LETTER OF AGREEMENT

Commented [CV1]: Is this binding? What happens if there is a change in government and the new government does not agree with the net benefit test concept and therefore does not approve it (required by 90 days).

Commented [CF(2]: Yes it is. It is a bargained agreement. I suppose a new Government could refuse to implement it, but there would be labour problems.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE PRESIDENT OF THE TREASURY BOARD

("ONTARIO")

- AND -

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

("OPSEU")

WHEREAS Ontario and OPSEU (together, the "**Sponsors**") are together the sponsors of the OPSEU Pension Plan (the "**Plan**");

AND WHEREAS the Sponsors have entered into discussions regarding the creation of a second schedule of benefits under the Plan, referred to herein as "**OPTrust Select**" and the related expansion of membership in the Plan, pursuant to section 40 of the Sponsorship Agreement, made as of the 18th day of April, 1994, as amended (the "**Sponsorship Agreement**");

AND WHEREAS Ontario and OPSEU have the power to amend the Sponsorship Agreement and the OPSEU Pension Plan (the "**Plan**") by unanimous written agreement pursuant to sections 20 and 41 of the Sponsorship Agreement and section 18.01 of the Plan;

AND WHEREAS Ontario and OPSEU wish to set out their agreement in respect of OPTrust Select and related amendments to the Sponsorship Agreement, the Plan and a new form of OPTrust Select Participation Agreement (and Letter of Acknowledgment attached as an appendix thereto) and such other matters as are set out below;

NOW THEREFORE Ontario and OPSEU agree as follows:

1. **Letter of Agreement Forms Part of the Sponsorship Agreement**

The Sponsors agree that this Letter of Agreement is an addendum to and forms part of the Sponsorship Agreement and shall be referred to as "The OPTrust Select Addendum" (the "**Addendum**") and filed with the Financial Services Commission of Ontario.

The terms of this Addendum and its appendices are subject to compliance with all applicable provincial and federal laws.

2. **Sponsorship Agreement Amendments**

The Sponsors agree to amend the Sponsorship Agreement as set out in Appendix 1 to this Letter of Agreement. The Sponsors further agree to execute the amendment to the Sponsorship Agreement and to provide such amendment to the Board of Trustees of the OPSEU Pension Plan (the "**Board**") within 30 days of the date of this Letter of Agreement.

Commented [CV3]: What is driving this timeline?

Commented [CF(4]: The direction has been to get this done in a timely way. We actually have the amendment drafted but we were at risk of getting it to TB/MBC.

3. **Plan Amendments**

The Sponsors agree to amend the Plan as set out in Appendix 2 to this Letter of Agreement. The Sponsors further agree to execute any Amending Agreement in the form normally used for this purpose and to provide such Amending Agreement to the Board within 30 days of the date of this Letter of Agreement.

The Plan amendments in Appendix 2 will provide for the establishment of OPTrust Select, a second schedule of benefits under the Plan to be marketed to employers and employees in the not-for-profit and broader public sectors who meet the requisite conditions to participate. The participating employers will be required to identify which classes of their employees would be eligible to join OPTrust Select, with full time employees being mandatory members and part-time employees being optional members. The key features of OPTrust Select will include:

- A contribution rate of 3% (per employer / employee) plus 0.2% (per employer) for the first two years as described in paragraph 7(d) of this Letter of Agreement,
- A benefit accrual rate: 0.6% of career average earnings for each year of pensionable service with conditional upgrades to such earnings if the Plan is sufficiently funded,
- Conditional indexation; if the Plan is sufficiently funded,
- No early retirement subsidy, bridging or subsidized joint and survivor benefits, and
- The ability for the member to provide survivor benefits through an actuarial reduction to his/her pension.

Commented [CV5]: How is "sufficiently funded" defined?

Commented [CF(6]: Because it is a JSPP the plan would need to have sufficient surplus to cover indexation in the form and to the extent being considered.

4. **Approval Process for OPTrust Select Employers**

The Sponsors agree on the following approval process for the admission of OPTrust Select Employers:

a) The Board shall develop a net benefit test template for all prospective employers that will be subject to the approval of both Sponsors based on the advice of their respective actuaries and legal advisors (the "**Net Benefit Test**") within 90 days of the signing of the Letter of Agreement.

b) The Net Benefit Test shall, among other things, assess whether the admission of a new employer into OPTrust Select would result in a significant loss to the Plan in relation to the new OPTrust members based on a measurement of the present value of potential future benefits for the prospective members compared to the present value of potential future contributions for such members. Net Benefit Test shall also include other criteria the Board considers necessary or desirable based on actuarial or legal advice to prevent the admission of an employer on the basis that admission could have a negative impact on the Plan or the existing Plan members. The Net Benefit Test shall comply with the Ontario Human Rights Code.

c) The Board shall also consider the overall financial viability of the employer as well as the employer's ability to make contributions and to comply with the terms of OPTrust Select.

