

Adopted by ELSO Board December 8, 2020

Revised August 8, 2023



## EXTRACORPOREAL LIFE SUPPORT ORGANIZATION

### NONPROFIT BYLAWS

#### **PREAMBLE**

The following Bylaws shall be subject to, and governed by, the Michigan Nonprofit Corporation Act (the “Act”) and the Articles of Incorporation of the Extracorporeal Life Support Organization. In the event of a direct conflict between the provisions of these Bylaws and the mandatory provisions of applicable state or federal law, the law shall apply. In the event of a direct conflict between the provisions of these Bylaws and the Articles of Incorporation, the Articles of Incorporation will control.

#### **ARTICLE 1**

##### NAME

The legal name of the Michigan nonprofit corporation is the Extracorporeal Life Support Organization and is referred to in these Bylaws as “ELSO.”

#### **ARTICLE 2**

##### MISSION

ELSO is a mission driven public charity whose assets are dedicated to the public interest. ELSO will abide by its mission statement as adopted by its Board of Directors (the “Board”) from time to time.

### **ARTICLE 3**

#### **OFFICES**

The registered office of ELSO will be recorded in the records of the State of Michigan and may be changed from time to time as authorized by the Board and pursuant to state law. ELSO may have such other offices as the Board approves as necessary and appropriate to the activities of ELSO.

### **ARTICLE 4**

#### **BOARD OF DIRECTORS**

Section 1. General Powers and Responsibilities. ELSO will be governed by a Board which shall manage the property, business and affairs of ELSO. ELSO's Board shall be comprised of nominated Directors, with a minimum of 3, not to exceed fifteen Directors. The Executive Committee will be comprised of the Officers of the Board and will have the authority as described in these Bylaws and applicable law. The Board will establish policies and directives governing its business and programs of ELSO and may delegate to the Officers, members, or ELSO staff the authority and responsibility to see that the policies and directives are appropriately followed, subject to Board oversight. Such delegation will be consistent with these Bylaws and applicable federal and state law.

As part of its oversight of ELSO, the Board shall approve the annual budget, approve and monitor expenditures of ELSO funds (or cause them to be approved and monitored), and cause to be conducted an annual audit of ELSO, including with respect to member center dues, sale of publications and courses, external contracts, grants, gifts, and other sources of income.

Section 2. Number and Qualifications. The Board shall be composed of a minimum of three and up to fifteen members ("*Directors*"): the President of ELSO, the immediate Past-President, the President-Elect, the Treasurer (who shall concurrently serve as the Secretary), an at-large member who shall be from an Affiliate Chapter, and such other Directors as elected by the Board. The Board will be chaired by the President. The exact number of Board members (3-15) shall be set by resolution of the Board from time to time and may be changed by an affirmative vote of a majority of the then-serving Directors. The number of Directors must always be an odd number, and if an even number exists due to a vacancy, then the Board shall fill such vacancy as soon as practicable. In the event that there is an even number of Directors voting upon any matter and an equal number of votes is cast "for" and "against" such

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matter, the vote of the President shall prevail." A Director need not be a resident of the State of Michigan nor of the United States of America so long as the majority of Board members are US citizens.

The Chief Executive Officer shall have the right to receive notice of and to attend meetings of the Board, but shall not be a Director. In addition to the Directors named above, the Board may appoint representatives of other organizations or individuals, as the Board may deem advisable, to receive notice of, and to attend, meetings of the Board, subject in all cases to execution of an appropriate agreement regarding confidentiality, maintenance of attorney client privilege (when applicable) and other similar matters. All such Board observers shall have such rights at the pleasure of the Board, shall not have voting power, and shall not be eligible to serve as an Officer.

Section 3. Board Compensation. The Directors shall receive no compensation for serving as members of the Board other than reasonable expenses. However, nothing in these Bylaws shall preclude any Director from concurrently serving ELSO as an Officer or in another capacity and receiving compensation for services rendered.

Section 4. Term of Board. Non-Officer Directors shall serve for a four-year term. Officer Directors shall serve for a two-year term that coincides with their Officer role. No Director shall serve more than two consecutive terms unless a majority of the Board, during the course of a Board meeting at which a quorum is present (or by unanimous written or electronic consent), votes to waive the term limit and appoint the Director to serve one (and only one) additional term.

