

Presbyteries of Toronto Conference Corporation
Memorandum of Understanding for the Operation of the
New Ministries Development & Leadership Fund
Submission to TC & Presbyteries, August 5, 2016

THIS Memorandum of Understanding made this day of , 2016.

BETWEEN:

Presbyteries of Toronto Conference Corporation
(hereinafter referred to as PTCC)
OF THE FIRST PART

and

Toronto Conference of The United Church of Canada
(hereinafter referred to as Conference)
OF THE SECOND PART

and

Living Waters Presbytery
(hereinafter referred to as Living Waters)
OF THE THIRD PART

and

Northern Waters Presbytery
(hereinafter referred to as Northern Waters)
OF THE FOURTH PART

and

South West Presbytery
(hereinafter referred to as South West)
OF THE FIFTH PART

and

Toronto Southeast Presbytery
(hereinafter referred to as Toronto Southeast)
OF THE SIXTH PART

WHEREAS PTCC is a Corporation incorporated as a corporation without share capital under the *Corporations Act*, R.S.O. 1990 Chap. C. 38 and is a registered charity;

AND WHEREAS PTCC has received assets from Conference which are to be invested by PTCC for the benefit of the TC - Presbytery Partners;

AND WHEREAS PTCC will establish policies and procedures to govern the management by PTCC of such assets, including the investment of the assets by PTCC and the payment of grants to the TC – Presbytery Partners and others as may be permitted;

NOW THEREFORE THIS MOU is being entered into to confirm the agreements of the parties regarding the operation of the New Ministries Development & Leadership Fund, including the management by PTCC of the Fund assets, such agreements being as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

- a) “Account” or “Accounts” means the accounts established by PTCC for the Fund and the other asset funds held by it as described in Sections 3.1 and 3.2 hereof;
- b) “Act” means the *Corporations Act*, R.S.O. 1990, chap. C. 38 as from time to time amended and every statute that may be substituted therefor and, in the case of such substitution, any references herein to provisions of the Act shall be read as references to the substituted provisions therefor in the new statute or statutes;
- c) “Bylaws” means the bylaws of PTCC unless otherwise stated;
- d) “Conference” means Toronto Conference of The United Church of Canada or its successor;
- e) “Fund” means The New Ministries Development and Leadership Fund;
- f) “Living Waters” means Living Waters Presbytery or its successor;
- g) “MOU” means this memorandum of understanding between PTCC, Conference, Living Waters, Northern Waters, South West and Toronto Southeast dated ____day of _____, 2016 and titled Presbyteries

of Toronto Conference Corporation Memorandum of Understanding for the Operation of the New Ministries Development & Leadership Fund;

- h) “Northern Waters” means Northern Waters Presbytery or its successor;;
- i) “South West” means South West Presbytery or its successor;;
- j) “Toronto Southeast” means Toronto Southeast Presbytery or its successor;;
- k) “TC – Presbytery Partners” means collectively Conference, Living Waters, Northern Waters, South West and Toronto Southeast;
- l) “Terms of Reference” means the Terms of Reference for the New Ministries Development and Leadership Fund as prepared by the Toronto Conference/inter-Presbytery Task Group in 2016;

All other capitalized terms contained in the MOU shall have the meaning given to such terms in the bylaws of PTCC from time to time properly enacted.

1.2 Interpretation

In the MOU unless the context otherwise requires, words importing the singular shall include the plural number, as the case may be, and vice versa.

1.3 Headings

The headings used throughout the MOU are inserted for reference purposes only and are not to be considered in construing the terms and provisions of the MOU or to be deemed in any way to clarify, modify or explain the effect of such terms or provisions.

1.4 Conflicts

To the extent of any conflict between the provisions of the MOU and the provisions of either the Act or the Letters Patent of PTCC, the provisions of the Act or the Letters Patent shall govern.

1.5 Invalid Provisions

The invalidity of any provision of the MOU shall not affect the validity of the remaining provisions of the MOU.

ARTICLE 2

PURPOSE AND ORGANIZATION

2.1 Purpose

PTCC and the TC – Presbytery Partners acknowledge and agree that this MOU sets out policies and procedures related to the investment of the Fund received by PTCC and the administration of grant requests by the TC – Presbytery Partners from the investment income and the capital in the Fund.

2.2 Modification of the MOU

It is acknowledged and agreed that circumstances may arise after this MOU is executed that may result in a need to modify the terms of the MOU, and that the terms of this MOU may be modified only upon the unanimous consent by all parties to this MOU.

2.3 Director, Member Obligation

Each Director and Member shall abide by all rules of law and bylaws or policies of PTCC governing conflict of interest and shall, where required, declare such conflict and abstain from participating in any discussions or vote on such matter.

2.4 Books of Account and Records

Proper books of account and records shall be kept by PTCC in accordance with all laws, rules, regulations and policies applicable to a registered charity incorporated in Ontario and PTCC shall prepare and file all appropriate returns, notices information statements and other materials applicable to PTCC, on a timely basis.

