Confidential

MB20 Submission

New Schedule of Benefits under OPSEU Pension Plan
for Expansion to Not-For-Profit and Broader Public Sectors

TREASURY BOARD SECRETARIAT

Centre for Public Sector Labour Relations and Compensation Division

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I. PURPOSE OF THE REQUEST

OPTrust, as administrator of the OPSEU Pension Plan (Plan), is proposing the expansion of 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. 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 A for a description of Select in comparison to the main Plan.

The Plan is jointly sponsored by OPSEU and the Government of Ontario (as represented by Treasury Board Secretariat (TBS)). Select requires approval of both Sponsors.

In this regard and subject to certain terms and directions, TBS recommends that Treasury Board / Management Board of Cabinet (TB/MBC) provide approval to the President of the Treasury Board to proceed to implement Select on behalf of the Crown as joint sponsor of the Plan.

II. KEY CONSIDERATIONS

Scope of Application:

Upon approval,

1. Direct the President of the Treasury Board to implement Select on behalf of the Crown as joint sponsor of the Plan in accordance with the terms summarized in the Letter of Agreement attached hereto as Appendix B, subject to obtaining prior written confirmation from OPSEU, in its role as the other co-sponsor of the Plan, of its approval to establish Select;

2. In particular, direct the President of the Treasury Board, to amend the Plan documentation as necessary in order to establish Select as a schedule to the Plan, subject to the prior written agreement of OPSEU to such documentation. More particularly, the following documentation will be created or amended, as applicable:
   i. The Letter of Agreement,
   ii. The Plan text,
   iii. The Sponsorship Agreement,
   iv. 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.

3. Direct the President of the Treasury Board, in due course following implementation of Select, to recommend an amendment to the *OPSEU Pension Act, 1994* to expand the definition of "employer" for consistency with the definition in the *Pension Benefits Act* to make it apparent that regulatory measures to enforce employer payments would apply to new Select employers.

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 engaged external counsel for legal advice on Plan governance, the potential implication to the Jointly Sponsored Pension Plan (JSPP) designation of the Plan, and feedback on proposed amendments to Plan documents to implement Select. All substantive legal advice has been incorporated.

TBS 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. All substantive actuarial advice has been considered.

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.

The Technical Working Committee has attempted to address and mitigate the potential policy, legal and actuarial risks associated with the establishment of Select. While some mitigation strategies and protections were achieved, a number of risks remain as part of this initiative as set out in Section VI of this Submission.

Matters for Consideration

<u>JSPP Status</u>
As a JSPP, the Plan is defined under the Pension Benefits Act (PBA) as:

- A pension plan in which contributions to the pension plan are jointly shared by both plan members and their employer(s) – collectively known as the plan sponsors. Both employers and plan members are required to fund any plan deficits. In light of this, employers and plan members 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.

- 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)

OPTrust's proposal for a new schedule of benefits within the Plan is unique in a number of respects, including that under the proposal, the Select employers and employees will be subject to a separate schedule of contribution rates and benefits, including conditional benefits such as indexation. However, they will have no direct role in the sponsorship of the pension plan or in decision-making regarding the plan. As a result, 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. Some changes in the governance structure will be made to address this issue (see Plan Governance section below for details), while permitting Select to solicit members to determine viability. The changes would enhance arguments that the Plan is consistent with some important aspects of the legal and policy framework applicable to JSPPs under the PBA.

The loss of JSPP status could have a number of negative implications for the sponsors, including:

(i) the potential loss of the current solvency funding exemption,
(ii) the requirement to make PBGF assessments, and
(iii) the potential loss of an anticipated exemption from enhanced going concern funding under Ontario's new funding regime.

There would also be negative fiscal implications as set out below in the section on Financial Analysis. A loss of JSPP status, combined with the narrow definition of employer under the *OPSEU Pension Act, 1994* could bolster potential Select employer arguments that they are not subject to the PBA requirements for making contributions and liquidating unfunded liabilities in the Plan. There is also the reputational risk of the government appearing to disregard the laws it has put in place that confer rights to members of JSPPs who, in exchange for being jointly responsible with the employer for funding the JSPP, have a right under the PBA to participate in the sponsorship and selection of the administration of the pension plan. However, as noted above, the governance model agreed to by the parties attempts to capture some of the policy intent of the JSPP model once the plan reaches a certain size.