Section 5. Vacancies. A vacancy on the Board may exist at the occurrence of the following conditions:

- a. The death, resignation, or removal of any Director;
- b. The removal of a Director who has been: (i) declared of unsound mind by a final order of court; (ii) charged by a government official with a felony; (iii) found by final order or judgment of any court to have breached a duty pursuant to the Act; (iv) who has missed three (3) consecutive meetings of the Board, or a total of four (4) meetings of the Board during any one calendar year; or (v) who is otherwise removed for cause in accordance with the following paragraphs;
- c. An increase in the authorized number of Directors; or
- d. The failure of the Directors, at any annual or other meeting of Directors at which Director(s) are to be elected, to elect the full authorized number of Directors.

The Board, by an affirmative vote of a majority of the Directors then in office, may remove any Director for cause at any regular or special meeting. In the event of such proceeding, the Director who is subject to removal: (i) shall receive notice of such meeting and (ii) a detailed writing (including electronic transmission) that sets forth the reasons for removal and (iii) shall be entitled to attend the meeting and speak in their own defense, but shall leave the meeting while the remainder of the Board discusses and

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votes upon the removal. A Director who is removed will automatically be removed as an Officer and any other position such Director holds with ELSO.

A Director may resign effective upon giving written notice to the Chairperson of the Board unless the notice specifies a later time for the effectiveness of the resignation. If the resignation is effective at a future time, a successor may be designated to take office when the resignation becomes effective. Unless the Attorney General is first notified and approves, no Director may resign when ELSO would then be left without a duly elected Director in charge of its affairs.

Any vacancy on the Board may be filled by vote of a majority of the Directors then in office, whether or not the number of Directors then in office is less than a quorum, or by vote of a sole remaining Director. No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires. A Director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor. A Director elected to fill a vacancy shall not have that term counted toward the term limits applicable to such Director set forth in Section 4 of this Article 4.

Section 6. Meetings. The Board's regular meetings may be held at least twice annually at such place and time as shall be determined by the Board. The Chairperson or any three voting Directors may call a special meeting of the Board with 2 days' written notice provided to each Director. The notice shall be served upon each Director via hand delivery, regular mail, email, or by fax. The person(s) authorized to call such special meetings of the Board may also establish the place the meeting is to be conducted, so long as it is a reasonable place in which to hold any special meeting of the Board.

Section 7. Minutes. The Secretary of the Board, or designated staff, shall prepare the minutes of the Board or Executive Committee meetings. Such minutes are to be kept with the official corporate records of ELSO after approval by the Board (or the Executive Committee, as applicable) at its next meeting.

Section 8. Action by Written Consent. Any action required by law to be taken at a meeting of the Board, or any action that may be taken at a meeting of the Board, may be taken without a meeting if consent in writing setting forth the action so taken shall be signed by all Directors. Such consent shall be kept with the official corporate records of ELSO and shall have the same force and effect as a unanimous vote of the Board taken at an actual meeting. The Directors' written consent may be executed in multiple counterparts, copies of which shall be deemed an original for all purposes. Facsimile signatures and electronic signatures or other electronic "consent click" acknowledgments shall be effective as original signatures.

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Section 9. Quorum. At each meeting of the Board or of any Board Committee, the presence of the majority (more than half) of the Directors then in office (or who are members of such Board Committee) shall constitute a quorum for the transaction of business. If at any time the Board consists of an even number of Directors and a vote results in a tie, then the vote of the Chairperson shall be the deciding vote. The act of the majority of the Directors or a majority of the members of a Board Committee present at a meeting in which there is a quorum shall be the act of the Board or applicable Board Committee, unless otherwise provided by the Articles of Incorporation, these Bylaws, or applicable law. If a quorum is not present at a meeting, the Directors present may adjourn the meeting from time to time without further notice until a quorum shall be present. However, a Director shall be considered present at any meeting of the Board or Board Committee if during the meeting such Director is in video or telephone communication with the other Directors participating in the meeting so that all participants may hear one another (including by TDD or other equipment for the hearing impaired).

Section 10. Proxy. The Act does not permit Directors to act by proxy.

