



TREASURY BOARD / MANAGEMENT BOARD OF CABINET REQUEST ASSESSMENT NOTE

Ministry:	Treasury Board Secretariat
Meeting Date:	April 17, 2018
Agenda Class:	Discussion
Last reviewed by: n/a	Tracking to: Cabinet, April 18, 2018

SUBMISSION TITLE:	New Schedule of Benefits under the Ontario Public Service Employees Union (OPSEU) Pension Plan for Expansion to Non-Profit and Broader Public Sectors
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I. DECISION BEFORE THE BOARD

Approve the proposal to expand the Ontario Public Service Employees Union (OPSEU) Pension Plan ("Plan") membership under a separate defined benefit schedule entitled OPTrust Select ("Select") to employees in the Broader Public Sector (BPS) and not-for profit sector.

II. RECOMMENDATIONS:

Direct the Ministry to proceed with the implementation of Select on behalf of the Crown, as joint sponsor of the Plan in accordance with the terms summarized in the Letter of Agreement.	<i>Board Judgment</i>
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Note that the Ministry will create or amend (as applicable) Plan documentation, including the Letter of Agreement, Plan text, Sponsorship Agreement and Participation Agreement, in order to establish Select.	<i>Board Judgment</i>
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Direct the Ministry to report back to TB/MBC, once the conditions as outlined in the Letter of Agreement S.6(f)(ii) are attained, with a status update on implementation and to seek approval for a negotiating mandate to commence discussions with the co-sponsor to review the governance structure of the Plan.	<i>Board Judgment</i>
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Note that the Ministry will, upon implementation of Select, undertake and seek the necessary approvals for amendments to the OPSEU Pension Act, 1994 to expand the definition of "employer" to align with the Pension Benefits Act.	<i>Board Judgment</i>
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Commented [CF(1)]: Confirmation was received on Friday.

III. FINANCIAL SUMMARY*

\$ Millions	2018-19	2019-20	2020-21
Initiative cost requested	0.0	0.0	0.0
Initiative cost recommended	0.0	0.0	0.0
Recommended program base	0.0	0.0	0.0
Offset Recommended	0.0	0.0	0.0
Total Fiscal Impact	0.0	0.0	0.0

*While there is no immediate fiscal impact, there is a risk that approval may result in a change to the Plan's status as a Jointly Sponsored Pension Plan (JSPP) with corresponding financial impact for the Province.

IV. KEY COMMENTS AND CONSIDERATIONS

Treasury Board Secretariat (TBS), in consultation with the Ministry of Finance (MOF), is requesting approval to implement an expansion of OPSEU Pension Plan (“Plan”) membership under a separate defined benefit schedule called OPTrust Select (“Select”) to employees in the Broader Public Sector (BPS) and not-for-profit sector.

Background

The Plan is a defined benefit plan, with membership comprising members represented by OPSEU, certain designated bargaining units, and other designated employees. The Province of Ontario (as represented by Treasury Board Secretariat (TBS)) and OPSEU are joint sponsors of the Plan.

As a Jointly-Sponsored Pension Plan (JSPP) as defined under the *Pension Benefits Act*, contributions (and requirement to fund deficits) are jointly shared by both plan members and their employer(s) (the ‘plan sponsors’). Therefore, sponsors are jointly responsible for making decisions about the terms and conditions of the plan, any amendments to the plan, and the appointment of the plan administrator. Additionally:

- Gains and losses are shared between the members and the employer sponsors;
- Certain specifically named JSPPs are not subject to Solvency Funding requirements;
- Pension benefits provided by JSPPs are not guaranteed by the Pension Benefits Guarantee Fund (PBGF).

The OPTrust, established in 1994 under the Ontario Public Service Employees Union Pension Act, 1994, is responsible for the administration of the Plan, the investment of the OPSEU Pension Fund and the adjudication of the plan.

OPTrust, as administrator of the Plan, is proposing the expansion of membership under a separate defined benefit schedule (Select) to employees in the BPS and not-for-profit sector, including registered charities.

