



## **Extracorporeal Life Support Organization ELSO Certified Practitioner Program Terms and Conditions**

### **1. Introduction**

The purpose of this Terms and Conditions Agreement (“Agreement”) is to establish (1) the terms by which the Extracorporeal Life Support Organization, a Michigan nonprofit corporation exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“ELSO”), will certify prospective individuals (“Practitioners”) as an “ELSO Certified Practitioner”, a certification of an individual’s overall ability to administer extracorporeal membrane oxygenation (“ECMO”) devices (the certification program as a whole, the “Program”), (2) the terms under which that certification will continue, (3) the obligations of the Practitioner as an ELSO Certified Practitioner, and (4) the rights of the Practitioner to use certain intellectual property of ELSO.

Please read the Agreement carefully.

IN THE EVENT OF ANY INCONSISTENCY OR CONFLICT BETWEEN THIS AGREEMENT, THE PRIVACY POLICY AND/OR ANY ADDITIONAL TERMS, THE FOLLOWING ORDER OF PRECEDENCE SHALL CONTROL: (A) THIS AGREEMENT; (B) THE PRIVACY POLICY; AND (C) ANY ADDITIONAL TERMS.

ELSO may change this Agreement from time to time. These changes will be effective immediately and incorporated into this Agreement. Any such changes will not apply to any dispute between Practitioner and ELSO arising prior to the date of such changes.

### **2. Requirements for Certification.**

In order to become an ELSO Certified Practitioner, Practitioner must meet the following requirements (collectively, the Requirements for Certification”):

**2.1 Certification Application.** In order to become an ELSO Certified Practitioner, Practitioner must be eligible for certification. ELSO may, in its sole discretion, choose to grant or withhold certification from any applicant for any reason. An eligible practitioner will have met the following criteria:

**2.1.1 Didactic Course:** Participant can demonstrate successful completion of a didactic course that satisfies ELSO’s learning objective requirements.

**2.1.2 Simulation Course:** Participant can demonstrate successful completion of a simulation course that satisfies ELSO’s learning objective requirements.

**2.1.3 Clinical Experience:** Participant can demonstrate adequate clinical ECMO experience through an attestation of clinical hours or patients, as described by ELSO in our application materials.

**2.1.4 Acceptance of Terms & Conditions:** Participant acknowledges that they accept all terms and conditions identified ELSO’s Certified Practitioner Program Terms and Conditions.



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2.2 **Certification Fee.** Practitioner must pay ELSO a Certification Fee in an amount indicated by ELSO. The Exam Fee is non-refundable and non-transferable. For the avoidance of doubt, payment of the Exam Fee does not entitle Practitioner to any rights or privileges under this Agreement.

2.3 **Certification Exam.** Upon written confirmation from ELSO of Practitioner's completion of all requirements, practitioner will be eligible to take the certification exam. In order to become an ELSO Certified Practitioner, Practitioner must take and receive a Passing Score on the Program's certification exam. A Passing Score means a minimum score as set and provided by ELSO. Certification will expire after three (3) years, after which time Practitioner must retake the certification exam (for the first time and for renewal).

2.4 **Certification Renewal.** Practitioners who wish to renew their certifications must submit an application for renewal within thirty (30) days of the end of the Certification Term. ELSO may, in its sole discretion, choose to grant or withhold renewal for any reason. If a Practitioner in the Program has not renewed his or her certification within thirty (30) days after the end of the Certification Term, ELSO may, in its sole discretion, require such Practitioner to reapply for the Program pursuant to some or all of the steps found in Sections 2.1 through 2.3 of this Agreement.

### **3. Intellectual Property.**

3.1 **License to Practitioner.** During the Certification Term only, ELSO hereby grants to the Practitioner a revocable, non-exclusive license to utilize Certification Marks, as that term is defined in and only in a manner consistent with ELSO's related policies, the terms of which are expressly incorporated herein by reference, for the purposes of promoting the Practitioner as an ELSO Certified Practitioner; provided, however, in the event of termination of this Agreement pursuant to Section 4.2 ("Termination") or Section 4.3 ("Revocation of Certification") of this Agreement or the discontinuance of the Program altogether by ELSO, all licenses contemplated in this Section 3 and elsewhere in this Agreement shall terminate concurrently with this Agreement. As between the Practitioner and ELSO, ELSO retains ownership of all of its intellectual property rights, including all Certification Marks.

3.2 **License to ELSO.** Practitioner here grants to ELSO a revocable, non-exclusive license to utilize the Practitioner's name and any trademark or logo, if available, for the purposes of promoting the interests of the Program and for the purposes listed in this Agreement.

### **4. Term and Termination.**

4.1 **Term of Certification; Recertification.** Upon meeting the Requirements for Certification, Practitioner will be certified as an ELSO Certified Practitioner for a period of three (3) years, the Certification Term, subject to the provisions regarding: (a) "Revocation of Certification" set forth in Section 4.3, below; (b) "Assignment" set forth in Section 5.5 below; and (c) all other terms of this Agreement. Practitioner hereby acknowledges that it must meet the requirements for Certification Renewal set forth in Section 2.4 above within the timeframe provided therein in order to maintain certification beyond the initial and any subsequent Certification Term.



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4.2 **Termination.** Acceptance into and continued participation in the Program is at the sole discretion of ELSO, including, without limitation, the discretion to revoke a certification, as described in Section 4.3, below. ELSO reserves the right to terminate this Agreement or discontinue the Program at any time and for any reason. Upon termination or expiration of this Agreement, or discontinuance of the Program, any and all rights or privileges granted by ELSO under this Agreement shall immediately expire and Practitioner shall immediately discontinue the use of any and all Certification Marks.