## **ARTICLE 5**

### **OFFICERS**

Section 1. Officers and Duties. The Officers of ELSO shall be chosen from among the Directors, by the Directors. The Executive Committee shall consist of five members, all of whom are Directors: the President, the immediate Past-President, the President-Elect, the Treasurer-Secretary, and the global Chapter Affiliate. The same person may hold any number of offices, except that the Treasurer-Secretary may not serve concurrently as the President, and any Officer shall not execute, acknowledge, or verify an instrument in more than 1 capacity if the instrument is required by law, the Articles of Incorporation these Bylaws or a policy adopted by the Board, to be executed, acknowledged, or verified by 2 or more Officers. The Chief Executive Officer will be appointed by the Board and shall not serve concurrently in any other office. In addition to the duties in accordance with this Article, Officers shall conduct all other duties typically pertaining to their office and other such duties which may be required by law, the Articles of Incorporation, or these Bylaws, subject to oversight of the Board, and they shall perform any other such additional duties that the Board may assign to them.

An annual meeting of the Board will be held each year for the election of Officers and Directors whose terms are expiring and to fill vacant positions, as well as other business properly brought before such meeting. The Board and/or the Nominating Committee shall propose a slate of nominees to the Board in accordance with the timing prescribed by the Board from time to time, in order to provide

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ample time for review before the election. To be eligible for an Officer position, an individual must have previously served as the Chairperson of a Standing Committee or must have demonstrated a significant commitment to ELSO. Officers and Directors will be elected by a majority of Directors present, so long as a quorum is present. The results of the election will be reported by the then-serving President at the next annual meeting of ELSO following the election.

An Officer who is also a Director will be removed from the Officer role if removed as a Director. All Officers have the right to resign at any time by providing notice in writing to the Chairperson without bias or predisposition to all rights, if any, of ELSO under any contract to which said officer is a party. However, termination of employment with ELSO shall effect removal as an Officer and as a Director unless otherwise approved by a majority of Directors then in office (not counting for such purposes the person whose office is being voted upon). All resignations shall become effective upon the date in which the written notice of resignation was received or at any time later as may be specified within the resignation; and unless otherwise indicated within the written notice, a stated acceptance of the resignation shall not be required to make the resignation effective.

Any and all vacancies, in any office because of death, resignation, disqualification, removal or for any other cause, shall be filled as prescribed for regular appointments to such office. Reasonable compensation, if any, of the Officers shall be fixed or determined by resolution of the Board, in accordance with policies and procedures adopted by the Board from time to time.

Section 2. Chairperson of the Board (President). The President shall serve as the Chairperson of the Board. It shall be the responsibility of the Chairperson, when present, to preside over all meetings of the Board. The Chairperson shall determine the order of business at such meetings and has the authority to establish rules for the conduct of meetings. The President is authorized to execute, in the name of ELSO, any and all contracts or other documents, which may be authorized, either generally or specifically, by the Board to be executed by ELSO and when required by law that the President's signature must be provided and shall have such other duties as incident to the office of President or as otherwise assigned by the Board.

In the absence of the President, or in the event of his/her inability or refusal to act, it shall then be the responsibility of the President-Elect to perform only for such meeting or the duration of such absence all the duties of the Chairperson, and in doing so shall have all authority and powers of, and shall be subject to all of the restrictions on, the Chairperson. If the President-Elect is unable to act, the Past-President assumes the role of Chairperson as described in the previous sentence.

Section 3. Chief Executive Officer. It shall be the responsibility of the Chief Executive Officer (CEO), in general, to:

- a. Supervise and conduct all daily activities and operations of ELSO, subject to the control, advice and consent of the Board;
- b. Keep the Board completely informed and shall freely consult with them in relation to all activities of ELSO;
- c. See that all orders and/or resolutions of the Board are carried out to the effect intended; and
- d. Act, speak for, or otherwise represent ELSO to the public and in ELSO's daily operations.

The CEO shall be responsible for the hiring and firing of all personnel and shall be responsible for keeping the Board informed at all times of staff performance and for implementing any personnel policies which may be adopted and implemented by the Board. The CEO is authorized to:

- a. Contract, receive, deposit, disburse, and account for all funds of ELSO;
- b. Execute in the name of ELSO all contracts and other documents, and negotiate any and all material business transactions of ELSO, in each case as authorized either generally or specifically by the Board to be executed by ELSO.