Employers may include charities registered under the *Income Tax Act (Canada)*, not-for-profit corporations incorporated under Part III of the *Corporations Act (Ontario)*, and broader public sector organizations such as hospitals, school boards, universities, colleges and agencies and organizations that receive a level of public funding sufficient to bring them within the scope of the *Public Sector Salary Disclosure Act*. (See Appendix H)

Select would introduce a reduced defined-benefit schedule under the current Plan and employees and employers will be subject to a separate set of contribution rates and benefits from the main Plan. For example, proposed employer-matched contribution rates in Select would be 3.0% (employers would pay an additional 0.2% for the first two years) as compared to 9.4% to the Yearly Maximum Pensionable Earnings (YMPE), and 11% above YMPE for main Plan members. (See Appendix C for more detail on the proposed attributes of Select and how it differs from the main Plan).

Select members would not have a role in governance of the Plan, until and unless OPSEU and the Government of Ontario agree to make the requisite changes to the existing joint governance structure. OPTrust Select would operate under the existing governance structure until the level of participation in Select (as a percentage of overall Plan membership) exceeds 20% and/or its liabilities exceed 5 % as a percentage of overall Plan liabilities, at which point the Sponsors would agree to review the governance structure.

OPTrust's rationale for expansion is to spread the Plan's investment volatility risk across increased numbers of active members in an effort to support Plan sustainability. Select will also offer greater pension coverage for Ontario workers who do not have access to a defined benefit pension plan, which is in alignment with the government's objectives to build retirement security for more Ontarians.

OPSEU's rationale for expansion is to expand OPSEU unionization in other sectors and provide a retirement option to the lower income target market. The government also previously committed to support OPSEU Plan expansion. (See Appendix G).

The implementation of Select would require amendments to Plan documentation, as necessary, in order to establish Select as a schedule to the Plan, subject to prior written agreement of OPSEU to such documentation. The following documentation will be created or amended, as applicable;

- The Letter of Agreement (see Appendix D);
- The Plan text,
- The Sponsorship Agreement,
- A new Participation Agreement to be executed by employers who wish to join Select and a Letter of Acknowledgment to be executed by non-OPSEU bargaining agents in order to, among other things, waive their collective bargaining rights in respect of the terms and conditions under Select.

Following implementation of Select, the *OPSEU Pension Act, 1994* would need to be amended to expand the definition of "employer" for consistency with the definition in the Pension Benefits Act and clarify that regulatory measures to enforce employer payments would apply to Select employers as well.

Key Considerations

Plan Governance and Jointly-Sponsored Pension Plan (JSPP) Designation

JSPP is a type of pension plan in which decision making and contributions are jointly shared. Both employers and plan members are required to fund any plan deficits. While Select employers and employees will be subject to a separate schedule of contribution rates and benefits, they will have no direct role in the sponsorship of the pension plan or in decision-making regarding the plan as required in a JSPP.

Therefore, there is a risk that the Superintendent of Financial Services (the pension regulator), the Financial Services Tribunal or a reviewing court may find that Select, if implemented, does not comply with the PBA. To minimize the likelihood of this risk being realized, TBS has identified several mitigation strategies that would be introduced as part of Select implementation. (See Appendix E).

The proposed Participation Agreement executed when a new employer agrees to join Select states that the Government and OPSEU will respectively represent the employers and employees. The agreement, however, would be a condition of participation and may not be sufficient to constitute consent, particularly for non-bargaining unit employees.

Once Select membership reaches 1,000, an Advisory Committee (AC) will be established to provide feedback to the Board of OPTrust and include representation from both Select employers and employees. OPTrust would provide to the Sponsors a report summarizing

issues raised by the AC along with a report from OPTrust detailing how issues would be addressed, if necessary.

Further governance changes and enhanced representation for Select members and employers will not be addressed until such time as Select membership surpasses 20% of the total active membership of the Plan or liabilities of Select exceed 5% of the total liabilities of the Plan (Discussions with respect to governance would be required to occur when Select reaches 15% of total active membership, or 4% of liabilities.). Select members and employers will have no decision-making rights regarding Select until this threshold has been attained. Once this threshold has been met, subject to agreement of the Sponsors, some representation rights for Select participants will be negotiated between the parties before Select can continue to grow.

Analysis:

TBS advises that the novelty of the Select proposal makes the risk level of FSCO determining that Select does not comply with the PBA difficult to predict.

