

**THIS AGREEMENT** made effective the first day of XXX, 2022.

**B E T W E E N:**

**XXXXX LUTHERAN CHURCH**

**Registration number: XXXXXXXXX RR 0001**

(herein called the "Congregation")

OF THE FIRST PART

**AND**

**EVANGELICAL LUTHERAN FOUNDATION OF EASTERN CANADA**

**Registration number: 830771127RR0001**

(herein called "ELFEC")

OF THE SECOND PART

**WHEREAS** the Congregation has funds on deposit which are either subject to donor directions and/or designations or are subject to the internal designations of the Congregation;

**AND WHEREAS** the Congregation is a registered charity pursuant to the provisions of the Income Tax Act (Canada);

**AND WHEREAS** ELFEC is a non-share capital corporation incorporated under the Canada Not-for-profit Corporations Act and is a registered charity pursuant to the provisions of the Income Tax Act (Canada);

**AND WHEREAS**, as part of its corporate objects, ELFEC has the authority to:

- (i) receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to charitable organizations that are also registered charities under the *Income Tax Act* (Canada);
- (ii) operate exclusively as a charity to support and further the life, work and mission of the Eastern Synod of the Evangelical Lutheran Church in Canada, its congregations and affiliated institutions, and other faith-based organizations with similar purposes, which are qualified donees within the meaning of section 248(1) of the Income Tax Act.

**AND WHEREAS** the Congregation has determined that, for various reasons, including investment economies and efficiencies, investment expertise by ELFEC, the potential for enhanced investment returns and for other reasons considered by the Congregation, the Congregation has determined that it would be prudent to transfer funds from the Congregation to ELFEC, a qualified donee pursuant to the provisions of the Income Tax Act (Canada); for the purpose of ELFEC administering the cooperative investment of such funds for the Congregation;

**AND WHEREAS** it has been determined that there are no restrictions in the constating documents of the Congregation to prevent any transfer of the funds of the Congregation to ELFEC;

**NOW THEREFORE**, in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration the receipt of which is acknowledged, the parties hereto agree as follows:

1. ELFEC hereby represents and warrants to the Congregation that it is a registered charity and as such is a “qualified donee” in accordance with the terms and provisions of the Income Tax Act (Canada).
2. The Congregation hereby represents and warrants to ELFEC that it is a registered charity and as such is a “qualified donee” in accordance with the terms and provisions of the Income Tax Act (Canada).
3. The Congregation has decided to transfer to ELFEC the funds set out in Schedule A and/or the amount set out in Schedule A, being funds and/or monies previously administered by the Congregation. Such funds are transferred to ELFEC so that they may be pooled with other funds, either belonging to ELFEC or transferred by other parties for similar purposes, with the express understanding on the part of both parties to this Agreement that such funds so transferred (the “Transferred Funds”) remain the funds of the Congregation.
4. The parties hereto further acknowledge and agree that some of the Transferred Funds may be subject to donor designations imposed on the Transferred Funds by the Congregation either because donors who donated all or part of such funds to the Congregation have designated the purpose to which they are to be applied or the Congregation has made such designations (herein called “Donor Designations”). If Donor Designations impact the manner in which any Transferred Funds are to be invested, it is the responsibility of the Congregation to notify ELFEC in writing of such limitations and/or restrictions at the time of transfer. The parties acknowledge that it is the responsibility of the Congregation to apply the Transferred Funds in accordance with the Donor Designations.

5. As administrator of the Transferred Funds for the Congregation, ELFEC shall use its best effort to ensure that in administering the Transferred Funds in accordance with the provisions of this Agreement, it shall do nothing to prevent the Congregation from complying with any donor restrictions on the Transferred Funds to which the Congregation is subject and which the Congregation has disclosed to ELFEC.
6. ELFEC acknowledges that, as of the effective date of transfer of the Transferred Funds, it has no right, title or ownership interest in such funds nor any subsequent funds transferred by the Congregation to ELFEC (the "Subsequent Funds") save and except for such entitlements arising pursuant to the terms and provisions of this Agreement.
7. Prior to the transfer of Transferred Funds which are subject to Donor Designations imposed by the original donor at the time of donation to the Congregation, the Congregation acted as a trustee for such funds and, as such, had a fiduciary duty to ensure that the designations so specified were honoured and the income and capital of the funds were applied in the manner so directed.
8. ELFEC shall, in the first quarter of each year, pay to the Congregation the investment income earned by the Transferred Funds in the previous year after the deduction of any charges and disbursements agreed upon by ELFEC and the Congregation. The Congregation may, at its discretion, direct ELFEC instead to reinvest the income for the year, or any part thereof, by adding it to the capital of the Transferred Funds, provided such direction is received in writing by ELFEC no later than January 31 in the year following the year in which the income is earned. Original Instructions are set out in Schedule A.
9. With respect to all Transferred Funds as set out in Schedule A and the Subsequent Funds, ELFEC shall provide to the Congregation an annual report of all such Transferred Funds and Subsequent Funds. Such Transferred Funds and Subsequent Funds need not be segregated from all other funds of ELFEC or administered by ELFEC, but will be accounted for separately.
10. Upon the request of the Congregation, ELFEC shall return all or any of the capital of the Transferred Funds and Subsequent Funds to the Congregation, subject to the provisions hereinafter set out and the deduction of any charges and disbursements agreed upon by ELFEC and the Congregation.
11. Where additional monies are transferred to ELFEC for investment purposes and such funds are subject to Donor Designations and/or other restrictions, provided the Congregation has notified ELFEC in writing of such Donor Designations and/or other restrictions, ELFEC shall do no act in administering such funds which is inconsistent with or in breach of such Donor Designations and/or other restrictions.

