software viruses, malware or other

surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

D. Exclusions. Notwithstanding any provisions of this Hosting Agreement to the contrary, PTG does not warrant that: (i) the Customer will at all times be able to access the Hosting Environment or (ii) the Customer's access to the Hosting Environment will at all times be uninterrupted or error-free.

E. Disclaimer of Warranties: Except for the express warranties contained in Section 12(A), PTG disclaims any and all representations and warranties, express or implied, with respect to the Software, the Hosting Environment or any facilities or services made available under this Hosting Agreement. PTG specifically disclaims all implied warranties, including without limitation any warranties of title, merchantability or fitness for a particular purpose (irrespective of any previous course of dealing between the parties or custom or usage of trade) or results to be derived from the use of the Software, Hosting Environment or any facilities or services. No representation or other affirmation of fact, including without limitation statements regarding capacity, suitability for use or performance of the Software or the Hosting Environment, whether made by PTG employees or otherwise, which is not contained in this Hosting Agreement, shall be deemed to be a warranty by PTG for any purpose or give rise to any liability of PTG whatsoever.

**15. Indemnity.**

PTG agrees to indemnify and shall hold Customer, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees) (collectively "Damages") (other than Damages that are the fault of Customer) arising from or in connection with PTG's or Subcontractor's breach of its express representations and warranties in Section 14 of this Hosting Agreement. If a third party claims that any portion of the products or services provided by PTG or Subcontractor under the terms of this Agreement infringes that party's patent or copyright, PTG shall defend and indemnify Customer against the claim at PTG's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, Customer, Customer shall promptly notify PTG of any third party claims and to the extent authorized by the Attorney General of Oklahoma, allow PTG to control the defense and any related settlement negotiations. If the Attorney General of Oklahoma does not authorize sole control of the defense and settlement negotiations to PTG, PTG shall be granted authorization to equally participate in any proceeding related to this section but PTG shall remain responsible to indemnify the Customer for all associated costs, damages and fees incurred by or assessed to the Customer. Should the Software become, or in PTG's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated under this Hosting Agreement, PTG may, at its option (i) procure for Customer the right to continue using the Software or (ii) replace or modify the Software with a like or similar product so that it becomes non-infringing. **Sections 15 and 16 state the entire liability of PTG with respect to infringement of third party intellectual property rights by the Software or any part thereof or by its operation whatsoever.**

**16. Limitation of Liability.**

- A. **To the maximum extent permitted by applicable law, PTG will not be liable for any loss of revenue, profits or goodwill or for any special, incidental, indirect, consequential or punitive damages or losses resulting from the Software's or the Hosting Environment's performance or failure to perform pursuant to the terms of this Hosting Agreement, from the furnishing, performance or loss of use of the Software or the Hosting Environment, including, without limitation, from any interruption of business, whether resulting from breach of contract or other legal liability whatsoever, even if PTG has been advised of the possibility of such damages.**
- B. **Notwithstanding anything to the contrary contained in this Hosting Agreement, the maximum aggregate liability of PTG arising out or relating to this Hosting Agreement shall not exceed the total of one year's Annual Fee paid by the Customer.**

**17. Confidentiality.**

- A. Definition of "Confidential Information". By virtue of the Agreement, Customer may be exposed to or be provided with certain confidential and proprietary information of PTG. PTG shall clearly mark any such information as confidential ("Confidential Information"). PTG's placement of a copyright notice on any portion of any Software will not be construed to mean that such portion has been published and will not derogate from any claim that such portion contains proprietary and confidential information of PTG. Customer is a state agency and subject to the Oklahoma Open Records Act (51 OK Stat. §24A) and PTG acknowledges information marked Confidential will be disclosed to the extent required under the Oklahoma Open Records Act and in accordance with this section. The parties acknowledge Customer Data is Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Hosting Agreement; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Hosting Agreement and without other obligations of confidentiality; (iii) is independently developed by the receiving party without the use of any of the disclosing party's Confidential Information; or (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure. In addition, the obligations in this Section 17 shall not apply to the extent that the receiving party is required by law or regulation to disclose the Confidential Information of the disclosing party, provided that the receiving party required to disclose such information provides reasonable written notice pursuant to Section 20 to the disclosing party so that the disclosing party may seek a protective order or other appropriate remedy.
- B. Non-Disclosure Obligations. Each party, including Subcontractor, will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own Confidential Information and, in any event, will use no less than a reasonable degree of care in

protecting such Confidential Information, except that each party may disclose or permit the disclosure of any Confidential Information to its directors, officers, employees, consultants, and advisors who are obligated to maintain the confidential nature of such Confidential Information and who need to know such Confidential Information for the purposes set forth in this Hosting Agreement. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Hosting Agreement. Neither party will disclose to third parties the other's Confidential Information without the prior written consent of the other party, except that either party may disclose the terms of this Hosting Agreement to a potential acquirer or investor who is obligated to maintain the confidentiality of such information.