TBS has indicated that the likelihood of this risk being realized is medium (with a significant fiscal impact if realized). The proposed provisions to change the governance structure once the Plan reaches a certain size would support arguments that the Plan is consistent with some important aspects of the legal and policy framework applicable to JSPPs under the PBA.

The AC will meet some of the representation requirements of a JSPP in the PBA, but Select members and employers, who are under a different (i.e. lower) benefit scheduled than the main Plan will have no decision making rights until the pre-determined thresholds have been attained. This representation is likely less than required under the policy and legal framework for JSPPs under the Pension Benefits Act.

If the loss of JSPP status were to occur, consideration would need to be given to reviewing options to address additional governance changes and/or potential legislative changes to recognize the changing nature and models of JSPPs. While this would address the issue from a prospective basis, it may not be able to address it on a retroactive basis and expose the government to criticism from stakeholders and the public for failing to comply with the laws that it has put in place that confer rights to members of JSPPs to participate in the sponsorship and administration of their plans.

It should also be noted that the Plan co-sponsor, OPSEU, is very reluctant to agree to governance changes at this time, meaning that Select membership may not grow beyond 20% of the active membership in the Plan (approximately 10,500 members), which is well below the critical mass of Select members (20,000) identified by OPTrust as needed in Select to assist the long-term sustainability of the Plan.

The loss of JSPP status may result in several financial impacts, including:

- The potential loss of the currently solvency funding exemption;
- The requirement to make PBGF assessments; and
- The potential loss of an anticipated exemption from enhanced going concern funding under Ontario's new funding regime.

The loss of JSPP status, combined with the narrow definition of employer under the OPSEU Pension Act, 1994 may result in Select employers arguing that they are not subject to the PBA requirements for making contributions and liquidating unfunded liabilities in the Plan.

For accounting purposes, the Plan is currently in a net pension asset position, meaning that the valuation of plan assets exceeds the accrued benefit obligation under Public Sector Accounting

Standards. The projected net pension asset position of the Plan at March 31, 2018 is \$1 billion. Based on the government's current accounting policy, as a JSPP, the government is able to recognize its share of net pension assets (and the related in-year fiscal impacts) provided that no valuation allowance is required.

Should the expansion result in the Plan no longer qualifying as a JSPP, the JSPP accounting rules would no longer apply and the Province may no longer be eligible to record these assets and would be required to take a full valuation allowance. A complete assessment would need to occur in the event of any changes to the existing governance of the Plan.

Target Market of Employees and Employers

The initial target market for Select has been identified as employees in the BPS and not-for-profit sector, including registered charities that may have an inferior workplace pension plan or no plan at all. This would include organizations with non-represented workers, and those with workers represented by non-OPSEU unions. These organizations typically employ lower income earners. Participating employers will be required to identify which classes of their employees would be eligible to join Select, with full time employees being mandatory members and part-time employees being optional members.

There is a risk that mandatory membership in Select may be detrimental to certain employee groups. For example, workers earning at or around minimum wage may be negatively impacted by mandatory membership due to potential erosion of their Old Age Security (OAS) and Guaranteed Income Supplement (GIS) benefits payable after age 65.

The vetting of potential employers is essential to promote sustainability of Select and the main Plan. There is a risk that employers may not meet the criteria for Select, either the definition of target employer or the financial capacity to meet contribution requirements.

To mitigate this risk, the vetting process for potential employers will include a net-benefit test template. OPTrust will also report regularly to the Sponsors on marketing efforts, sectors that are being targeted, applications that have been accepted or declined and potential employers currently being evaluated.

To mitigate the risk of employer default, the Sponsors have agreed in principle that all Select employers will pay an additional 0.2% reserve contribution during the first two years of joining Select. The pooled reserve account will be held and may be used to fund member benefits that would otherwise be impacted.

Analysis:

TBS has raised with OPTrust and OPSEU that certain employee groups may be negatively impacted by mandatory membership in Select.

A preliminary analysis of Select's benefit model by MOF indicated that a more advantageous savings vehicle for individuals earning at around minimum wage may be a Tax Free Savings Account (TFSA) so that OAS and GIS will not be eroded. The participation of part-time workers -- who may be more likely to be minimum wage earners -- would be optional. Select would provide a beneficial savings vehicle for moderate income earners.

