Ontario

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

BASED ON DRAFT MATERIALS

SUBMISSION TITLE:	Ontario Public Service Employees Union Pension Plan Expansion

I. DECISION BEFORE THE BOARD

Treasury Board Secretariat (TBS) is requesting approval for the President of the Treasury Board to implement an expansion of the Ontario Public Service Employees Union (OPSEU) Pension Plan membership, by offering a separate defined benefits schedule to the broader public and not for profit sectors, subject to prior confirmation from OPSEU.

II. RECOMMENDATIONS:

[Recommendation] the proposal to expand the OPSEU Pension Plan ('Plan') membership by offering a reduced-defined benefits schedule to the broader public and not for profit sectors, to be called OPTrust Select ('Select'), in accordance with the terms in the Letter of Agreement.	*TBC*
[Recommendation] that the President of the Treasury Board to proceed with implementation of Select, including amendments of Plan documentation, subject to prior OPSEU agreement.	*TBC*
[Recommendation] following the implementation of Select, the President of the Treasury board to recommend an amendment to the *OPSEU Pension Act, 1994*, to expand the definition of 'employer' for consistency with that of the *Pension Benefits Act (*PBA).	*TBC*

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

*Approval of the request may not result in an immediate financial impact; however, there is a risk that approval would result in the Plan no longer having status as a Jointly-Sponsored Pension Plan (JSPP), whereupon the Plan could no longer be recorded as an asset to the Province. See Financial Impact, below.

IV. KEY COMMENTS AND CONSIDERATIONS

OPTrust, as administrator of the OPSEU Pension Plan, is proposing the expansion of Plan membership to support sustainability. Membership would be expanded to the Broader Public (BPS) and not-for-profit sectors as a separate schedule under the Plan, called OPTrust Select. Select requires approval by both Plan sponsors; OPSEU and the Government of Ontario (represented by TBS). Therefore, TBS is requesting that Treasury Board/Management Board of Cabinet (TB/MBC) approve the President of the Treasury Board to implement Select on behalf of the Crown as joint sponsor of the Plan, subject to prior OPSEU agreement.

IV. Key Comments and Considerations

About Select

If approved, Select would be a reduced defined-benefit schedule under the current OPSEU Pension Plan. Proposed employer-matched contribution rates would be 3.0% (employers would pay an additional 0.2% for the first two years, and 3% afterwards) as compared to 9.4% to the Yearly Maximum Pensionable Earnings (YMPE), and 11% above YMPE for main Plan members. For more detail on the proposed attributes of Select, see Appendix C. Select members would have a limited role in governance, to be determined depending on the level and/or per cent of Select membership/liabilities in the overall plan (see Plan Governance, below).

OPTrust's rationale for expansion is that it would spread the Plan's investment volatility risk across increased numbers of active members, thereby supporting Plan sustainability. Select would also provide greater pension coverage for those who do not have access to a defined benefit pension plan. Benefits for OPSEU would include the growth of OPSEU unionization in other sectors. Additionally, TBS notes that expansion could build retirement security by providing a retirement option to a lower income target market, and support the government's previous commitment to OPSEU plan expansion.

About Select: Requested Approvals and Proposed Amendments

The expansion to Select would require amendments to Plan documentation, including the Plan text and Sponsorship agreement, and potentially other legislation and documentation. TB/MBC approval is therefore requested for the following:

1. 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 (see Appendix D), subject to obtaining prior written confirmation from OPSEU, as the other co-sponsor of the Plan, of its approval to establish Select;
2. 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.

   In particular, the following documentation would be created or amended, as applicable:

   i. The Letter of Agreement (see Appendix D),
   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 collective bargaining rights in respect of the Select terms and conditions.
3. The President of the Treasury Board 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 PBA to make it apparent that regulatory measures to enforce employer payments would also apply to new Select employers.

About Select: Target Market

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. 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*. This would include OPSEU employees, non-represented workers and management, and those with workers represented by non-OPSEU unions. TBS notes that these organizations typically employ lower income earners.