The CEO shall serve as the registered agent of ELSO. The Board shall select the CEO and may place the CEO under a contract of employment where appropriate.

Section 4. Treasurer. The Treasurer also serves as the Secretary. It shall be the responsibility of the Treasurer to keep and maintain, or cause to be kept and maintained, adequate and accurate accounts of all the properties and business transactions of ELSO, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements.

The Treasurer shall be responsible for ensuring the deposit of, or cause to be deposited, all money and other valuables of ELSO, or as otherwise directed by the Board. Furthermore, the Treasurer shall disburse, or cause to be disbursed, the funds of ELSO, as may be ordered by the Board or in the regular course of business, and shall render to the Chairperson and Directors, on a regular basis or promptly upon their request, an account of all of the transactions in ELSO's name or on its behalf, and of the financial condition of ELSO.

The Treasurer shall give ELSO a bond, if so requested and required by the Board, in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of the Treasurer's office and for restoration to ELSO of all its books, papers, vouchers, money and other

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property of every kind in the Treasurer's possession or under the Treasurer's control upon the Treasurer's death, resignation, retirement, or removal from office. ELSO shall pay the cost of such bond.

Section 5. Secretary. The Secretary shall also serve as Treasurer. The Secretary, or the Secretary's designee, shall be the custodian of all records and documents of ELSO that are required to be kept at the principal office of ELSO, shall act as Secretary at all meetings of the Board or a Board Committee, and shall keep the minutes of all such meetings with ELSO's official corporate records. The Secretary shall attend to the giving and serving of all notices of ELSO and shall see that if the seal of ELSO is affixed to a document, the execution of that document is duly authorized in accordance with the provisions of these Bylaws and shall attest thereto.

## ARTICLE 6

### STEERING COMMITTEE

Section 1. Steering Committee Responsibilities. The Steering Committee is an advisory body to the Board and its members shall owe no fiduciary duties to ELSO. The responsibilities of the Steering Committee are to advise the Board on the following:

- a. Institutional, foundation, and industrial grants;
- b. The priorities of ELSO related to committee-specific topics; and
- c. The activities of ELSO both inside and outside the membership.

Section 2. Steering Committee Membership. The Steering Committee shall consist of:

- a. The Chairpersons of the Standing Committees described in the ELSO Charter;
- b. The President of the Board, who shall serve as the Chairperson of the Steering Committee;
- c. One representative from each Affiliate Chapter; and
- d. Three professional liaison members, one of whom is a nurse, one of whom is a perfusionist, and one of whom is a respiratory therapist, who are nominated by a relevant professional society and approved by the ELSO Board.

To be eligible for Steering Committee membership, a person must be in an active Extracorporeal Life Support (ECLS) leadership role (such as, but not limited to, a physician leader or coordinator) at an ELSO Institutional Member center and either providing clinical care or shall have otherwise demonstrated a commitment to ELSO and shall also be an individual ELSO member.

Section 3. Steering Committee Elections. Each year, an election will be held to fill any vacancies and replace members whose terms are expiring on the Steering Committee. This process will consist of a list of qualified candidates produced by the Nominating Committee, upon which the Steering Committee recommends a single candidate for each open position on the Steering Committee. The Board will act upon the recommendation by either approving the recommended candidate or returning the



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nomination to the Nominating Committee. If a candidate is not approved by the Board, the Nominating Committee will reconvene to establish additional qualified candidates, and the Steering Committee will recommend a new candidate. In all cases, an affirmative vote by the majority of the Directors then in office is required to fill a Steering Committee position.

Section 4. Steering Committee Terms. The term of membership of each Steering Committee member will be three years, renewable once, for each position that an individual holds. Terms begin at the annual meeting following election and conclude at the annual meeting in the year the term ends. A position on the Steering Committee may be held by only one individual. Steering Committee members will be ineligible for reappointment to the same role on the Steering Committee after completing an initial term or re-elected second term.