TBS is relying on OPTrust and potential employers to take this risk under advisement and create appropriate mandatory and voluntary employee classes which would comply with legislation and protect precarious workers. Since all full-time employees would be defined as a mandatory member in Select, it may not be possible for OPTrust and employers to carve out all

negatively impacted employees upon enrolment.

Inability to mitigate this risk may impact the viability of Select. The Ontario Nonprofit Network (ONN) has recently released the results of a year-long task force mandated to develop recommendations on the design of a sector-wide pension for Ontario's not-for-profit and charities. The proposal by ONN for a Target-Benefit Multi-Employer Pension Plan will directly compete with Select's target market, will offer more flexibility and, unlike Select, offer employers and employees a direct role in governance of the plan.

Vetting of potential employers will be under the control of the OPTrust based on a net benefits template, the parameters of which are currently unknown but which will be approved by the Sponsors. In addition to the net benefit test, the OPTrust will consider the financial viability of potential employers to mitigate the risk of accepting an employer that may default on contributions, would be unique to public sector pension plans. There are also provisions in the Letter of Agreement that require OPTrust to inform the government about the employers that are being targeted for participation in Select.

The reserve fund contemplated for new employer entrants would also be unique to public sector pension plans. The adequacy of the reserve will be reviewed each year by the Sponsors. In order to comply with the *Income Tax Act* (Canada), the Plan's actuary must certify that the 0.2% pooled reserve contribution is required to fund the intended benefit. Since the reserve is therefore not limited to use for default but is available to secure the payment of any benefit in Select (e.g. to pay for indexing if the plan couldn't otherwise afford it) the security offered by the reserve is reduced, at least theoretically. The reserve may also not be sufficient to cover losses if a number of participating employers default and/or if an employer defaults, and whose membership increased significantly.

Critical Mass and Cross Subsidization

OPTrust has indicated that a critical mass of 20,000 Select members is needed to assist with the long-term sustainability of the Plan. There is a risk that uptake of Select to this level may not be achieved and/or that the identified critical mass will not have the intended positive impact on the Plan's long-term sustainability.

As Select is a schedule within the Plan, its design must ensure that sufficient measures are in place to mitigate the risk of one schedule subsidizing the other.

Analysis:

TBS notes that it has not seen evidence to indicate OPTrust is able to attract the requisite 20,000 new members; although OPTrust has advised that organizations have expressed interest to them. The number of active members currently in the OPSEU Pension Plan is approximately 45,259. As noted above, OPSEU's desire to not pursue governance changes may limit Select membership to 10,500 members, well below the 20,000 critical mass identified.

It is not clear that the membership to be targeted would have the intended effect of enhancing Plan sustainability. The actuarial analysis for Select had been completed under the assumption that Select members' demography would be the same as current Plan members. A sensitivity analysis has been conducted using different economic, demographic and other assumptions. While some assumptions such as the starting salary and part time versus full time work impacts cash flow it does not impact the sustainability of the plan. In comparison the age of entry, age at retirement and level of indexation provided during employment and retirement has a significant impact on sustainability. To be clear, the younger the age of entry, the older the age at retirement and the less indexation provided the more favourable the outcome. The likelihood of the demography of Plan Select being the same as current Plan members on implementation

is not currently known; it has been noted that organizations in the target market typically employ lower-income workers.

In regards to cross-subsidization, initial actuarial analysis shows that the greatest risk is most likely with Select members subsidizing the main Plan beneficiaries. This may be cause for concern as Select members and employers may be viewed as being brought in to subsidize the main Plan risk, with no or limited decision-making rights. There are currently no set rules/provisions in the revised documentation to prevent this; reliance would be placed on the OPTrust to make decisions under the Funding Policy to correct any persistent cross-subsidy by changing contribution rates and/or benefits.

Other Risks/Potential Issues

A number of other potential risks and issues related to the expansion to Select have been noted. Please see Appendix E for the ministry-submitted risk analysis; in addition to the risks noted above.

