

USER AGREEMENT

1. Introduction

This User Agreement and all policies and additional terms posted on and in our sites, applications, tools and services set out the terms on which ELSO offers you access to and use of our Platform (defined in **Section 2** below). All policies and additional terms posted on and in our website are incorporated into this User Agreement. You agree to comply with all terms of this User Agreement when accessing or using our Platform.

The entity you are contracting with is Extracorporeal Life Support Organization, a Michigan nonprofit corporation (referred to as "ELSO" "we," or "us").

Please be advised that this User Agreement contains provisions that govern how claims you and we have against each other are resolved (see "Disclaimer of Warranties" and "Legal Disputes" provisions below). It also contains an Agreement to Arbitrate which will, with limited exception, require you to submit claims you have against us or our agents to binding and final arbitration.

2. About ELSO

ELSO is a global non-profit consortium of health care institutions who are dedicated to the development and evaluation of novel therapies for support of failing organ systems. ELSO offers a website platform (the "Platform") whereby ELSO Member Centers ("Users") can donate, swap/trade, or borrow goods and equipment (collectively, "Equipment") in a variety of trade formats. The actual contract for these goods is directly between Users.

Any guidance we provide as part of our Platform, such as shipping, listing, and sourcing information is solely informational. ELSO has no control over and does not guarantee: the existence, quality, safety, or legality of items advertised; the truth or accuracy of Users' content or listings; or that Users will complete a transaction or return an item.

3. Using ELSO's Platform

In connection with using or accessing our Platform you will not:

- breach or circumvent any laws, regulations, third-party rights or our systems, Platform, policies, or determinations of your account status;
- use our Platform if you are not able to form legally binding contracts (for example, if you are under 18 years old), or are temporarily or indefinitely suspended from using our Platform, or are a person with whom transactions are prohibited under economic or trade sanctions;

- fail to deliver items traded, or donated by you, unless the User fails to comply with the posted terms in your listing or you cannot contact the User;
- post false, inaccurate, misleading, deceptive, defamatory, or libelous content;
- transfer your ELSO account or login credentials to another party without our consent;
- distribute or post spam, or unsolicited or bulk electronic communications;
- distribute viruses or any other technologies that may harm ELSO or the interests or property of Users;
- use any robot, spider, scraper, data mining tools, data gathering and extraction tools, or other automated means to access our Platform for any purpose, except with the prior express permission of ELSO;
- interfere with the functioning of our Platform, such as by imposing an unreasonable or disproportionately large load on our infrastructure;
- export or re-export any Equipment, except in compliance with the export control laws, and rules and policies of any relevant jurisdictions;
- infringe the copyright, trademark, patent, publicity, moral, database, and/or other intellectual property rights (collectively, "Intellectual Property Rights") that belong to or are licensed to ELSO, including without limitation, by reproducing, performing, displaying, distributing, copying, reverse engineering, decompiling, disassembling, or preparing derivative works from content that belongs to ELSO or someone else;
- infringe any Intellectual Property Rights that belong to third parties affected by your use of our Platform or post content that does not belong to you;
- commercialize any ELSO application or any information or software associated with such application, except with the prior express permission of ELSO;
- harvest or otherwise collect information about Users without their consent; or
- circumvent any technical measures used to provide our Platform.

If we believe you are abusing ELSO and/or our Platform in any way, we may, in our sole discretion and without limiting other remedies, limit, suspend, or terminate your User account(s) and access to our Platform, remove listings, and take technical and/or legal steps to prevent you from using our Platform.

If we believe you are violating our policies, you may be subject to a range of actions, including limits on your trading and donating privileges, restrictions on listings, suspension of your account, and recovery of expenses for policy monitoring and enforcement.

Additionally, we reserve the right to refuse, modify, or terminate all or part of our Platform to anyone for any reason at our discretion.

4. Fees and Taxes

If you are a User, you are liable for transaction fees arising out of all orders made using some or all of our Platform, even if terms are finalized outside of ELSO. Shipping-related fees would be an example of transaction fees.

In any jurisdiction where ELSO has an obligation to collect sales taxes on transactions you make using our Platform, we may collect such sales taxes from you via any means available to us.

