

**AGREEMENT ON THE ESTABLISHMENT AND OPERATION OF THE  
\_\_\_\_\_ ENDOWMENT FUND**

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

**BETWEEN:**

(hereinafter called "Donor")

**OF THE FIRST PART**

- and -

**EVANGELICAL LUTHERAN FOUNDATION  
OF EASTERN CANADA**

(hereinafter called "ELFEC")

**OF THE SECOND PART**

**WHEREAS** the Donor is desirous of establishing a permanent endowment fund to be known as the \_\_\_\_\_ Fund (the "Fund") or as otherwise named pursuant to the provisions hereinafter set out to be held and administered by ELFEC, on the terms and conditions as set out herein.

**THEREFORE**, the Donor and ELFEC agree as follows:

**ARTICLE 1**

**CREATION OF ENDOWMENT**

- 1.1 The Donor will provide an initial gift of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) on or before \_\_\_\_\_, 20\_\_ to ELFEC to establish the Fund. Upon receipt of such gift, ELFEC shall provide to the Donor an official receipt for income tax purposes pursuant to provisions of the Income Tax Act (Canada).
- 1.2 There shall also be added to the Fund any other gifts that the Donor may make to ELFEC from time to time that are specifically directed to the Fund, other gifts that are directed to be added to the Fund by any other person and any income earned in the Fund that has not been distributed in accordance with the terms of this Agreement and which ELFEC has, in its discretion, added to the Fund as capital.
- 1.3 If, in the sole discretion of ELFEC, it is impractical to continue using the income from the Fund for the designated purposes, the income is insufficient to

accomplish the intent of the Fund as set out in Schedule A or the program or preferred ministry to which the income in the Fund is to be applied is, for any reason, impossible, impractical or undesirable, ELFEC shall have the right to apply any or all of the capital, capital gain, whether realized or unrealized and/or income of the Fund to such other endowment(s) administered by ELFEC as ELFEC, in its sole discretion, considers appropriate, including but not limited to a general endowment fund established by ELFEC, the income, capital and capital gains, realized or unrealized of which is applied in accordance with the provisions of such fund. Without imposing any trust or legal obligation to do so, ELFEC shall use reasonable efforts to honour the original intent of the Donor in the application of the capital and/or income of the Fund to the extent that it is practical to do so.

- 1.4 Subject to the provisions hereinafter provided, all contributions to the Fund by the Donor and any other donors, subject to any condition imposed by the Donor and accepted by ELFEC, shall be retained by ELFEC in perpetuity as capital and may be pooled with ELFEC's other capital funds for investment purposes.
- 1.5 ELFEC reserves the right to amend the name of the Fund if, in the sole discretion of the Directors of ELFEC acting reasonably, it is determined that it is in the best interests of ELFEC to change the name of the Fund.

## **ARTICLE 2**

### **APPLICATION OF ENDOWMENT**

- 2.1 Unless otherwise specified in Section 2.2 of this Agreement, the income and, where considered appropriate by ELFEC, the realized and unrealized capital gains from the Fund shall be used by ELFEC for its charitable purposes and shall be subject to the terms and conditions of its governing documents which include but are not limited to the constating documents of ELFEC by which it was established, its bylaws as amended from time to time and the policies as adopted by the Directors of ELFEC from time to time, including but not limited to endowment policies established by the Directors of ELFEC from time to time (herein called the "Governing Documents").
- 2.2 The purpose of the Fund and the criteria upon which income from the Fund is to be allocated shall be as set out in Schedule A attached hereto. Without imposing any trust or legal obligation on ELFEC to do so, ELFEC may seek the advice and input of the Donor as to the preferred ministry or program to which the income from the Fund is to be applied, provided such application is within the charitable objects of ELFEC.

- 2.3 Capital gains realized on the Fund may, at the discretion of ELFEC, either be applied to income or added to the capital of the Fund. Realized or unrealized capital gains shall not be subject to the restrictions placed on the Fund with respect to a minimum hold period of not less than ten (10) years.
- 2.4 In accordance with the ELFEC policies on disbursements and grants then in force, earnings from the Fund shall, subject to the provisions of this Agreement, be applied for the purposes set out in Section 2.2 of this Agreement.
- 2.5 The Donor intends that the original value of the property contributed for this Fund, or other property substituted for it, shall, subject to the provisions of this Agreement, be held and invested by ELFEC as a permanent endowment for the purpose set out in Schedule A unless the purpose is amended in accordance with the provisions of this Agreement. Irrespective of any other provisions set out in this Agreement, where there is a disbursement quota excess from the preceding five taxation years and/or from the immediately subsequent taxation year, then ELFEC shall be entitled to encroach on the Fund to the extent of the Disbursement Quota Excess.
- 2.6 If, at any time subsequent to the date of this Agreement, the value of the principal of the Fund, adjusted for inflation as measured by the Consumer Price Index for Canada or its equivalent, should fall below the minimum amount then required by ELFEC for the maintenance of a permanent endowment fund, such minimum amount being determined by ELFEC in its sole discretion, ELFEC shall have the authority, but not the obligation, to disburse the capital of the Fund over a period of not less than two years for such of ELFEC's general charitable purposes as ELFEC shall in its absolute discretion, deem appropriate and thereby dissolve the Fund. Without imposing any trust or legal obligation to do so, ELFEC shall use reasonable efforts to honour the original intent of the Donor in the application of the capital and/or income of the Fund to the extent that it is practical to do so.