Section 5. Proxy. A Steering Committee member who is unable to attend a meeting of the Steering Committee may vote by written proxy given to another member of that chapter to represent the chapter. However, a vote by proxy shall not be counted toward the number of Steering Committee members needed to be present to constitute a quorum for the transaction of business. No proxy shall be valid after three months from the date of execution. Each proxy shall be revocable unless expressly stated therein to be irrevocable or unless made irrevocable by law.

Section 6. Minutes. The Steering Committee Chairperson shall appoint an individual to act as recording Secretary at each meeting in which business shall be transacted. The appointed recording Secretary shall prepare the minutes of the meetings which shall be placed in the Steering Committee's minutes, which are part of ELSO's official corporate records, once a draft of the meeting minutes has been officially reviewed and approved by the Steering Committee at its next meeting.

Section 7. Quorum. The presence of more than one-third of the members then serving on the Steering Committee shall constitute a quorum for the transaction of business. If at any time the Steering Committee consists of an even number of members and a vote results in a tie, then the vote of the Chairperson shall be the deciding vote. If a quorum is not present at a meeting, the Steering Committee members present may adjourn the meeting from time to time without further notice until a quorum shall be present. However, a Steering Committee member shall be considered present at any meeting of the Committee if during the meeting such Steering Committee member is in video or telephone communication with the other members participating in the meeting.

## **ARTICLE 7**

### **OTHER COMMITTEES**

Section 1. Executive Committee. Only the Executive Committee may exercise all powers and authority of the Board in the management of the business and affairs of ELSO between meetings of the Board, unless restricted by resolution adopted by the Board. However, the Executive Committee, regardless of Board resolution, may not (because the Act prohibits it):

- (a) Amend the Articles of Incorporation;
- (b) Adopt an agreement of merger or conversion;
- (c) Approve the sale, lease or exchange of all or substantially all of ELSO's property and assets;
- (d) Approve the dissolution of ELSO or the revocation of a dissolution;
- (e) Amend these Bylaws;
- (f) Fill vacancies on the Board; or
- (g) Fix compensation of the Directors for serving on the Board or on a committee.

The board may designate one or more Directors as alternate members of the Executive Committee, who may replace an absent or disqualified member at a meeting of the Executive Committee.

Section 2. Other Committees. The Board may designate other committees as deemed appropriate. The committees will have the authority as delegated to them by the Board, except no committee other than the Executive Committee may exercise the power or authority of the Board but instead shall make recommendations to the Board. The Chair of all such committees shall be chosen by the Board and may be a Director or another person chosen by the Board. The President and the CEO shall be entitled to notice of, and to attend, all committee meetings.

Section 3. Meetings and Actions of Other Committees. Meetings and actions of all committees (other than the Steering Committee) shall be governed by, and held and taken in accordance with, the provisions of these Bylaws concerning meetings and actions of the Board, with such changes in the context of those Bylaws as are necessary to substitute the Committee and its members for the Board and its members, except that the time for regular meetings of committees may be determined either by resolution of the Board or by resolution of the Committee. Special meetings of Committees may also be called by resolution of the Board. Notice of special meetings of Committees shall also be given to any and all alternate members, who shall have the right to attend all meetings of the Committee. Minutes shall be kept of each meeting of any Committee and shall be maintained with

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ELSO'S official corporate records. The Board may adopt rules for the governance of any Committee or may delegate such authority to any Committee.

## **ARTICLE 8**

### **MEMBERS**

Section 1. Institutional Membership. Each Extracorporeal Life Support (ECLS) program that contributes cases to ELSO Registry is considered to be an active Institutional Member of ELSO. Active status of an Institutional Member is maintained for as long as the Institutional Member regularly contributes cases to the Registry and pays membership dues. An Institutional Member is inactive if it has not reported any cases to the Registry for period of twelve consecutive months, or if its dues are in arrears for more than six months.

Section 2. Corporate Membership. Corporate Membership may be held by corporations who are active in research and development of extracorporeal devices, drugs, and techniques. Each Corporate Member may designate as many individual representatives as it wishes to participate in the various activities of ELSO. Corporate Members may not attend Board meetings except by special invitation of the Board.