ARTICLE 3

Financial Structure and Guidelines

3.1 The Fund Account

- a) PTCC shall set up a separate Account for the Fund within PTCC's financial records and shall continue to maintain the separate Accounts held by it for the benefit of Living Waters, Northern Waters, South West, Toronto Southeast and the South West Community Ministries.

- b) The initial capital assets of \$3,000,000 received by PTCC and future capital asset additions paid to PTCC and designated for the Fund shall be assigned to the Account for the Fund within the accounts of PTCC.

3.2 PTCC Account

- a) PTCC shall have its own Account in order to perform the necessary receipt of income and payment of expenses before allocations. This Account will also facilitate the situation when the timing of receipt of funds and payment of expenses results in having to record the transaction before an allocation of funds is known.
- b) It is anticipated that the PTCC Account will have a zero balance at the end of each financial year.

3.3 Accounts within PTCC

PTCC may hold all of its financial assets in one or more corporate bank account(s) and/or investment account(s) as shall be determined by it to be most beneficial but shall keep separate account statements for each of the Accounts described in Sections 3.1 and 3.2 and any new Accounts established by PTCC in the future.

3.4 PTCC Investment Committee & Investment Officer

PTCC has the authority to appoint an Investment Committee, engage a financial institution to invest and manage its financial assets and appoint an Investment Officer or other staff or advisors to advise the Board of Directors and/or its Committee(s) on investment matters and shall do as required from time to time.

3.5 Apportionment of Investment Income & Realized/Unrealized Capital Gains/Losses to Accounts

The Fund Account and Other Accounts: The overall investment interest, dividends, and the realized/unrealized capital gains/losses (except for capital losses arising from specific grants of capital as outlined further in Section 3.9) will be applied pro-rata against the various Accounts within PTCC. Interest, dividends, and realized/unrealized capital gains/losses will be applied and allocated quarterly on an estimated basis, and finalized annually at the end of each calendar year, based on accruals and receipt of Accounts in that calendar year.

3.6 Apportionment of Costs to the Accounts

The costs of the operation of PTCC will be charged pro-rata against each of the Accounts, including the Fund Account within PTCC and any other accounts established in the future, and will be based on the value of each of the Accounts at the beginning of each financial year. Typical expenses include general administrative expenses, legal expenses, bookkeeping and audit expenses, and investment management fees or commissions paid for the purchase and sale of financial assets.

3.7 Grant Requests from the Fund

The Grant Review Committee appointed by TC- Presbytery Partners and defined in the Terms of Reference, shall forward approved grant applications to PTCC for administrative review and approval. Grants that have been approved for payment by PTCC will be paid to the organizations named on the grant applications and in accordance with the schedule of payments in the grant application, or as otherwise determined.

3.8 Payment of Grant Requests from the Fund

Grant requests shall be paid within 90 days after approval by PTCC or as otherwise agreed.

3.9 Apportionment of Capital Losses to the Fund Due to Payment of a Grant Request

Any capital loss arising from the execution of a grant request by TC – Presbytery Partners that would negatively affect income of the other Accounts shall be the financial responsibility of TC – Presbytery Partners, and the amount of any capital loss will be deducted from the Fund, and credited as a capital addition and prorated to the other Accounts.

3.10 PTCC Requirements for Grant Requests

TC – Presbytery Partners, through the Grant Review Committee, will be responsible for making financial projections sufficiently in advance for PTCC to have funds available to meet TC – Presbytery Partners grant requests in accordance with this MOU. Grant requests from the Fund may be made quarterly so as to be considered by the PTCC Board at its next quarterly meeting.

3.11 Reporting of Accounts

PTCC shall provide for each Account an annual written report and interim reports on a regular basis as the Directors shall determine, to the Board of Directors, Toronto Conference and each Presbytery that is authorized to request grants from such Account. The Investment Committee, in addition to the annual report, shall be required to provide quarterly reports to the Board of Directors.

ARTICLE 4

ACCOUNTING FOR PTCC

4.1 Proceeds from the Sale of Surplus Real Property through Toronto Conference – Allocation for the Fund

PTCC and TC – Presbytery Partners acknowledge and agree that proceeds from the sale of surplus real property or personal property transferred from Conference to PTCC for the use of TC – Presbytery Partners shall be allocated by PTCC to the Fund.

4.2 Investment Policy of PTCC

It shall be the investment policy of PTCC to invest the Fund assets and other assets held by PTCC conservatively, preserving the capital and yielding the maximum return on investment possible, in accordance with prudent investment strategies, the PTCC objects, and the special provisions set out in the Letters Patent of the Corporation.

PTCC may hold assets in cash, marketable securities and other forms such as real property, mortgages, or special investments in order to facilitate the work of TC – Presbytery Partners.

4.3 Dissolution of the Fund

PTCC shall receive notice from TC – Presbytery Partners and be a party in discussions regarding the dissolution of the Fund, so that capital distributions from the Fund upon dissolution can be achieved in a manner which will best minimize or avoid capital losses.