Prior History

In 2013, following the Government's agreement with Ontario's JSPPs to freeze contribution rates pending the balancing of the budget in 2017, the Sponsors entered an agreement to expand membership in the OPSEU Pension Plan to organizations with OPSEU members – in the context of divestments and otherwise. The parties also agreed to develop and report back to TB/MBC on a proposed "OPT Lite" to offer a reduced benefits package in the broader public sector – again at organizations with OPSEU representation. A design framework was developed but never implemented due to a number of government concerns (potential pressure on public funding, potential labour impacts, and pushback from government ministries on requests to consult with the target market to assess the potential for uptake). The proposal for OPTrust Select is broader than OPT Lite and offers essentially a new pension plan within the OPSEU Plan for organizations where the employer may not be connected to the Government sponsor and the employees may not be connected to OPSEU.

Next Steps/Communications Plan

Given approval, the proposed implementation would proceed in the coming weeks following OPSEU Sponsor approval. If Select is approved with all required documentation secured, OPTrust would be able to promote Select to the potential employer market.

Note that OPTrust has communicated that interested employers waiting to join Select and are concerned that these employers may look to alternative retirement vehicles if Select is not implemented in the near future (e.g., the ONN MEPP).

Performance Measures

As the proposed outcome of Select is to assist the Plan with long term sustainability, success would be measured by Select's ability to attract sufficient members to positively influence to the Plan's long term needs (20,000).

Name of analyst:	Rebecca Herbert and Helder Marcos	Phone number:	7-2184
Date:	April 13, 2018	Log number:	
Branch / Division:	Health, Social, and General Government/OEMD		

APPENDIX A: PROPOSED MINUTE

[Should the Board approve the initiative as proposed, this is the associated minute]

Approve the proposal to expand the Ontario Public Service Employees Union (OPSEU) Pension Plan (“Plan”) membership under a separate defined benefit schedule entitled OPTrust Select (“Select”) to employees in the Broader Public Sector (BPS) and not-for profit sector.

In this regard:

- I. Direct the Ministry to proceed with the implementation of Select on behalf of the Crown, as joint sponsor of the Plan, in accordance with the terms summarized in the Letter of Agreement.
- II. Note that the Ministry will create or amend (as applicable) Plan documentation, including the Letter of Agreement, Plan text, Sponsorship Agreement and Participation Agreements, in order to establish Select.
- III. Direct the Ministry to report back to TB/MBC, once the conditions as outlined in the Letter of Agreement S.6(f)(ii) are attained, with a status update on implementation and to seek approval for a negotiating mandate to commence discussions with the co-sponsor to review the governance structure of the Plan.
 1. Note the S.6(f)(ii) articulates: *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.*
- IV. Note that the Ministry will, upon implementation of Select, undertake and seek the necessary approvals for amendments to the *OPSEU Pension Act, 1994* to expand the definition of “employer” to align with the *Pension Benefits Act*.

APPENDIX B: FINANCIAL TABLE

FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE*					TABLE B1
		Fiscal Plan Basis			Appropriations Basis
\$ Millions		2018-19	2019-20	2020-21	2018-19
Initiative cost recommended		0.0000	0.0000	0.0000	
Expense changes:					
Operating item	Oper	0.0000	0.0000	0.0000	0.0000
Capital item	Cap	0.0000	0.0000	0.0000	00000
Revenue changes:					
Revenue increase/offset		0.0000	0.0000	0.0000	
Revenue decrease		0.0000	0.0000	0.0000	
Total Fiscal Impact		0.0000	0.0000	0.0000	0.0000

****While there is no immediate fiscal impact, there is a risk that approval may result in a change to the Plan's status as a Jointly Sponsored Pension Plan (JSPP) with corresponding financial impact for the Province.**

APPENDIX C: Attributes of the Regular OPSEU Pension Plan, and Plan Select

	OPSEU Pension Plan	Plan Select
Contribution Rates (Employer Matched)	9.4% to Yearly Maximum Pensionable Earnings (YMPE) + 11% above YMPE	3%* *For the first two years, employer pays 3.2%; afterwards 3%
Accrual Type	Based on best 60 consecutive month average earnings	Based on entire career earnings
Accrual Rate	1.345% to YMPE + 2% above	0.6%
Early Retirement Benefits	• 90 Factor (age + service = 90) • 60/20 (minimum age 60 with 20 years of service)	None
Bridge Benefits	0.655% of 5-year average YMPE per year of credit	None
Joint and Survivor Benefits	Survivor Benefits funded at 60%	None – Life Only pension
Indexation	100% Indexing	100% - Conditional Indexing. Only paid if plan is sufficiently funded

APPENDIX D: LETTER OF AGREEMENT

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.