The vetting of potential employers would be under the control of the OPTrust based on a net benefits test template, which would be approved by the Sponsors. Vetting would mitigate the risk of potential employers defaulting on their contributions (thereby placing the Plan and Sponsors at risk of additional liability). Vetting would be under the control of the OPTrust based on a net benefits test template, to be approved by the Sponsors. OPTrust would 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. Additionally, Select employers would pay an additional 0.2% reserve contribution during the first two years of joining Select; this pooled reserve would be held and may be used to fund member benefits that would otherwise be impacted by the missing contributions, thereby protecting the Plan.

Analysis: Select Target Market

MOF's preliminary analysis of Select indicated that a more appropriate savings vehicle for individuals earning at or around minimum wage may be a Tax Free Savings Account so that benefits payable (Guaranteed Income Supplement; Old Age Security) after age 65 will not be eroded. There could be possible perception risk in implementing a schedule that is not in the best interest of certain lower income earners.

TBS also reports that the Ontario Nonprofit Network (ONN) has recently proposed a Target-Benefit Multi-Employer Pension Plan (MEPP), which would compete directly with Select's target market. This MEPP would potentially offer more flexibility, and unlike Select, would offer employers and employees a direct role in governance of the plan (see Plan Governance, below).

With respect to potential employers, vetting and the use of the net benefits test template would mitigate default risk, although it is not clear what the parameters of such a test would be. Additionally, 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.

As Select is a schedule within the Plan, its design must ensure that sufficient policy measures are in place to mitigate risk of one schedule subsidizing the other. TBS notes that 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 (see Plan Governance, below). There are currently no set rules or provisions in the revised Plan documents to prevent this occurrence; reliance would be placed on the OPTrust to make decisions under the Funding Policy to correct any persistent cross-subsidy.

About Select: Critical Mass

TBS reports that OPTrust has indicated that approximately 20,000 Select members would be needed for Select to have the intended positive impact on the OPSEU Pension Plan's long-term sustainability. OPTrust also advises that additional administration costs for Select would be covered given a few hundred Select members.

Analysis: Critical Mass

TBS notes that it has not seen evidence to indicate OPTrust is able to attract the requisite 20,000 new members; although OPTrust staff have advised that organizations have expressed interest to them. The number of active members currently in the OPSEU Pension Plan is approximately 45,259.

Additionally, it is not clear that the membership to be targeted would have the intended effect of enhancing Plan sustainability. TBS (OPCD) notes that the actuarial analysis for Select had been completed under the assumption that Select members' demography would be the same as current Plan members. The likelihood of this assumption holding true on implementation is not currently known; it has been noted that organizations in the target market typically employ lower-income workers.

<u>About Select: Plan Governance</u>

Plan governance is a determining factor in the Plan's status as a Jointly-Sponsored Pension Plan under the *Pension Benefits Act.* As outlined in the Letter of Agreement (Appendix D), Select members and employers would not have governance representation until Select membership or liabilities reached certain thresholds, described below:

Threshold 1: 1000 Select Members - Advisory Council

As per the Letter of Agreement (Appendix D), should Select reach 1000 members, an Advisory Committee (AC) would be established to provide feedback to the Board of OPTrust.

The AC would include representation from both Select employers and Select members, and 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.

Threshold 2: Governance Review

As per the Letter of Agreement (Appendix D), Sponsors would 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) exceed 5% of Plan liabilities as a whole, 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 OPTrust**.**

OPTrust will not permit the number of Select members in the Plan to increase beyond 20% of total active members (which is under the current critical mass threshold) in the Plan or 5% of Plan liabilities unless governance changes regarding some representation were negotiated between the parties.

Note that the proposed critical mass threshold of 20,000 Select members would account for approximately 30.6% of the total Plan membership (Select + main plan, based on the current active Plan membership of 45,259).

Analysis: Plan Governance

With respect to the Advisory Council, it is unclear to what extent, if at all, action regarding the AC's recommendations would be required on the part of the Board of OPTrust, and therefore, the degree to which Select members would have control over their own plan.

TBS notes that the Advisory Committee would support the achievement of some of the representation requirements under the policy and legal framework for JSPPs under the PBA. However, it is not clear to what degree, and is likely to be less than is required. TBS notes that the representation to be negotiated when Threshold 2 is met would also likely be less than required for JSPPs.