12. ELFEC shall invest the Transferred Funds, any Subsequent Funds and any income and/or capital added to the Transferred Funds or Subsequent Funds only in such investments as are from time to time authorized by law for trustees.
13. ELFEC shall deduct from the income earned on the Transferred Funds and/or Subsequent Funds or the capital thereof only such charges as mutually agreed by ELFEC and the Congregation from time to time including the Fees as set out in Schedule B attached or as otherwise provided for in this Agreement.
14. The parties acknowledge that ELFEC offers several cooperative portfolios with different risk and reward characteristics. The Congregation acknowledges that it understands the risks inherent in the different portfolio options, that it is responsible for the choice of portfolios into which its assets are invested, and that its investment objectives and knowledge are accurately described in Schedule C.
15. ELFEC's liability for losses incurred on the cooperative investment and administration of the Transferred Funds and Subsequent Funds shall be limited only to losses caused by the willful neglect, default or negligence of ELFEC.
16. The return and/or application of Transferred Funds and Subsequent Funds shall be subject to the following:
  - (i) Contribution of Subsequent Funds shall be in a minimum amount of Five Thousand Dollars (\$5,000) per contribution;
  - (ii) Partial return of Transferred Funds and Subsequent Funds shall be in a minimum amount of Twenty Thousand Dollars (\$20,000.00) per return;
  - (iii) Where Transferred Funds and Subsequent Funds are less than the minimum amount then required by ELFEC to establish, maintain and administer a fund, ELFEC shall have the right to return to the Congregation all amounts held by ELFEC pursuant to this Agreement;
  - (iv) Upon a written request by the Congregation for the return of Transferred Funds, Subsequent Funds and income with respect to same, in whole or in part, ELFEC shall return the requested funds within ninety (90) days from the date of receipt of the request.
  - (v) All tax, if any, payable with respect to income earned and capital gains realized on the Transferred Funds and Subsequent Funds

shall be the sole responsibility of the Congregation and the Congregation shall indemnify and save harmless ELFEC with respect to any claims with respect to same.

17. This Agreement may be terminated by either party upon ninety (90) days prior written notice of such termination to the other party, whereupon all Transferred Funds, Subsequent Funds and additions and accretions thereto shall, upon the request of the Congregation, be returned to the Congregation less any disbursements and other charges due and payable to ELFEC; provided, however, ELFEC shall, upon the request of the Congregation, immediately return to the Congregation all Transferred Funds, Subsequent Funds and the additions and accretions thereto in the event ELFEC is in breach of the terms and provisions of this Agreement and fails to remedy such breach within thirty (30) business days of being notified in writing by the Congregation of such breach.
18. This Agreement shall not be assigned by ELFEC hereto without the prior written consent of the Congregation which consent cannot be unreasonably withheld.
19. The parties hereto, and each of them, covenant and agree that each of them shall and will, upon reasonable request of the other party, make, do, execute or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices and assurances whatsoever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.
20. All matters in difference between the parties hereto in relation to this Agreement shall be referred to the arbitration of a single arbitrator, if the parties hereto agree upon one, otherwise to three arbitrators, one to be appointed by each party and a third to be chosen by the first two named before they enter upon the business of arbitration. The award and determination of such arbitrator or arbitrators or any two of such three arbitrators shall be binding upon the parties hereto.
21. No change or modification of this Agreement shall be valid unless it is in writing and signed by each party hereto.
22. 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.
23. 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.

24. Any finding that a provision of this Agreement is invalid or unenforceable shall apply only to such provision.
25. This Agreement shall ensure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

**IN WITNESS WHEREOF** the parties have executed this Agreement effective as of the Date, 2022 as attested to by their duly authorized signing officers.