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 ad hoc upgrades to such earnings if the Plan is sufficiently funded,
- Ad hoc 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.

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 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.
- d) The decision as to whether to admit a new employer shall be made by the Board in accordance with 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 1,000 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 have disclosure rights similar to the Sponsors subject to the possible redaction by the Board of information when warranted by privacy or financial concerns.
 - iii. 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.

- iv. 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.
- v. 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 Board shall provide to the Sponsors a report summarizing issues raised by the Advisory Committee along with a Report from the Board detailing how issues would be addressed, if necessary.
- e) 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 the Advisory Committee to report to OPTrust Select employers and employees on their activities.
- f) 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 current 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.
- g) Pending the Sponsors reaching a mutually satisfactory resolution regarding the governance issues if the thresholds set out in paragraph f) above are met, the Board 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 f) 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 and other constituting documents of OPTrust Select as needed.
- 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).
- 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.

The Sponsors further agree that this security reserve will be operationalized as follows: 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. The OPTrust shall also advise the Sponsors annually on the amount of funds in the reserve, including whether the amount is adequate and what steps OPTrust has taken to address employer defaults, if any, and/or whether, based on actuarial advice, there is an excess of funds, and shall make recommendations to the Sponsors in this regard.

- 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**

**ONTARIO PUBLIC SERVICE
EMPLOYEES' UNION**

By: _____
President of Treasury Board

By: _____
Name:
Title:

By: _____
Name:
Title:

[LoA] Appendix 1

See attached Amendment to Sponsorship Agreement.

[LoA] Appendix 2

See attached Amendment to the Plan.

[LoA] Appendix 3

See attached OPTrust Participation Agreement.

[LoA] 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.

APPENDIX E: RISKS ASSESSMENT (MINISTRY SUBMITTED)

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy
Select employers will not be given representation under the current joint-sponsor governance structure which may jeopardize the Plan's JSPP status under the PBA.	High	Medium	The Participation Agreement executed when a new employer agrees to join Select states that the Government and OPSEU will respectively represent the employers and employees. While this may mitigate some risk, since this agreement would be a condition of participation in Select it may not be sufficient to constitute consent, in particular in respect of employees, and even more particularly, non- bargaining unit employees. An Advisory Committee (AC) will be established to provide feedback to the Board of OPTrust in order to meet some of the representation requirements of a JSPP in the PBA once there are 1,000 members in Select. The AC will include representation from both Select employers and Select members. • AC would have disclosure rights similar to Sponsors subject to possible redaction of information when warranted by privacy or financial concerns. • OPTrust would provide to the Sponsors a Report summarizing issues raised by the AC along with a Report from OPTrust detailing how issues would be addressed, if necessary. • AC would be established at a threshold of 1,000 active Select members. Sponsors will commit to review the governance structure of the Plan, and in particular the appointment of Trustees on the Board, to add additional representation rights for Select members and employers upon the earlier of either (i) the liabilities for benefits of Select members (as determined by OPTrust in accordance with the most recent actuarial valuation) exceed 5% of Plan liabilities as a whole based on the most current valuation, or (ii) the number of active Select members is greater than 20% of the total number of active members in the Plan as determined by