Therefore, there is a significant risk of the proposed plan governance structure resulting in the OPSEU Plan being found as not in compliance with the JSPP requirements. Loss of JSPP status would result in significant fiscal impact to the Province (see Financial/Accounting Impact, below).

TBS notes that 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, which could enhance arguments that the Plan is consistent with important aspects of the legal and policy framework applicable to JSPPs under the PBA. While this could address the issue from a prospective basis, it 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.

Analysis: Financial/Accounting Impact

The OPSEU Plan is currently in a net pension asset position for accounting purposes; i.e., the valuation of plan assets exceeds the accrued benefit obligation under measurement using Public Sector Accounting Standards. The projected net pension asset position of the Plan at March 31, 2018 is $1,014 million. The request itself is fiscally neutral, although it does entail significant accounting and financial risks.

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. The expansion could potentially result in the Plan no longer qualifying as a JSPP due to any change in plan governance that removes the government's shared control over the plan (see Plan Governance, above). The determination of the Plan's status as a JSPP could be made by the Financial Services Commission of Ontario (FSCO), or a Court in response to a complaint/challenge by a plan member or employer.

In this case, 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 full valuation allowance against any net pension asset, resulting in a fiscal impact to the Province of the value of the asset. An additional annual valuation allowance would also be reported against any future net increase in the net plan asset position.

As noted TBS notes that some risk mitigation strategies would be implemented under this proposal. The Participation Agreement executed when a new employer agrees to join Select states that the Government and OPSEU would respectively represent the employers and employees. Additionally, as outlined above, there are considerations made to adjust governance given certain thresholds of Select membership/level of liabilities in the Plan. The Advisory Council would support some representation requirements of a JSPP in the PBA, and upon meeting Threshold 2, Sponsors would commit to review the governance structure of the Plan. However, this representation is likely less than required. If the Superintendent of the FSCO or the Financial Services Tribunal (in the event that a request for a hearing is made) and/or a reviewing court found the Plan to not be in compliance with the JSPP requirements set out in the PBA, consideration could be given to reviewing additional governance changes and/or potential legislative changes to recognize the changing nature and models of JSPPs. TBS also notes that while this could address the issue from a prospective basis, it 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.

Other Risks/Potential Issues

A number of potential risks and issues related to the expansion to Select, have been noted. Please see Appendix E for risk analysis additional to that noted above.

Next Steps/Communications Plan

Given approval, TBS indicates that the proposed implementation would proceed in the coming weeks following approval of the OPSEU Sponsor. If Select is approved for implementation 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	**Phone number:**	7-2189
Date:	April 9, 2018	**Log number:**	
Branch / Division:	Health, Social, and General Government/OEMD		

APPENDIX A: PROPOSED MINUTE

[under development – see recommendations]

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**

*Implementation of the Plan would not result in an immediate financial impact; however, there is a risk that approval of Select implementation would result in the Plan no longer having status as a Jointly-Sponsored Pension Plan (JSPP), whereupon the Plan could no longer be recorded as an asset. See Financial Impact.

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

[TBC] The following Letter of Agreement was signed by OPSEU on [date – Wednesday, April 11]] and would be signed by the President of Treasury Board, given approval of the current request.

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: Additional Risks and Analysis

Risk	Impact	Likelihood	Potential Mitigation Strategy
Create upward pressure from some BPS employers to expand their funding envelope; there would be a possible long term financial impact for the Government of Ontario related to increased pressures to improve/bargain up the benefits offered.	Medium	Medium	Participation Agreement to be signed by Select employers, and 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%. The risk of Select fracturing sectors and affecting labour mobility would pertain mostly to the NFP sector and the proposed ONN MEPP.
There is a potential for implications on labour relations and labour mobility in the targeted sectors.			[TBC]
As the Government of Ontario and OPSEU are co-sponsors of this pension plan, careful consideration would be required to avoid perception that OPSEU is the Government's union of choice			Other plans may also expand; other unions may participate in that expansion.
With respect to any BPS/Non-Governmental Organizations that receive funding from the Province, there may be a perception that participation in Select would result in increased public financial support.			The Participation Agreement would 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

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.