**XXXXX LUTHERAN CHURCH Address  
City Province Postal**

Per: \_\_\_\_\_  
Authorized signing officer

Per: \_\_\_\_\_  
Authorized signing officer  
"We have authority to bind the Congregation"

**EVANGELICAL LUTHERAN FOUNDATION OF  
EASTERN CANADA  
74 Weber Street West  
Kitchener, Ontario N2H 3Z3**

Per: \_\_\_\_\_  
Authorized signing officer

Per: \_\_\_\_\_  
Authorized signing officer  
"We have the authority to bind the Corporation"

**SCHEDULE "A"**

**TRANSFERRED FUNDS**

1. Many thousand dollars in Canadian funds fifty thousand dollars (CDN \$XXXX), as evidenced by cheque number XXX, dated, 2022.
2. Selection of Income disbursement (check one):

ELFEC will, in the first quarter of each year, pay to the Congregation the investment income earned by the Transferred Funds in the previous year after the deduction of any charges and disbursements agreed upon by ELFEC and the Congregation. Payment will be made to the same bank account the Transferred Funds originated from unless a void cheque is added to this schedule for alternate bank account.

Or

ELFEC will reinvest all of the income for the year, by adding it to the capital of the Transferred Funds.

Changes to this original direction must be received in writing by ELFEC no later than January 31 in the year following the year in which the income is earned.

3. Fund statements will be sent to:

Position in congregation: Chairperson and/or Treasurer

Email: EMAIL



## SCHEDULE "B"

### ELFEC FEE SCHEDULE

1. Administrative Fee

All Transferred Funds and Subsequent Funds administered by ELFEC shall be subject to an Administrative Fee, calculated as a percentage of the market value of the Funds at the end of each calendar quarter or part thereof, as set out in the following table.

Market Value of Fund	Quarterly Fee
Up to \$499,999	0.25%
\$500,000-999,999	0.23%
\$1M-2.499M	0.21%
\$2.5M-4.999M	0.19%
\$5M-9.999M	0.17%
\$10M-19.999M	0.15%
\$20M+	0.13%

The Congregation acknowledges that the Administrative Fee deducted from the funds may vary without notice as the Fund's market value changes.

2. Investment Management Fee

Investment income paid to the Congregation will be calculated after the deduction of the proportionate share of the investment management fee charged by ELFEC's investment manager.

3. Processing Fee on Return of Funds

Each return of Transferred Funds and Subsequent Funds within the first five years after the effective date of this agreement shall be subject to the payment to ELFEC of a processing fee as follows:

Year 1: Five hundred dollars (\$500.00)

Year 2: Four hundred dollars (\$400.00)

Year 3: Three hundred dollars (\$300.00)

Year 4: Two hundred dollars (\$200.00)

Year 5: One hundred dollars (\$100.00)

4. Processing Fee on Donations of Securities

Donations of securities from individuals to ELFEC, given with a direction that the securities be sold and the proceeds either contributed to the Congregation or added to the Congregation's funds, will be subject to a fee of one hundred dollars (\$100.00), plus the brokerage commission charged by ELFEC's investment manager, on each donation.

5. Amendment

Irrespective of the fee schedule rates set out herein, the fees charged by ELFEC may be amended upon the mutual agreement of the Congregation and ELFEC, such agreement to be in writing.

## SCHEDULE "C"

### CONGREGATION'S INVESTMENT OBJECTIVES AND KNOWLEDGE

**1. Investment Plan**

- a. The Congregation agrees to make its investment plan or strategy available to ELFEC and to inform ELFEC if the plan is revised.
- b. ELFEC agrees to administer the Congregation's assets in compliance with the Congregation's written investment plan or strategy in place from time to time.

**2. Time Horizon**

The Congregation expects to maintain the great majority of its assets invested for a period of five (5) years or more. It does not anticipate requesting the return of capital from ELFEC in large amounts within that period.

**3. Investment Objectives**

ELFEC understands that the Congregation's current investment objectives, in priority order, are:

- a. To preserve the principal of its Transferred Funds and Subsequent Funds.
- b. To generate a reasonably predictable stream of income.
- c. To produce long-term growth.

**4. Financial Capacity**

The Congregation acknowledges that it has the financial capacity to endure short-term investment losses without jeopardizing its viability as an organization.

**5. Investment Knowledge**

The Congregation's Governing Board or Council, collectively, have a basic level of knowledge of investments and financial markets and their inherent risks and rewards.

**6. Investment Choice**

The Congregation acknowledges that ELFEC offers participation in several cooperative portfolios which, due to their asset allocation models, incorporate varying degrees of risk. The Congregation acknowledges that, on the basis of the factors described above, it freely chooses to invest as follows:

<u>Portfolio</u>	<u>Percentage of assets</u>
Income and Security	One-hundred percent (100%)
Growth	Zero percent (0%)