Commented [CV7]: Are there criteria established to evaluate this, or is this subject to the Board's discretion?

Commented [CF(8]: "The net benefit test template for all prospective employers that will be subject to the approval of both Sponsors" per item 4 a). We have reviewed in its current draft and OPT is amenable to working with AON on refining the test.

d) The decision as to whether to admit a new employer shall be made by the Board in accordance paragraph (c) and with the Net Benefit Test.

e) The Board shall provide the information and reports to the Sponsors regarding prospective and new OPTrust Select Employers in accordance with the requirements in Appendix 4.

5. **Participation Agreement**

The Sponsors agree that, before an employer that is approved in accordance with section 4 may participate in OPTrust Select, the employer must enter into a Participation Agreement with the Board in substantially the same form as the sample attached at Appendix 3 ("**OPTrust Select Participation Agreement**"). The Participation Agreement shall require the employer to acknowledge that if the employer receives transfer payments from the Government of Ontario, there will be no increased public financial support (and no decrease in any existing level of public services) related to its participation in OPTrust Select. The Sponsors acknowledge that the Board may make amendments to such agreement in order to reflect changes in the Plan Documents (as defined in the Sample Agreement) or applicable law as well as changes that do not materially deviate from the form of agreement set out in Appendix 3. Any changes to the form of agreement, and any amendments to any agreement, that materially alter the rights and obligations of any party to the agreement from those contained in the Sample Agreement shall only be made with the prior written approval of the Sponsors.

6. **Governance Matters**

a) In accordance with the amendments to the Sponsorship Agreement attached hereto as Appendix 1, OPSEU and Ontario agree to establish an advisory committee of OPTrust Select members and employers (the "**Advisory Committee**") and to prepare the terms of reference of such committee within 90 days from the delivery of a notice by the Board that membership in OPTrust Select has reached 1000 members.

b) The terms of reference for the Advisory Committee shall, at minimum, set out that:

i. The Advisory Committee shall not have any decision making authority under the Sponsorship Agreement, Trust Agreement or the Plan.

ii. The Advisory Committee shall meet at least annually with, and is entitled to meet twice annually or such greater number of meetings as may be requested by the Sponsors or agreed to by the Board, with the Plan actuary and with the Chief Investment Officer or his delegate and with any other members of the senior leadership team at OPTrust that the Advisory Committee, acting reasonably, may request to meet with or which the Board may deem helpful for the Advisory Committee to meet with. The employer and employee Advisory Committee members may choose to meet together or separately in their discretion provided that there is one annual meeting held with employer and employee members together.

iii. The Advisory Committee may provide input to the Board on the Board's decisions or recommendations that affect OPTrust Select including but not limited to the Board's decisions or recommendations concerning: whether or not to provide wage upgrades or post-retirement indexing; whether or not to increase contribution rates or decrease future benefits, amendments to the OPTrust Select terms (other than amendments required for compliance with applicable legislation), changes in the Funding Policy, and matters pertaining to the contribution stabilization reserve, the security reserve or the use of any surplus in the Plan.

iv. The Advisory Committee may also monitor the Plan; make recommendations on the Plan's administration and promote awareness and understanding of the Plan.

c) The Board shall provide reasonable administrative assistance to the Advisory Committee and reasonable costs for the Advisory Committee's establishment and operation shall be paid from the Plan fund.

d) The following matters shall be subject to the joint approval of the Sponsors:

i. the process for appointing members to the Advisory Committee;

ii. the number, construct and terms of the Advisory Committee members; and

iii. a mechanism for reporting and/or accountability of the Advisory Committee.

e) The Sponsors commit to review the governance structure of the Plan, and in particular the appointment of Trustees to the Board, to add additional representation rights for OPTrust Select members and employers upon the earlier of either:

i. the liabilities for benefits of OPTrust Select members (as determined by the Board) exceeding 5% of Plan liabilities as a whole, as determined by the most recent actuarial valuation or

ii. the number of active OPTrust Select members becoming greater than 20% of the total number of active members in the Plan (as determined by the Board). The Sponsors agree that once active members in OPTrust Select reach 15% of the total number of active members or the liabilities of OPTrust Select reaches 4% of the Plan's liabilities, they will convene to commence discussions regarding governance changes.

f) Pending the Sponsors reaching a mutually satisfactory resolution regarding the governance issues if the thresholds set out in paragraph e) above are met, the Board

Commented [CV9]: What rights do the Sponsors to veto requests made by the AC?

Are the decisions made by the Sponsors different for the AC members than for the original members when comparing decision making rights of the Board vs. the Sponsors?

Commented [CF(10]: The AC have no decision rights. They may only make recommendations. Only the Sponsors have decision rights and may reject any or all recommendations from the AC/

Commented [CV11]: How is this measured – funding basis, accounting basis, etc. – PSAS, IFRS, etc.