5. Listing Conditions

When listing an item on our Platform, you agree that:

- You assume full responsibility for the item offered and the accuracy and content of the listing.
 - Your listing may not be immediately searchable by keyword or category.
 - Content that violates any of ELSO's policies may be modified, obfuscated or deleted at ELSO's sole discretion.
 - We reserve the right to supplement, remove, or correct information in your listing.
 - We do not transfer legal ownership of items from User to User.
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- Uniform Commercial Code § 2-401(2) applies to the transfer of ownership between Users, unless the Users agree otherwise.

6. International Trading, Donating, and Shipping; Translation

Our Platform is accessible internationally. Users are solely responsible for complying with all laws and regulations applicable to the international sale, purchase, trade, donation, and shipment of items.

You are solely responsible for translating your ELSO content and User communications, in whole or in part, into local languages. We do not guarantee and have no control over the accuracy and availability of any translation by a User.

Pursuant to a routed export transaction under the U.S. Export Administration Regulations and Foreign Trade Regulations (if applicable), the User, as the Foreign Principal Party in Interest, will agree to assume responsibility for the export shipment. You remain liable for the accuracy of information you provide about items, and you agree to provide timely responses to requests for additional information.

You consent to the disclosure of certain personally identifiable information, as well as listing and order information, by ELSO to its affiliates, service providers, and other third parties (such as customs and revenue authorities, as well as other government agencies), in connection with the processing, export and customs clearance, and international transportation of any item. ELSO does not control the privacy policies of affiliates, its service providers, or other third parties and you are subject to the privacy policies of those parties, as applicable.

7. Content and Equipment

When you provide content using our Platform (directly or indirectly), you grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to exercise any and all Intellectual Property Rights you have in that content in connection with our provision, expansion, and promotion of our Platform, in any media known now or developed in the future. To the fullest extent permitted under applicable law, you waive your right to enforce your Intellectual Property Rights in that content against ELSO, our assignees, our sublicensees, and their assignees in connection with our, those assignees', and those sublicensees' use of that content in connection with our provision, expansion, and promotion of our Platform.

You represent and warrant that, for all such content and Equipment you provide (or offer for trade, or donation on the Platform) you own or otherwise control all necessary rights to do so and to meet your obligations under this User Agreement. You represent and warrant that such content is accurate. You represent and warrant that all content that you use, and all Equipment you offer for trade or donation, is in compliance with this User Agreement, and does not and will not infringe any Intellectual Property Rights of any third party. ELSO takes no responsibility and assumes no liability for any content or Equipment provided by you or any third party, such as a shipping provider.

You agree not to remove any copyright, proprietary, or identification markings on the Equipment offered for trade or donation. You agree not to create any derivative works based on that Equipment (other than by including the Equipment descriptions in your listings).

You agree that ELSO is not responsible for examining or warranting the listings, content, or Equipment provided by Users through our Platform, and that you will not attempt to hold us liable for inaccuracies, malfunctions, errors, defects, or failures associated with them.

The name "ELSO" and other ELSO marks, logos, designs, and phrases that we use in connection with our Platform are trademarks, service marks, or trade dress of ELSO globally. They may not be used without the express written prior permission of ELSO.

8. Notice for Claims of Intellectual Property Violations and Copyright Infringement Pursuant to Section 512(c) of Title 17 of the United States Code

We respond to notices of alleged intellectual property. If you believe that your intellectual property rights have been infringed on the Platform, please notify ELSO.

9. Analyzing Message Content

Our collection, use, disclosure, retention, and protection of your personal information is governed by our Privacy Policy, found here: <https://www.elseo.org/PrivacyPolicy.aspx>.

ELSO's automated systems scan and analyze the contents of every message sent through its messages platform, including messages between Users, to detect and prevent fraudulent activity or violations of ELSO's User Agreement, including the incorporated terms, notices, rules, and policies. This scanning and analysis may occur before, during, or after the message is sent, or while in storage, and may result in your message being delayed or withheld. ELSO may store message contents, including to conduct this scanning and analysis.

If ELSO provides you with information about another User, you agree you will use the information only for the purposes that it is provided to you. You may not disclose, sell, rent, or distribute a User's information to a third party for purposes unrelated to our Platform. Additionally, you may not use User information for marketing purposes, via electronic or other means, unless you obtain the consent of the specific User to do so.