Section 3. Individual Membership. ECMO clinicians, research scientists, members of regulatory and public health institutions, and those interested in ELSO are eligible and encouraged to participate as Individual Members in ELSO. Individual members can be part of an ELSO Member Center or a clinician or scientist from a non-ELSO center. Individual members receive specified benefits for membership separate from Member Center privileges and may participate in all the activities of ELSO. Individual Members may not attend Board meetings except by special invitation of the Board.

Section 4. Membership Rights and Requirements. The Board may modify the rights and requirements of membership from time to time as it deems in the best interest of ELSO and ELSO's charitable mission and purposes.

## **ARTICLE 9**

### **AFFILIATE CHAPTERS**

Section 1. Affiliate Chapters. The Board may authorize the formation of Affiliate Chapters that represent ELSO centers within a geographical location. An Affiliate Chapter shall have a Chapter board of directors with the same organizational structure and processes approved by the ELSO Board. Membership in an Affiliate Chapter is limited to institutions in the given geographic location.

Section 2. Chapter Authority. The Chapter board of directors may conduct business related to chapter activities; including establishment of a Name, Charter and Bylaws; policy statements; board of director appointments; conferences and courses; and recruiting efforts and grants, pending ELSO Board approval. The administration and maintenance of membership, establishment and receipt of dues, and administration and operation of the Registry shall remain the responsibility of ELSO Board. Each Affiliate Chapter shall establish a Charter and Bylaws that are consistent with the goals of ELSO and these Bylaws and that are subject to the approval of ELSO Board. The Board of ELSO, in its reasonable discretion, may retract the right of an Affiliate Chapter to call itself an ELSO Affiliate Chapter and may revoke all attendant rights and responsibilities (such as use of the ELSO name and intellectual property) of an Affiliate Chapter not conforming to its established bylaws, applicable law, or the rules adopted by the Board from time to time. Institutional, Corporate, and Individual Memberships shall remain in ELSO even if located within the geographic region of the revoked Affiliate Chapter.

Section 3. Chapter Finances. ELSO has no financial responsibility or liability whatsoever for the debts or other liabilities of its Affiliate Chapters, and each such Affiliate Chapter shall hold ELSO harmless and indemnify ELSO for any debts or liability incurring to ELSO stemming from the Affiliate Chapter. Each Affiliate Chapter shall establish appropriate means for maintaining and accounting for funds received and distributed and shall comply with applicable law, both locally and in the United States. Each Affiliate Chapter shall be financed through the following:

- a. Twenty-five percent (25%) of the dues of the Affiliate Chapter Institutional Members collected by ELSO shall be distributed to the Affiliate Chapter.
- b. Proceeds from Affiliate Chapter activities, such as educational activities and grant awards, shall remain with the Affiliate Chapter.
- c. Additional *ad hoc* allocations from ELSO as authorized by the ELSO Board.

A treasurer shall be elected by the Affiliate Chapter from amongst its board of directors at-large membership. Each Affiliate Chapter shall submit in good faith a budget for the subsequent calendar year to the ELSO Treasurer at the time of the annual meeting of ELSO Board, for review and approval by the ELSO Board. Assuming all of the previous conditions in this Article have been met, as authorized by the ELSO Board, each Affiliate Chapter may apply for financial assistance from ELSO in order to maintain the Affiliate Chapter's financial stability in times of hardship.

## **ARTICLE 10**

### **STANDARD OF CONDUCT**

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Section 1. General. ELSO's Directors and officers shall discharge their duties as a Director or Officer (including as a member of a committee) in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the Director or Officer, as applicable, reasonably believes is in the best interests of ELSO.

Section 2. Reliance on Others. In discharging their duties, a Director or Officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following (unless such Director or Officer has knowledge concerning the matter in question that makes reliance unwarranted):

(a) One or more Directors, Officers, or employees of ELSO whom the Director or Officer reasonably believes to be reliable and competent in the matters presented.

(b) Legal counsel, public accountants, engineers, or other persons as to matters the Director or Officer reasonably believes are within the person's professional or expert competence.

(c) A committee of the Board of which the Director or Officers is not a member but which they reasonably believe merits confidence.