4.3 **Revocation of Certification.** Should ELSO determine, in its sole discretion, that Practitioner has failed to comply with any section of this Agreement, including, but not limited to, misuse of ELSO Intellectual Property, failure to pay any Certification Fees, or failure to renew Certification in a timely manner, or if ELSO otherwise determines that Practitioner's participation in the Program presents any harm or potential harm to ELSO, the Program or other ELSO Certified Practitioners, ELSO may, in its sole discretion, revoke Practitioner's certification and terminate this Agreement. Upon revocation, any and all rights or privileges granted by under this Agreement shall immediately expire and Practitioner shall immediately discontinue the use of any and all Certification Marks.

**5. Additional Terms.**

5.1 **Indemnification.** Practitioner agrees to indemnify and hold harmless ELSO and its affiliates and their respective officers, directors, employees, agents, representatives, subcontractors, subsidiaries and independent contractors (ELSO and such persons, "Indemnitees") from and against all direct and third-party claims, actions, suits, losses, costs, liabilities, judgments, damages and expenses, including reasonable attorneys' fees, court costs, litigation expenses and related expenses (collectively, "Claims") arising out of or relating to (i) Practitioner's breach of any of the representations, warranties or obligations set forth herein, (ii) any incompleteness or inaccuracy of the information provided by Practitioner to ELSO, (iii) Practitioner's use of the ELSO IP other than as set forth in the Agreement, (v) any and all clinical activities of Practitioner, or (v) Practitioner's use of, and/or reliance upon, certification under this Agreement, except to the extent such Claim was directly caused by the gross negligence or willful misconduct of ELSO. To the extent Practitioner is required to indemnify any of the Indemnitees, Indemnitees shall not enter into any settlement without obtaining Practitioner's prior written consent, not to be unreasonably withheld.

5.2 **DISCLAIMER OF WARRANTIES.** ELSO MAKES NO (AND HEREBY DISCLAIMS, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY AND ALL) WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF ACCURACY, COMPLETENESS, TITLE, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT, WITH RESPECT TO THE PROGRAM AND ANY SERVICES PROVIDED BY OR ON BEHALF OF ANY INDEMNITEE.

5.3 **Limitation of Liability.** EXCEPT AS OTHERWISE REQUIRED BY LAW, IN NO EVENT SHALL ANY OF THE INDEMNITEES BE LIABLE TO PRACTITIONER OR ITS AGENTS OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL,



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PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES OR COSTS DUE TO LOSS OF PROFITS, TAX CREDITS, ECONOMIC BENEFITS, DATA, LOSS OF GOODWILL, OR PERSONAL OR OTHER PROPERTY DAMAGE REGARDING THIS AGREEMENT OR RESULTING FROM OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT BY ANY INDEMNITEE OR IN CONNECTION WITH CERTIFICATION, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY ELSO. REGARDLESS OF THE FOREGOING, AND WITHOUT LIMITING ANY OTHER PROVISION HEREIN, PRACTITIONER'S SOLE REMEDY SHALL BE LIMITED TO A RETURN OF FEES PAID BY ELSO UNDER THIS AGREEMENT AND IN NO EVENT SHALL INDEMNITEES, IN THE AGGREGATE, BE LIABLE FOR DAMAGES IN EXCESS OF THE TOTAL AMOUNT OF FEES PAID BY PRACTITIONER UNDER THIS AGREEMENT. TO THE EXTENT THE FOREGOING LIMITATION OF LIABILITY IS, IN WHOLE OR IN PART, HELD TO BE INAPPLICABLE OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF THE INDEMNITEES FOR ANY REASON AND UPON ANY CAUSE OF ACTION (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY AND OTHER ACTIONS IN CONTRACT OR TORT) ARISING OUT OF OR IN ANY WAY RELATED TO THE PROGRAM OR THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES ACTUALLY INCURRED UP TO TWO HUNDRED FIFTY (\$250) US DOLLARS. THESE LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF A LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

5.4 **Nonreliance.** The Program is not a substitute for professional medical judgment applied by Practitioner. Reliance on the Program is solely at Practitioner's own risk. Practitioner acknowledges that as between ELSO and Practitioner, Practitioner is sole responsibility for diagnosing and treating his/her patients and ELSO has no responsibility.

5.5 **Governing Law.** This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of State of Michigan, without regard to its conflict of laws rules. Practitioner and ELSO hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the courts in the State of Michigan, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of such courts for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) in the case of the Practitioner, consent to service of process at the address set forth in its Certification Application or any other address of which the Practitioner shall have given written notice to ELSO, with the same legal force and validity as if served upon such party personally within the State of Michigan, (iv) waive any objection to the laying of venue of any such action or proceeding in such courts and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the such courts has been brought in an improper or inconvenient forum.

5.6 **Assignment.** Practitioner may not assign, transfer, or sublicense any or all of its rights or obligations under this Agreement (including but not limited to any right the Practitioner has to use



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the ELSO Certified Practitioner trademark or claim ELSO Certified Practitioner status) without ELSO express prior written consent. ELSO may assign, transfer or sublicense any or all of its rights or obligations under this Agreement without restriction

5.7 **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the maximum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

5.8 **Entire Agreement.** Both parties agree that this Agreement constitutes the complete and exclusive statement of the mutual understanding between ELSO and Practitioner, and may not be substituted, varied, or abridged in any manner except as provided herein at ELSO's sole discretion. This Agreement terminates and supersedes all prior and contemporaneous agreements, written or oral, or created by course of dealing, if any, between ELSO and Practitioner.