Target Market of Select Employers

The initial target market for Select has been identified as employees and management in the BPS and not-for-profit sector, including registered charities that 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.

Preliminary analysis of Select's benefit model by Ministry of Finance indicated that a more advantageous savings vehicle for individuals earning at or around minimum wage may be a Tax Free Savings Account (TFSA) so that Old Age Security and Government Income Supplement benefits payable after age 65 will not be eroded. This is similar to the pilot program for personal support workers announced in the 2018 Budget. However, a plan such as Select would be of benefit to moderate wage earners. For these workers, Select would provide a retirement plan option that could benefit unserved sectors. It would also be consistent with earlier agreements reached with OPSEU to support plan expansion as part of the 2012 benefit and contribution freeze.

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 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 plan for Ontario's not-for-profit and charities. The proposal by ONN for a Target-Benefit Multi-Employer Pension Plan directly competes with Select's target market, offers more flexibility than Select, and unlike Select, will offer employers and employees a direct role in governance of the plan.

Risk Transparency

OPTrust's February 2018 Sustainability Memo states that the probability of contributions sustaining Select's Core Benefit (i.e. with no annual inflation protection) is 84%, and 57% for Select's Intended Benefit (i.e. with inflation protection). The probability of contributions sustaining the main schedule of benefits is approximately 60% which, according to Aon (TBS external actuary), is reasonable for most plans.

Depending on how Select is communicated by OPTrust, the probability of achieving a pension with inflation protection may not be transparent to potential employers and members.

Critical Mass Required

OPTrust has determined that a critical mass of 20,000 Select members is needed to assist with the long term sustainability in the Plan.

Plan Governance

It has been agreed by the parties that the issue of 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. OPTrust will notify the Sponsors as soon as practical when:

- (i) membership in Select reaches 900 or more members,
- (ii) membership in Select reaches 10%, 15% and 20% of the total Plan membership, and
- (iii) liabilities of Select reaches 3%, 4% and 5% of total Plan liabilities.

Select members and employers, who are under a different (i.e. lower) benefit schedule than the main Plan will have no decision-making rights regarding Select until this threshold has been attained. Once this threshold is met, subject to agreement of the Sponsors, representation will be negotiated between the parties before Select can continue to grow. This representation is likely less than required under the policy and legal framework for JSPPs under the *Pension Benefits Act.*

There is a risk of the Superintendent or the Financial Services Tribunal (in the event that a request for a hearing is made) and/or a reviewing court finding that the Plan is not in compliance with the JSPP requirements set out in the PBA. If this were to occur, consideration could be given to reviewing options to address additional governance changes and/or potential legislative changes to recognize the changing nature and models of JSPPs. This could address the issue from a prospective basis, but may not be able to address it on a retroactive basis and may not protect the government from criticism by stakeholders and the public for failing to comply with its own laws.

It should be further noted that the OPSEU Plan Sponsor is very reluctant to agree to governance changes at this time. Given the agreement that the governance representation issue will not be addressed until Select membership reaches 20% of the active membership in the Plan (approximately 10,500 members), Select may not grow beyond 10,500 members. This raises the concern that the critical mass of 20,000 members needed to assist in the long term sustainability of the Plan will not be met.

<u>Cross Subsidy</u>

As Select is a schedule within the Plan, the design of Select needs to ensure that sufficient policy measures are in place to mitigate risk of one schedule subsidizing the other. 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 representation until such time as Select represents 20% of the active membership of the Plan or its liabilities exceed 5% of the total Plan liabilities. Select employers and members will not at any point have representation as sponsors until if and when such threshold is reached.

There are no set rules or provisions in the revised Plan documents to prevent the occurrence of cross-subsidy and reliance would be placed on the OPTrust to make decisions under the Funding Policy to correct any persistent cross-subsidy.