Section 3. Loans. ELSO shall not make any loan of money or property to, or guarantee the obligation of, any Director or Officer; provided, however, that ELSO may advance money to a Director or Officer of ELSO or any Affiliate Chapter for expenses reasonably anticipated to be incurred in the performance of the duties of such Officer or Director (or Affiliate Chapter) so long as such individual would be entitled to be reimbursed for such expenses absent that advance.

Section 4. Conflict of Interest. ELSO will maintain Conflict of Interest policies and procedures to protect ELSO's interests. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to tax-exempt, charitable organizations and is not intended as an exclusive statement of responsibilities.

## ARTICLE 11

### INDEMNIFICATION

Section 1. Indemnification of Directors, Officers and Others. ELSO will, to the fullest extent now or hereafter permitted by law, indemnify any Director or Officer of ELSO (and, to the extent provided in a

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resolution of the Board or by contract, may indemnify any volunteer, employee or agent of ELSO)(in each case, "Indemnitee") that was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of ELSO, by reason of the fact that the person is or was a Director, Officer, employee, non-director volunteer, or agent of ELSO, or is or was serving at the request of ELSO as a director, officer, partner, trustee, employee, non-director volunteer, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for-profit or not-for-profit, for expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of ELSO, and with respect to a criminal action or proceeding, if the person had no reasonable cause to believe that the conduct was unlawful. The termination of an action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner that the person reasonably believed to be in or not opposed to the best interests of ELSO and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

Section 2.       Indemnification in Connection with Actions by or in the Right of ELSO. ELSO has the power to (but shall not be required to) indemnify a person that was or is a party or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of ELSO to procure a judgment in its favor by reason of the fact that the person is or was a Director, Officer, employee, non-director volunteer, or agent of ELSO, or is or was serving at the request of ELSO as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for-profit or not-for-profit, for expenses, including attorneys' fees and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of ELSO. ELSO shall not indemnify a person for a claim, issue, or matter in which the person is found liable to ELSO except to the extent authorized under Section 564c of the Act.

Section 3.       Advancement of Expenses.

(1) ELSO shall pay or reimburse the reasonable expenses incurred by a Director or Officer, and may pay or reimburse the reasonable expenses incurred by a non-officer employee, non-director volunteer, or agent of ELSO or a person that is or was serving at the request of ELSO as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, limited liability company, joint venture, trust, or other enterprise, whether for-profit or not-for-profit, that is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if the person furnishes ELSO a written agreement, executed personally or on the person's behalf, to repay the advance if it is ultimately determined that the person did not meet the standard of conduct, if any, required by the Act for the indemnification of a person under the circumstances.

(2) An agreement required under this Article 11, Section 3, must be an unlimited general obligation of the Director, Officer, employee, non-director volunteer, or agent, but may be unsecured. ELSO may accept such agreement without reference to the financial ability of the person to make repayment.

(3) Except if an advancement of expenses is mandatory under ELSO's Articles, these Bylaws or by contractual agreement, ELSO shall evaluate the reasonableness of advances in the manner described in section 564a(1) of the Act and make an authorization in the manner described in Act section 564a(4) (or subsequently enacted sections of the Act relating to the subject matter). ELSO may authorize advances with respect to a proceeding and determine the reasonableness of advances or approve a method for determining the reasonableness of advances in a single resolution covering the entire proceeding. However, unless the action or resolution provides otherwise, an authorizing or determining authority of ELSO may subsequently terminate or amend the authorization or determination with respect to advances that are not yet made.

Section 4. Remedies. If a claim for advancement of expenses that meets the requirements of these Bylaws is not paid in full by ELSO within thirty (30) days after a written claim has been received by ELSO, the Indemnitee may at any time thereafter bring suit against ELSO to recover the unpaid amount of the claim. If successful in whole or in part in any such suit or in a suit brought by ELSO to recover advances, the Indemnitee also shall be entitled to be paid the expense of prosecuting or defending such claim. In any action brought by the Indemnitee to enforce a right to indemnification, it shall be a defense that the Indemnitee has not met the applicable standard of conduct set forth in the Act or other applicable laws of the State of Michigan or the Internal Revenue Code of 1986, as amended

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(the “Code”), and if advances have been made, ELSO shall be entitled to recover such advances if it is ultimately determined that the Indemnitee has not met such applicable standard of conduct.