10. Returns and Cancellations

Users are permitted to contract with each other regarding returns. ELSO is not responsible for any returns, cancellations, or shipping costs (including return shipping).

11. Disclaimer of Warranties.

We try to keep our Platform safe, secure, and functioning properly, but we cannot guarantee the continuous operation of or access to our Platform.

You agree that you are making use of our Platform at your own risk, and that any equipment exchanged on the Platform is being provided to you on an "AS IS" and "AS AVAILABLE" basis. Accordingly, to the extent permitted by applicable law, we exclude all express or implied warranties, terms and conditions including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

In addition, to the extent permitted by applicable law, we (including any affiliates, and our and their officers, directors, agents and employees) are not liable, and you agree not to hold us responsible, for any damages or losses (including, but not limited to, loss of goodwill or reputation, other intangible losses, or any special, indirect, or consequential damages) resulting directly or indirectly from:

- the content and Equipment you provide (directly or indirectly) using our Platform;
- your use of or your inability to use our Platform;
- shipping, format, or other guidance provided by ELSO;
- delays or disruptions in our Platform;
- viruses or other malicious software obtained by accessing or linking to our Platform;
- glitches, bugs, errors, or inaccuracies of any kind in our Platform;
- damage to your hardware device from the use of any ELSO Service;
- the content, actions, or inactions of third parties, including items listed using our Platform or the destruction of allegedly fake items;
- a suspension or other action taken with respect to your account or breach of the User Agreement;
- the duration or manner in which your listings appear; or
- your need to modify practices, content, or behavior, or your loss of or inability to do business, as a result of changes to this User Agreement or our policies.

Some jurisdictions do not allow the disclaimer of warranties or exclusion of damages, so such disclaimers and exclusions may not apply to you.

Regardless of the previous paragraphs, if we are found to be liable, our liability to you or to any third party is limited to the amount of ELSO's applicable insurance coverage for such liability.

12. Release

If you (a) have a dispute with ELSO or one or more Users, (b) incur any damages in connection with your use of the Platform whatsoever, or (c) have or incur any claim against ELSO arising out of or related to your use of the Platform or your offer for trade or donation of Equipment, you waive and release us (and our affiliates and subsidiaries, and our and their respective officers, directors, employees and agents) from all such claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with the foregoing (a) – (c). In entering into this release, you expressly waive any protections (whether statutory or otherwise) that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release.

13. Indemnity

You will indemnify and hold us (including our affiliates and subsidiaries, as well as our and their respective officers, directors, employees, agents) harmless from any claim or demand, including

reasonable legal fees, made by any third party, including without limitation, those that are due to or arising out of or related to your breach of this User Agreement, your use of our Platform, or your breach of any law or the rights of a third party.

14. Legal Disputes

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND ELSO HAVE AGAINST EACH OTHER ARE RESOLVED.

In this Legal Disputes Section, the term “related third parties” includes (as applicable) your and ELSO’s respective affiliates, subsidiaries, parent companies, predecessors, successors, assigns, as well as your, ELSO’s, and these entities’ respective employees and agents.

You and ELSO agree that any claim or dispute at law or equity that has arisen, or may arise, between you and ELSO (or any related third parties) that relates in any way to or arises out of this or previous versions of this User Agreement, your use of or access to the Platform, the actions of ELSO or its agents be resolved in accordance with the provisions set forth in this Legal Disputes Section.

A. Applicable Law

You agree that, except to the extent inconsistent with or preempted by federal law, the laws of the State of Michigan, without regard to principles of conflict of laws, will govern this User Agreement and any claim or dispute that has arisen or may arise between you and ELSO, except as otherwise stated in this User Agreement.

B. Agreement to Arbitrate

You and ELSO each agree that any and all disputes or claims that have arisen, or may arise, between you and ELSO (or any related third parties) that relate in any way to or arise out of this or previous versions of the User Agreement, your use of or access to our Platform, the actions of ELSO or its agents, or any products or services offered through our Platform shall be resolved exclusively through final and binding arbitration, rather than in court. Alternatively, you may assert your claims in small claims court, if your claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The Federal Arbitration Act governs the interpretation and enforcement of this Agreement to Arbitrate.