<u>Employer Vetting</u>

The vetting of potential employers is essential to promote sustainability of the plan, mitigate the risk of potential employers defaulting on their contributions, and thereby placing the Plan and Sponsors at risk of additional liability. The vetting will be under the control of the OPTrust based on a net benefits test template, which will be approved by the Sponsors. It should be noted that the net benefit test, which is based upon analysis the potential loss to each new member, would be unique to public sector pension plans. It should also be noted that the reserve fund contemplated for new employer entrants (to mitigate risk of near term insolvency) would also be unique to public sector pension plans.

III. RATIONALE

OPTrust's rationale for expansion is that it will: spread the Plan's investment volatility risk across increased numbers of active members in an effort to support Plan sustainability; and provide greater pension coverage for Ontario workers who do not have access to a defined benefit pension plan.

Rationale for the Province of Ontario is to:

- Build retirement security by providing a retirement option to lower income target market.
- Leverage the existing pension administration infrastructure to administer both benefit schedules.
- Grow the membership base to spread the risk of losses across a larger membership base and reduce the need for future contribution increases, as per section V below.
- Uphold and support the government's previous commitment to OPSEU plan expansion

Rationale for OPSEU is to:

- Expand OPSEU unionization in other sectors; and
- Build retirement security by providing a retirement option to lower income target market.

IV. FINANCIAL ANALYSIS

The Plan is currently in a net pension asset position for accounting purposes, meaning that the valuation of plan assets exceeds the accrued benefit obligation under Public Sector Accounting Standards. 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 due to any change in plan sponsorship and governance that removes the government's shared control over the plan, the JSPP accounting rules would no longer apply and the Province would no longer be eligible to record these assets, and would be required to take a valuation allowance. The projected net pension asset position of the Plan at March 31, 2018 is $1 billion. An additional annual valuation allowance would also be reported against any future net increase in the net plan asset position.

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 Select.

V. PERFORMANCE MEASURES

The proposed outcome of Select is to assist the Plan with long term sustainability. Its success will be measured by Select's ability to attract sufficient members to positively influence to the Plan's long term needs.

VI. RISKS

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.

VII. TIMEFRAME

OPTrust has communicated it has interested employers wanting to join Select and are concerned that these employers may look to alternative retirement vehicles if Select is not implemented in the near future.

The pending proposal by the Ontario Nonprofit Network to implement a MEPP a Target-Benefit Multi-Employer Pension Plan, which could be competitive with OPTrust Select, creates additional timing pressure.

The proposed implementation would proceed following approval of the OPSEU Sponsor and once all required documentation has been completed and signed by both sponsors.

VIII. RECOMMENDATION

Recommend Treasury Board / Management Board of Cabinet provide approval to the President of the Treasury Board, on behalf of the Crown as joint sponsor of the Plan, to proceed to implement a new schedule to the OPSEU Pension Plan entitled OPTrust Select that would provide a separate Plan benefit to employees in the BPS and Not-For-Profit sector, including registered charities upon securing required documentation and subject to obtaining prior written confirmation from OPSEU, in its role as the other co-sponsor of the Plan, of its approval to establish Select.

IX. COMMUNICATIONS PLAN

If Select is approved for implementation with all required documentation secured:

- OPTrust would be able to promote Select to the defined potential employer market.
- Provide potential employers with the necessary application and documentation.

Appendix A – OPSEU Pension Plan Schedule of Benefits

	Main Plan	OPTrust Select
Contribution Rates (Employer Matched)	9.4% to YMPE + 11% above YMPE	3% *first two years: Employer pays 3.2%, then afterwards pays 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%
Unreduced 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-yr average YMPE per year of credit	None
Subsidized 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 B – Letter of Agreement

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

By: ______________________________
President of Treasury Board

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

By: ______________________________
Name:
Title:

By: ______________________________
Name:
Title:

Letter of Agreement - Appendix 1

See attached Draft Amendment to Sponsorship Agreement

Letter of Agreement - Appendix 2

See attached Draft Amendment to the Plan

Letter of 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.