- C. Remedies for Breach of Confidentiality Obligations. Each party acknowledges that the disclosure of any aspect of any of the Confidential Information of the other may give rise to irreparable injury and may not be adequately be compensated by an award of money damages. Accordingly, either party may seek injunctive relief against the breach or threatened breach of any of the foregoing undertakings by the other, in addition to any other legal remedies which may be available.

**18. Authorized Contact.**

- A. Authorized Contact. During the Term, and at the request of Customer, PTG agrees that it shall name an authorized representative of Customer as an authorized contact with respect to payments under PTG's Subcontractor agreement with Rack:space Hosting, Inc.(the Rackspace Agreement). Such authorized contact shall have the right to make payments under the Rackspace Agreement and continue to access the Software and Customer Data hosted under the Rackspace Agreement solely upon the trigger events and periods of time set forth below and solely in connection with Customer's own Customer Data.
- B. Trigger Events. Customer's authorized representative shall have the right to make payments under the Rack:space Agreement and access the Software and Customer's Data solely in the event that: (i) PTG ceases to do business for a period of three (3) consecutive days at any time during the Term; (ii) PTG files a voluntary petition for bankruptcy protection or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign; (iii) PTG makes an assignment for the benefit of creditors; or (iv) a receiver is appointed for PTG or PTG's business and such receiver is not discharged within 30 days ("Trigger Events"). Upon a Trigger Event, Customer shall provide written notice to PTG of Customer's desire to make said payments and gain access to the Software and Customer Data under the Rackspace Agreement Upon receipt of such notice, PTG shall have two (2) business days to accept or reject such request by Customer (the "Response Period"). If PTG rejects such request it must provide Customer with a good faith proposal of when it will resume normal business activities. If PTG fails to accept or reject such request or fails to respond to Customer's request within the Response Period, Customer shall have the right to pay all amounts due under the Rackspace Agreement directly to Rackspace Hosting, Inc. and access and use the Software and Customer Data for no more than three (3) months after the Response Period, unless PTG resumes its business

during such period (the "Access Period"). Upon conclusion of the Access Period, this Agreement shall terminate in accordance with Section 13 herein.

**19. Authorized Contact.**

A. Business Negotiations. In the event any disputes or controversies arise during the course of this Hosting Agreement, including any claim that either party has breached any aspect of this Hosting Agreement, the aggrieved party shall advise the other party of the dispute or claim in writing provided to the representative of the other party designated in Section 17 of this Hosting Agreement. Within ten (10) days after written notice of any such dispute or controversy has been provided, authorized executive officers of each of PTG and the Customer shall meet and attempt to resolve the dispute. It is expressly acknowledged and agreed that such authorized representatives shall have full access to all employees, consultants or information reasonably necessary to attempt to resolve any such dispute. The parties shall work together in good faith to successfully resolve any dispute or controversy of which notice is given under this Section 16. Any agreement reached relating to the result of any dispute or controversy shall be committed to writing and shall be signed by the authorized executive officers for both parties. If the dispute has not been resolved within fifteen (15) business days after the commencement of the good faith negotiations referred to above (which period may be extended by mutual agreement), subject to any rights to injunctive relief and unless otherwise specifically provided for by this Hosting Agreement, either party may seek relief for such dispute from any court of competent jurisdiction.

A. Intellectual Property and Confidentiality. Notwithstanding anything to the contrary in this Section 16, in the event of an alleged violation of a party's intellectual property rights or a breach or a threatened breach by a party of any confidentiality provisions of this Hosting Agreement, the party complaining of such breach may seek temporary injunctive relief from any court of competent jurisdiction without the need to comply in advance with Section 16(A) above.

**20. Notices.**

Unless expressly stated otherwise in this Hosting Agreement, any notice, demand, request or delivery required or permitted to be given by a party pursuant to the terms of the Hosting Agreement shall be in writing and shall be deemed given (a) when delivered personally, (b) on the next business day after timely delivery to an overnight courier, or (c) on the third business day after deposit in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid) and sent to the following designated representatives of the parties:

**For PTG:**

Christoper Lodge  
President & COO  
Pension Technology Group LLC  
92 State St.  
Suite 600  
Boston, MA 02109

*with an email to:*

[clodge@ptg-usa.com](mailto:clodge@ptg-usa.com) and [invoicing@ptg-usa.com](mailto:invoicing@ptg-usa.com)

**For the Customer:**

Tulsa County Board of Commissioners  
218 West 6th St., 9th Floor  
Tulsa, OK 74119

**21. Assignment.**

Neither party shall assign this Hosting Agreement and its rights and obligations under this Hosting Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other party, except that PTG may assign this Hosting Agreement to: (i) a majority owned subsidiary or an affiliate under common control with PTG; or (ii) a successor pursuant to a merger or a sale of all or substantially all of its assets to which this Hosting Agreement relates. In the case of any permitted assignment or transfer of or under this Hosting Agreement, this Hosting Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the parties hereto, and any successor shall acknowledge such obligations in writing.