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy
			OPTrust. OPTrust will not permit the number of Select members in the Plan to increase beyond 20% of total active members in the Plan or 5% of Plan liabilities unless governance changes are agreed to by the Province and OPSEU.
Select employer may default on submitting employee / employer contributions, resulting in the main Plan members and/or plan sponsors being responsible for the liability	Potential to be High	Low	The Sponsors have agreed in principle that all Select employers will pay an additional 0.2% reserve contribution during the first two years of joining Select. The pooled reserve account will be held and may be used to fund member benefits that would otherwise be impacted by the missing contributions, and thereby protecting the Plan from such liability. Sufficiency of the reserve will be addressed in the Funding Policy, approved by the Board and reviewed with the sponsors annually. However, in order to comply with the Income Tax Act (Canada), the Plan's actuary must certify that the contribution is required to fund the intended benefit. Since the reserve is therefore not limited to use for default but is available to secure the payment of any benefit in OPTrust Select (e.g. to pay for indexing if the plan couldn't otherwise afford it) the security offered is reduced, at least theoretically. The reserve may not be sufficient to cover losses if: • a number of participating employers default • an employer defaults, and whose membership increased significantly (but less than 100% grow requiring additional reserve funding)
Select members may be subsidizing the main Plan members as both schedules will be valued together	Medium	Low-Medium	Sponsors will be depending on the OPTrust to administer the plan in accordance with the funding policy to mitigate the risk of cross-subsidization on an ongoing basis.

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy
Employer may not be suitable or meet the criteria for Select (i.e. within the definition of target employer, or financially able to meet the contribution requirements)	High	Low	The vetting process for potential employers will include a net-benefit test to mitigate risk of ineligible employers being admitted to Select. The net-benefit test template will be reviewed by both Sponsors but the Sponsors will not have a veto right based on public interest criteria such as: reputational risk, labour disruption, labour mobility or potential compromise to the organization's ability to deliver on its mandate. OPTrust will report regularly to the Sponsors on marketing efforts, sectors that are being targeted, applications that have been accepted or declined, and potential employers currently in discussion.
Create upward pressure from some BPS employers to expand their funding envelope	Medium	Medium	Participation Agreement to be signed by Select employers, states that the employer will continue to provide the same level of service without additional funding from the Province.
Uptake of OPTrust Select exceeds expectations (i.e. membership numbers challenging those of the main plan), and thereby jeopardizes the governance structure (i.e. greatly above 20% of total membership)	High	Unknown	OPTrust will report on a regular basis to the Sponsors on the current uptake and potential employers. Sponsors will be required to address any changes to representation rights should Select membership exceed 20%. There may be a perception that OPSEU has received preferential treatment. This is mitigated by other plans also expanding, and that there may be other unions participating in that expansion. The risk of Select fracturing sectors and affecting labour mobility would pertain mostly to the NFP sector and the proposed ONN MEPP.
Mandatory membership detrimental to certain employee groups	High	Medium	TBS has raised with OPTrust and OPSEU that certain employee groups (i.e. precarious workers earning at or around minimum wage) may be negatively impacted by mandatory membership in Select due to OAS and GIS erosion. TBS is relying on OPTrust and potential employers to take this risk under advisement and create appropriate mandatory and voluntary employee classes

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy
			which would comply with legislation and affectively protect precarious workers. Since all full-time employees would be defined as mandatory member in the Plan, it may not be possible for OPTrust and employers to carve out all negatively impacted employees upon enrolment.
Potential employers and members are not sufficiently aware of the risk related to conditional indexation.	High	Unknown	TBS has raised this issue with OPTrust and OPSEU. This model of benefit assumes some probability risk of not achieving the Intended Benefit. TBS will be relying on OPTrust to address the issue in the Funding Policy and manage Select employers and members expectations related to inflation protection of their pension. Although Select employers and members will have no representation to make decisions, they are able to make recommendations to the Board of Trustees regarding their benefits and other matters through the Advisory Committee.

APPENDIX F: ABOUT OPTrust AND THE TECHNICAL WORKING GROUP

About OPTrust

The OPTrust, established in 1994 under the Ontario Public Service Employees Union Pension Act, 1994, is responsible for the administration of the OPSEU Pension Plan, the investment of the OPSEU Pension Fund and the adjudication of the plan. The Province of Ontario and Ontario Public Service Employees Union (OSPEU) are joint sponsors.

The OPTrust Board of Trustees is comprised of ten members, five of whom are appointed by each sponsor. The President of the Treasury Board appoints the Ontario-Sponsor trustees by Ministerial letter. Minister's appointments are generally 3-year terms.