1. Prohibition of Class and Representative Actions and Non-Individualized Relief

YOU AND ELSO AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION

OR PROCEEDING. UNLESS BOTH YOU AND ELSO AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, CLASS, OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER USERS. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular claim or a particular request for a remedy (such as a request for injunctive relief), then that claim or that remedy request (and only that claim or that remedy request) must be severed from the arbitration and may be brought in court, subject to your and ELSO's right to appeal the court's decision. All other claims will be arbitrated.

2. Arbitration Procedures

The arbitration will be conducted by the American Arbitration Association ("AAA") under its rules and procedures. In the event that the AAA is unavailable to administer the arbitration, another administrator will be selected by the parties or the court.

A party who intends to seek arbitration must first send to the other, by certified mail, a valid Notice of Dispute ("Notice"). The Notice to ELSO must be sent to ELSO at its address on file with the State of Michigan Department of Licensing and Regulatory Affairs. ELSO will send any Notice to you to the physical address we have on file associated with your ELSO account; it is your responsibility to keep your physical address up to date. To be valid, you must personally sign the Notice, provide description of the nature and basis of the claims you are asserting, the specific relief sought, and the email address and phone number associated with your account.

If you and ELSO are unable to resolve the claims described in a valid Notice within 30 days after ELSO receives that Notice, you or ELSO may initiate arbitration proceedings. A form for initiating arbitration proceedings is available on the AAA's site at www.adr.org. In addition to filing this form with the AAA in accordance with its rules and procedures, the party initiating the arbitration must mail a copy of the completed form to the opposing party. Any settlement offer made by you or ELSO shall not be disclosed to the arbitrator.

The arbitration hearing shall be held in Washtenaw County, MI or at another mutually agreed location. In cases where an in-person hearing is held, you and/or ELSO may attend by telephone, unless the arbitrator requires otherwise.

The arbitrator will decide the substance of all claims in accordance with applicable law, including recognized principles of equity, and will honor all claims of privilege

recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different Users, but is bound by rulings in prior arbitrations involving the same User to the extent required by applicable law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this Agreement to Arbitrate.

With the exception of any of the provisions in Section 1 of this Agreement to Arbitrate ("Prohibition of Class and Representative Actions and Non-Individualized Relief"), if an arbitrator or court decides that any part of this Agreement to Arbitrate is invalid or unenforceable, the other parts of this Agreement to Arbitrate shall still apply.

C. Judicial Forum for Legal Disputes

Unless you and we agree otherwise, in the event that the Agreement to Arbitrate above is found not to apply to you or to a particular claim or dispute, you agree that any claim or dispute that has arisen or may arise between you and ELSO must be resolved exclusively by a state or federal court located in Washtenaw County, Michigan. You and ELSO agree to submit to the personal jurisdiction of the courts located within Washtenaw County, Michigan for the purpose of litigating all such claims or disputes.

15. General

Except as otherwise provided in this User Agreement, if any provision of this User Agreement is held to be invalid, void or for any reason unenforceable, such provision shall be struck out and shall not affect the validity and enforceability of the remaining provisions. In our sole discretion, we may assign this User Agreement without notice to you.

Headings are for reference purposes only and do not limit the scope or extent of such Section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. We do not guarantee we will take action against all breaches of this User Agreement.

We may amend this User Agreement at any time by posting the amended terms on www.ELSO.org. Our right to amend the User Agreement includes the right to modify, add to, or remove terms in the User Agreement. Your continued access or use of our Platform constitutes your acceptance of the amended terms. We may also ask you to acknowledge your acceptance of the User Agreement through an electronic click-through. This User Agreement may not otherwise be amended except through mutual agreement by you and an ELSO representative who intends to amend this User Agreement and is duly authorized to agree to such an amendment.

If you create or use an account on behalf of a business entity, you represent that you are authorized to act on behalf of such business and bind the business to this User Agreement. Such account is owned and controlled by the business entity. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this User Agreement.

The User Agreement and all terms and polices posted through our website at www.ELSO.org set forth the entire understanding and agreement between you and ELSO, and supersede all prior understandings and agreements of the parties.

The following Sections survive any termination of this User Agreement: Fees, Content, Disclaimer of Warranties; Limitation of Liability; Release, Indemnity, Legal Disputes, and General.