**22. Excusable Delays.**

In the event that either party is unable to perform any of its obligations under this Hosting Agreement because of causes beyond its reasonable control or because of any act of God, accident to equipment or machinery; any fire, flood, hurricane, tornado, storm or other weather condition; any war, act of war, act of public enemy, terrorist act, sabotage, riot, civil disorder, act or decree of any governmental body; any failure of the Network, transportation, light, electricity or power; any earthquake, civil disturbance, commotion, lockout, strike or other labor or industrial disturbance; or any illness, epidemic, quarantine, death or any other natural or artificial disaster (each, a “Force Majeure Event”) the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Hosting Agreement shall be immediately suspended and performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay. If any delay reasonably beyond the control of either party continues for a period of three (3) months or more, this Hosting Agreement may be terminated by either party and neither party shall be liable to the other for such termination, provided the Customer pays PTG all fees incurred in accordance with the payment provisions of this Hosting Agreement. Nothing provided in this Hosting Agreement shall excuse the delay of any payment that is validly due by the Customer under this Hosting Agreement.

**23. Governing Law.**

This Hosting Agreement shall in all respects be governed by the laws of the state of Oklahoma. without reference to its principles of conflicts **of laws**. Subject to Section 19 of this Hosting Agreement, all disputes arising under, out of, or in any way connected with the Use of the Software or Hosting Environment or this Hosting Agreement shall be litigated exclusively in the state and federal courts of Oklahoma, and in no other court or jurisdiction.

**24. Notification of Legal Requests.**

PTG and Subcontractor shall contact Customer upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to Customer's data under this Agreement, or which in any way might reasonably require access to Customer's data, including member information. PTG and Subcontractor shall not respond to subpoenas, services of process and other legal requests related to Customer without first notifying Customer pursuant to Section 20, unless prohibited by law from providing such notice.

**25. Contract Audit.**

PTG and Subcontractor shall allow Customer to audit conformance to the terms of the Contract resulting. Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.

**26. Data Center Audit:**

PTG and Subcontractor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request by Customer. PTG and Subcontractor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

**27. Business Continuity and Disaster Recovery:**

PTG and Subcontractor shall provide a business continuity and disaster recovery plan upon request and ensure that Customer's recovery time objective of 24 hours/day is met.

**28. Encryption of Customer Data at rest:**

PTG and Subcontractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in PIPS 140-2, Security Requirements of Cryptographic Modules for all personal data, including member information, unless Customer approves the storage of personal data, including member information, on a service provider portable devices in order to accomplish work as defined in the Contract.

**29. Compliance.**

Neither party shall violate any applicable local, state, national or international law or regulation in the performance of its obligations under this Hosting Agreement.

**30. Independent Parties.**

Nothing in this Hosting Agreement shall be construed to constitute either of the parties hereto as a partner, joint venturer, agent, representative or employee of the other party.

**31. Waiver of Compliance.**

Neither party shall, by mere lapse of time, without giving notice or taking other action under this Hosting Agreement, be deemed to have waived any breach by the other party



of any of the provisions of the Hosting Agreement. Further, the waiver of either party of a particular breach of the Hosting Agreement by the other shall not be construed as or constitute a continuing waiver of such breach or of other breaches of the same or other provisions of the Hosting Agreement.

**32. Invalidity and Severability.**

In the event that all or any part of the terms, conditions or provisions contained in this Hosting Agreement are determined to be invalid, unlawful or unenforceable to any extent by any court or tribunal of competent jurisdiction, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

**33. Entire Agreement.**

This Hosting Agreement, together with its Exhibits and any appendices or other attachments hereto, constitute the entire agreement between the parties in relation to this subject matter. The terms of this Hosting Agreement shall supersede the terms of any correspondence or oral agreements or understandings reached between PTG and the Customer up until the date of this Hosting Agreement, including without limitation any prior Confidential Disclosure Agreements. This Hosting Agreement may not be modified except in writing signed by a duly authorized representative of both parties.

**34. Counterparts.**

This Hosting Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile signatures may be relied upon and shall be deemed as originals for purposes of effecting the provisions of this Hosting Agreement

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties have caused this Hosting Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this Hosting Agreement duly authorized by all necessary and appropriate corporate action to execute this Hosting Agreement.