About the Plan Select Technical Working Committee

OPTrust, and the joint sponsors of the Plan; OPSEU and TBS, have each provided three representatives to create a Technical Working Committee to address potential policy, legal, actuarial, and governance issues and risks and to finalize the documentation for Select. TBS notes that it engaged external counsel for legal advice on Plan governance, the potential implication to the JSPP designation of the Plan, and feedback on proposed amendments to Plan documents to implement Select. TBS also engaged an external actuary to provide advice on the actuarial assumptions applied by OPTrust, funding expectations on the sustainability for the Plan and risk of cross subsidization. TBS also consulted with the Ministry of Finance Pension Policy team and legal counsel to obtain feedback regarding: policy direction of the JSPP model, compliance with the requirements for JSPPs under the PBA and consequences of losing JSPP status.

APPENDIX G: LETTER OF AGREEMENT (EXCERPT): OPTRUST AND SPONSORS AGREEMENT ON EXPANSION

BETWEEN:
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS
REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES'
("Ontario")
-and-
THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION
("OPSEU")

D. Broader Expansion to New Employers: "Plan-Lite"

11. The Sponsors agree to continue discussions on a potential "Plan-Lite" defined benefit pension plan which could be offered to OPSEU-represented and any other nonunionized employees (including management) of a New Employer who do not already participate in a defined benefit pension plan. "Plan-Lite" would be intended to ensure afford ability for both New Employers and their employees. The model would be based upon a recommendation from the OPT.
12. The Sponsors agree that the discussion contemplated in paragraph 11 , will proceed in accordance with paragraph 13, without any initial preference for anyone option and will include consideration of the following design issues:
 - (i) Full Costing / Actuarial Assessment to determine contribution rate;
 - (ii) Further assessment on financial/legal risks to the Plan, if any;
 - (iii) Eligibility Criteria for "Plan-Lite" model; and
 - (iv) Consideration of design options that would minimize financial risk and promote Plan sustainability.
13. The Sponsors agree to meet twice a month, beginning one week after of the date of this Letter of Agreement, dates of meetings to be set by mutual agreement, for the purposes of reviewing a model for "Plan-Lite". In this regard, OPSEU will request that OPT prepare a model for consideration and review in or before the week of January 28, 2013.
14. The Sponsors agree that it is their joint intent to seriously discuss the details of a model for "Plan-Lite", with the further intention of incorporating provisions for "Plan-Lite" in all necessary Plan documentation such that "Plan-Lite" becomes an available option for appropriate New Employers, as soon as reasonably possible.

APPENDIX H: SELECT PROPOSED POTENTIAL EMPLOYERS

OPTrust Select Employer denotes an employer:

- a. in respect of employees for whom it applies to participate in OPTrust Select, are not members of, or eligible to be members of, the OPSEU Pension Plan pursuant to Article 3 of the OPSEU Pension Plan or another registered defined benefit pension plan by virtue of their employment with the employer; and
- b. that at the time it applies to commence participation in OPTrust Select:
 - i) is a charity in Ontario registered under the *Income Tax Act*, (Canada),
 - ii) is a not for profit corporation in Ontario incorporated under Part III of the *Corporations Act* or successor legislation,
 - iii) is an organization at which employees who are represented by OPSEU are employed and is set out in the list of organizations attached as Schedule "X" to the Sponsorship Agreement as may be amended in writing by the Sponsors from time to time, or
 - (iv) is a Broader Public Sector Organization; and
- c. has entered into a Participation Agreement with the Board.

"Broader Public Sector Organization" means:

- 1. Every public hospital and the University of Ottawa Heart Institute/Institut de cardiologie de l'Université d'Ottawa.
- 2. Every school board.
- 3. Every university in Ontario and every college of applied arts and technology and post-secondary institution in Ontario whether or not affiliated with a university, the enrolments of which are counted for purposes of calculating annual operating grants and entitlements.
- 4. Every agency, authority, board, commission, committee, corporation, council, foundation or organization that received public funds of the Government of Ontario in the previous fiscal year ending March 31, of an amount that is at least equal to (a) \$1,000,000; or (b) 10 per cent of the organization's gross revenues for the year if that percentage is \$120,000 or more but does not include,
 - i) the Office of the Lieutenant Governor,
 - ii) the Office of the Assembly or the office of an officer of the Assembly,
 - iii) a ministry of the Government of Ontario,
 - iv) an agency of the Government of Ontario, or
 - v) an organization that undertakes its activities for the purpose of profit to its shareholders.