ARTICLE 5

OWNERSHIP OF ASSETS, RESTRICTIONS, & PTCC AS CUSTODIAN OF ASSETS OF THE UNITED CHURCH OF CANADA

5.1 Ownership of Assets

PTCC and TC – Presbytery Partners acknowledge and agree that there is the need for fundamental clarity and understanding on the issue of ownership of the financial assets of PTCC.

- a) PTCC is not a deposit taking institution or an investment management organization.
- b) Financial and other forms of assets, when received by PTCC, become the property of PTCC alone and are legally its assets to be administered in accordance with its duties and responsibilities as a registered charitable corporation and the terms of this MOU.

5.2 PTCC as an Incorporated Ministry of The United Church of Canada

PTCC and TC – Presbytery Partners acknowledge and agree that PTCC is an incorporated ministry of The United Church of Canada, and that its assets vest in The United Church of Canada in the event that it ceases to function or its corporate existence is terminated.

ARTICLE 6

GENERAL PROVISIONS, OPERATIONAL PROCEDURES, DISPUTE RESOLUTION

- 6.1** In the event of any dispute relative to this MOU and between the parties to this MOU, as a method of dispute resolution and as a last resort measure, the matter in dispute shall be referred to a conflict resolution facilitator selected from the most recent list of facilitators available from the General Council Office of The United Church of Canada. The parties agree to participate in good faith in a process facilitated by the conflict resolution facilitator, using their best efforts to achieve a resolution of the matter in dispute. If the dispute remains unresolved after a reasonable period of time, the parties agree that it shall be settled by arbitration pursuant to the Arbitration Act (Ontario). The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the parties, or if they fail to agree within ten days of one party giving notice to the others of a proposed arbitrator, any party may apply to a civil court having jurisdiction to appoint an

arbitrator. The decision of the arbitrator shall be final and binding and not subject to appeal.

- 6.2** Any changes to this MOU will be confirmed by an amendment to this MOU signed by each of the parties.
- 6.3** This MOU shall come into effect on the date stated on page 1 hereof, after signing by all parties.
- 6.4** This MOU may be executed and delivered in any number of counterparts, each when executed and delivered is an original but all of which taken together constitute one and the same instrument.

ARTICLE 7

NOTICES

- 7.1** Any demand, notice or other communication to be given in connection with this MOU shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible party of the recipient) or by electronic communication addressed to the recipient as follows:

To: PTCC
19 Pebblehill Square
Toronto, Ontario M1S 2P8
Attention: Nick Walker, Secretary
Fax No.: 416-291-6943
E-mail: nwalker@ftn.net

To: Toronto Conference
65 Mayall Avenue
Downsview, ON
M3L 1E7
Attention: David Allen, Executive Secretary
Fax No.: 416-241-2689
E-mail: dallen@united-church.ca

To: Living Waters
59 Line 4 North, R R 1
Shanty Bay, ON
L0L 2L0
Attention: Jody Maltby, Conference Minister for Vision & Mission
Fax No.: 705-487-2114
E-mail: jmaltby@united-church.ca

To: Northern Waters
P.O. Box 10038
56 Victoria Street East
Alliston, ON L9R 0B7
Attention: John Neff, Conference Minister for Ministry Planning &
Governance Support
Fax No.: 705-434-1846
E-mail: jneff@united-church.ca

To: South West
65 Mayall Avenue
Downsview, ON M3L 1E7
Attention: Donna Rutz, Administrative Assistant
Fax No.: 416-241-2689
E-mail: drutz@united-church.ca

To: Toronto Southeast
963 Pharmacy Avenue
Scarborough, ON M1R 2G5
Attention: Anne Shirley Sutherland, Conference Minister for Healthy
Communities of Faith
Fax No.: 416-759-2091
E-mail: asutherl@united-church.ca

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof, and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient on a Business Day and on the Business Day following the transmittal thereof if not so transmitted.

[Signing pages follow]

The parties have signed this Memorandum of Understanding as written confirmation of their mutual understanding and agreement with respect to the operation of the New Ministries Development & Leadership Fund.

The Presbyteries of Toronto Conference Corporation

Per: _____
Name and Title

Per: _____
Name and Title
I / We have authority to bind the Corporation

Toronto Conference

Per: _____
Name and Title

Per: _____
Name and Title
I / We have authority to bind the Conference

Living Waters Presbytery

Per: _____
Name and Title

Per: _____
Name and Title
I / We have authority to bind the Presbytery

Northern Waters Presbytery

Per: _____
Name and Title

Per: _____
Name and Title
I / We have authority to bind the Presbytery

South West Presbytery

Per: _____
Name and Title

Per: _____
Name and Title
I / We have authority to bind the Presbytery

Toronto Southeast Presbytery

Per: _____
Name and Title

Per: _____
Name and Title
I / We have authority to bind the Presbytery