**Pension Technology Group LLC**

**Tulsa County Board of Commissioners**

By: 


Name: Brandon Johnson


Title: Chief Executive Officer

By: 

Name: Karen Keith

Title: Chairman Pro Tem

APPROVED AS TO FORM/ LEGALITY  
  
ASSISTANT DISTRICT ATTORNEY  
Andrew C. Mihelich

Attest:   
Michael Willis, County Clerk



**Exhibit A**

**Description of Software and Equipment**

Software: PTG PensionPro Software Hosted Under the Agreement.

\* \* \*

**Exhibit B**

**Pricing and Payment Schedule**

Maintenance and Hosting Fee Schedule

<b>Initial Term and Renewal Terms</b>	<b>7/1/2024 to 6/30/2025</b>	<b>7/1/2025 to 6/30/2026</b>	<b>7/1/2026 to 6/30/2027</b>	<b>7/1/2027 to 6/30/2028</b>	<b>7/1/2028 to 6/30/2029</b>
<b>Annual Fee Total</b>	\$123,050.00	\$129,203.00	\$135,663.00	\$142,446.00	\$149,568.00

<b>Payment Date</b>	<b>Period</b>	<b>Prepayment Option = NO</b>
9/30/2024	7/1/2024-6/30/2025	\$ 123,050
9/30/2025	7/1/2025-6/30/2026	\$ 129,203
9/30/2026	7/1/2026-6/30/2027	\$ 135,663
9/30/2027	7/1/2027-6/30/2028	\$ 142,446
9/30/2028	7/1/2028-6/30/2029	\$ 149,568
<b>5-Year Total</b>		<b>\$ 679,929</b>

## **Exhibit C**

### **Hosting Support Services**

The routine Hosting Support Services provided under this Hosting Agreement, shall comprise the (a) resolution of errors to the Software, and (b) help desk user support of the Software.

Hosting Support Services do not include support for third-party vendor hardware/software, integration of third-party vendor hardware/software. The Customer relieves PTG of responsibility for any code modifications, system modifications or database changes performed by the Customer or any third parties at the Customer's request and not specifically authorized by PTG. The specifics of the routine Hosting Support Services provided under this Hosting Agreement are as follows:

#### **1. Routine Hosting Support**

(a) Levels of problems will be mutually agreed upon by both the Customer and PTG and will be assigned when proper notification and documentation (e.g., issues log) is received by PTG. PTG response time will commence with PTG confirmation that the information mentioned above is received.

##### (i) Urgent

(1) *Definition.* Software is not operational. Some examples of Priority 1 calls include: any interruption of the payroll process; users unable to save work in progress; software/application functionality failure; mission-critical software/application malfunction causes restart, hang, or suspend; a security breach or vulnerability is identified.

(2) *Response.* Support call returned within 30 minutes; Resources assigned to the problem within 30 minutes; solution delivery targeted within 4 hours.

##### (ii) Serious

(1) *Definition.* Software is not operating with full capability but is still operational. Some examples of Priority 2 calls include: Impaired or broken functionality with significant impact to applications; frequent software/application failure; significant problems effecting software/application performance.

(2) *Response.* Support call returned within 2 hours; Resources assigned to the problem within 4 hours; solution delivery targeted within 2 business days.

##### (iii) Not Critical

(1) *Definition.* Software is up and running with limited or no significant impacts. Some examples of Priority 3 calls include: Bugs which cause limited or no

direct impact to performance and functionality; request to replace a bug work-around; limited impact defective functionality; software performance issues.

(2) *Response.* Support call returned within 1 day; solution delivery targeted within 15 business days.

(b) Help Desk

(i) *Availability.* The Help Desk will be open on Business Days during Business Hours.

(ii) *Access.* Help Desk may be accessed via telephone or email. PTG will confirm receipt of requests reported via email.

(iii) *Escalation.* Requests not responded to or resolved within agreed upon time limits shall be escalated to the attention of the project or account manager.

**2. Exclusions.** Services not specifically included above are excluded from this Hosting Agreement. Any excluded services requested by the Customer and accepted by PTG will be separately charged on a time and materials basis at the current PTG standard labor rates, and could include:

(i) Support for any software not part of the Software accessed by the Customer, but connected to it or making use of its features or facilities.

(ii) Training.

(iii) Any services relating to Software enhancement requests.

(iv) Update compatibility issues surrounding third-party software interfaces, custom reports or custom forms.

(v) Migration of production data due to system release updates.

(vi) Data errors due to system failures that are not caused by PTG personnel or Software (e.g., hardware failure, virus, etc.).

\* \* \*