### **ARTICLE 3**

#### **GOVERNANCE – MANAGEMENT**

- 3.1 It is understood by the Donor that the investments of the Fund may, at the discretion of ELFEC, form part of the pool of investments of ELFEC and such investments are made in accordance with the investment policies adopted by ELFEC from time to time in consultation with its investment managers and advisors. The Donor declares that ELFEC shall not be liable for any loss that may happen to the Fund in connection with any such investment made by ELFEC in good faith.

- 3.2 All distributions from the earnings of the Fund when disbursed by ELFEC will be identified as coming from the Fund.
- 3.3 The Donor declares that ELFEC may encroach upon and disburse from the Fund such amount or amounts as permits ELFEC to meet its 3.5 % Disbursement Quota requirement (or such Disbursement Quota requirement as may be amended from time to time) pursuant to the provisions of the Income Tax Act (Canada) and ELFEC shall be entitled to encroach on the capital of the Fund to the extent of the 3.5% Disbursement Quota requirement or such Disbursement Quota requirement may be amended from time to time.
- 3.4 The assets of the Fund need not be segregated from other assets belonging to or administered by ELFEC, but may be co-mingled with such other assets for administrative and/or investment purposes in the discretion of ELFEC, provided that such co-mingling shall not be obligatory and that the Fund will be accounted for separately.
- 3.5 ELFEC shall provide an Annual Fund Statement to the Donor showing all receipts and disbursements from the Fund. Such obligation shall terminate when the Donor dies, becomes incapable of managing his/her affairs, defaults in making additional contributions to the Fund in accordance with the provisions of Schedule B, if applicable, or advises ELFEC in writing that such Annual Fund Statement is no longer required by the Donor.
- 3.6 ELFEC, in carrying out its duties and responsibilities pursuant to this Agreement, may employ investment managers and advisors and pay such reasonable fees as it may determine appropriate for such services. ELFEC does not guarantee the investment performance of the Fund and shall not be responsible for any loss sustained, except where such loss arises out of acts or omissions done or suffered through ELFEC's negligence, willful misconduct, or failure to comply with any material applicable laws and regulations or failure to comply with the terms and provisions of this Agreement.
- 3.7 ELFEC and its Board of Directors, its employees and/or contracted employees shall be indemnified and held harmless out of the Fund against each and every claim and loss arising with respect to such Fund or any part thereof except those claims arising against ELFEC, its officers, directors, employees or contracted employees through the willful neglect, default or misconduct or the willful breach of the terms of this Agreement by ELFEC or its officers, directors, employees or contracted employees and such indemnity shall include but not limited to professional fees and disbursements incurred, taxes and impositions.

## **ARTICLE 4**

### **OTHER PROVISIONS**

- 4.1 ELFEC shall be entitled to deduct from the Fund as a management fee for the management of the Fund an amount equal to one percent (1%) per annum of the capital value of the Fund, such management fee to be calculated and payable as one quarter of one percent (0.25%) of the capital value of the Fund at the end of each calendar quarter or part thereof.
- 4.2 The Donor acknowledges the accuracy of the information set out in the Donor Biography attached hereto as Schedule C and consents to the use of such information by ELFEC for donor recognition purposes.
- 4.3 This Agreement may be signed by the parties in separate counterparts each of which when so signed and delivered shall be an original and all such counterparts shall together constitute one instrument.
- 4.4 This Agreement shall not be amended unless such amendment has been mutually agreed upon by the parties hereto, such agreement to be evidenced in writing.
- 4.5 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 4.6 Any finding that a provision of this Agreement is invalid or unenforceable shall apply only to such provision.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
Donor signature

\_\_\_\_\_  
Witness (please print name)

**EVANGELICAL LUTHERAN FOUNDATION OF EASTERN CANADA**

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_ c/s  
(Authorized Signing Officer)

We have authority to bind the Organization

**AGREEMENT ON THE ESTABLISHMENT AND OPERATION  
OF THE \_\_\_\_\_ ENDOWMENT FUND**

**SCHEDULE A**

Subject to the provisions of the Endowment Agreement of which this Schedule A is an integral part, the purpose of the Fund and the manner in which the income from the Fund is to be applied as follows:

Purpose:

Criteria for Allocation of Income:

**AGREEMENT ON THE ESTABLISHMENT AND OPERATION  
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**SCHEDULE B**

**Additional Scheduled Contributions**



**AGREEMENT ON THE ESTABLISHMENT AND OPERATION  
OF THE \_\_\_\_\_ ENDOWMENT FUND**

**SCHEDULE C**

Donor Biography

I acknowledge the accuracy of the information set out in this Donor Biography and consent to the use of such information by ELFEC for donor recognition purposes.

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(Donor Signature)