Commented [CF(12]: See the change added.

will not admit any new OPTrust Select employers into the Plan nor agree to permit participation by additional classes of employees for existing OPTrust Select employers if admitting such employers or employees would cause the number of OPTrust Select members in the Plan to increase beyond 20% of total active members in the Plan (or 5% of Plan liabilities,) per paragraph e) above.

7. **Other Matters**

a) The Sponsors agree and acknowledge that credit in OPTrust Select shall not be counted for the purpose of determining eligibility for post retirement benefits that are provided by the Province of Ontario for OPSEU Pension Plan members who meet certain pension credit thresholds.

b) The Sponsors agree to meet (or to send delegates to meet) at least once per year to review the operation of OPTrust Select, including the operation of the security reserve as set out in paragraph d) below.

c) The Sponsors agree that Ontario will propose amendments to the *OPSEU Pension Plan Act, 1994* (Ontario) to align the definition of "employer" under that Act with the definition of "employer" in the *Pension Benefits Act* (Ontario).

Commented [CV13]: What is the impact of this change?

Commented [CF(14]: The plan is currently exempt under PBA. Essentially OPT require the government to make/change contributions to the plan (this was done when the plan was inaugurated).

d) In accordance with the amendments to the Plan, as set out in Appendix 2, the Sponsors agree that a security reserve will be established under the Plan to guard against the potential default by OPTrust Select employers on their contribution obligations. Such reserve will be funded by an additional 0.2% contribution by OPTrust Select employers (over and above the regular employer contribution rate under OPTrust Select) for the first two years of each such employer's participation under OPTrust Select. If an employer defaults and does not meet all of its contribution obligations, money held in the security reserve account may be used to pay for member benefits that would otherwise be impacted by the missing contributions. If an OPTrust Select employer purchases one or more businesses or organizations, merges with one or more other entities, or goes through some other form of restructuring(s) or reorganization(s) (a "transaction" or "transactions") after the first two years of participation in OPTrust Select and following the transaction, or a series of transactions that occur within a **[1]** year period, the number of active members employed by the employer increases by 100% or more, the employer additional 0.2% contribution obligations will apply in respect of any employees who become members of OPTrust as a result of the transaction(s) for a two year period. The OPTrust shall also have the discretion to request additional payments or mechanisms of additional security to guard against potential default by OPTrust Select Employers. (KG Comment – We need Allan and OPT to agree on one additional sentence to address what happens if the security reserve continues to grow and is not used for defaults).

Commented [CV15]: Is the draw down only from the additional contributions the specific employer contributed or is this a pool of funds available? What happens if the funds are not used?

Commented [CF(16]: This reserve is a notional accounting in the valuation – its intent is security. In the event of default these funds would be used to cover missed contributions. If the funds become excessive, the funds can be used to provide conditional indexation.

Commented [CV17]: How was this threshold determined?

Commented [CF(18]: We expect these employers will be relatively small. Because this sector is prone to consolidation or program expansion we wanted to build in a lever to automatically restart the 0.2% contribution. 100% was somewhat arbitrary. The intent is to review the protocol and monitor the participation each year to determine what changes might be required.

8. This Agreement may be executed and delivered by the parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission and those counterparts will together constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Letter of Agreement.

DATED AT TORONTO, ONTARIO THIS _______ day of April, 2018.

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE PRESIDENT OF TREASURY BOARD

By: ______________________________
President of Treasury Board

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

By: ____________________________________
Name:
Title:

By: ____________________________________
Name:
Title:

Appendix 1

See attached Amendment to Sponsorship Agreement.

Commented [CV19]: Please send the appendices

Draft

Appendix 2

See attached Amendment to the Plan.

Appendix 3

See attached OPTrust Participation Agreement.

Appendix 4

Acknowledgement by Board of Trustees of the OPSEU Pension Plan

1. The Board shall provide the Sponsors with reports regarding the marketing of and the admission of new employers into OPTrust Select as soon as practicable and at least every six months.

2. Specifically, the Board will notify the Sponsors as soon as practicable of any of the following:

   a. Admission of a new OPTrust Select employer into the Plan and the classes of employees of such employer that will participate in OPTrust Select;

   b. Membership in OPTrust Select reaching 900 or more members;

   c. Membership in OPTrust Select reaching **10%, 15% and 20%** of the total Plan membership;

   d. Liabilities of OPTrust Select reaching **3%, 4% and 5%** of total Plan liabilities.

3. The Board shall also provide the Sponsors as soon as practicable with information regarding the sectors that are being targeted and any employers in discussion with the Board regarding participation in OPTrust Select.

Commented [CV20]: See point in submission re: understanding of the market – should this be a two step approval – approval to complete market sounding and then approval to market the plan if market sounding supports that.