Section 5. Miscellaneous.

- (1) *Non-exclusivity.* The right to indemnification and the advances conferred in this Article 11 shall not be exclusive of any other right that any person may have or hereafter acquire under any statute, contract, vote of disinterested Directors, ELSO’s Articles of Incorporation or otherwise.
- (2) *Amendment or Repeal.* No amendment or repeal of this Article 11 shall apply to or have any effect on any person who is or was a Director or Officer of ELSO for or with respect to any acts or omissions of the Director or ffOicer occurring before the amendment or repeal.
- (3) *Indemnification of others.* ELSO may, in its sole discretion by action of the Board, provide indemnification and advancement of expenses to other employees, volunteers and agents of ELSO with the same scope and effect as described in this Article 11, in accordance with the Act and the Code.
- (4) *Insurance.* ELSO shall have the power to purchase and maintain insurance on behalf of any person against any liability asserted against him or her and incurred by him or her in any capacity with ELSO, or arising out of his or her status with or service by or at the request of ELSO, whether or not ELSO would have the power to indemnify him or her against such liability under this Article 11.

**ARTICLE 12**

**EXECUTION OF CORPORATE INSTRUMENTS**

Section 1. Execution of Corporate Instruments. The Board may, in its discretion, determine the method and designate the signatory officer or officers or other person or persons, to execute any



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corporate instrument or document, or to sign the corporate name without limitation, except when otherwise provided by law, and such execution or signature shall be binding upon ELSO.

Unless otherwise specifically described in these Bylaws, determined by the Board, or otherwise required by law, formal contracts of ELSO requiring transfer of funds or other financial commitments by ELSO such as, promissory notes, deeds of trust, mortgages, and other evidences of indebtedness of ELSO, and other corporate instruments or documents, memberships in other organizations, shall be executed, signed and/or endorsed by the Treasurer.

All checks and drafts drawn on banks or other depositories on funds to the credit of ELSO, or in special accounts of ELSO, shall be signed by the Chief Executive Officer and/or such person or persons as the Boards of Directors shall authorize to do so.

Section 2. Loans and Contracts. No loans or advances shall be contracted on behalf of ELSO and no note or other evidence of indebtedness shall be issued in its name unless and except as the specific transaction is authorized by the Board. Without the express and specific authorization of the Board, except as permitted by these Bylaws, no Officer or other agent of ELSO may enter into any contract or execute and deliver any instrument in the name of and on behalf of ELSO.

## **ARTICLE 13**

### **RECORDS AND REPORTS**

Section 1. Maintenance and Inspection of Articles and Bylaws. ELSO shall maintain in its official corporate records copies or originals of its then-current Articles of Incorporation and Bylaws, which shall be open to inspection by the Directors at all reasonable times during office hours.

Section 2. Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns. ELSO shall also maintain in its official corporate records its federal tax exemption application (on Form 1023), its IRS Determination Letter, and its annual information returns for three years from their date of filing, which shall be open to public inspection and copying to the extent required by law.

Section 3. Maintenance and Inspection of Other Corporate Records. ELSO shall keep adequate and correct books and records of accounts, and written minutes of the proceedings of the Board and Committees of the Board. All such records shall be kept at a place or places as designated by the Board and Committees of the Board, or in the absence of such designation, at the principal office of ELSO (or easily accessible remotely). The minutes shall be kept in written, typed, or recoverable electronic form, and other books and records shall be kept either in written or typed form or in any form capable of

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being converted into written, typed, or printed form. Upon leaving office, each Officer, employee, or agent of ELSO shall turn over to his or her successor or the Chairperson, in good order, such monies, books, records, minutes, lists, documents, contracts or other property of ELSO as have been in the custody of such Officer, employee, or agent during his or her term of office.

Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of every kind and the physical properties of ELSO and each of its Affiliate Chapters. The inspection may be made in person or by an agent or attorney and shall include the right to copy and make extracts of documents.

Section 4. Preparation of Annual Financial Statements; Filing of Other Reports. The Board shall cause, at least once in each calendar year (typically at the Board's annual meeting), the distribution of a report of ELSO that shall include all of the following for ELSO's preceding fiscal year: (i) Its income statement; (ii) Its year-end balance sheet, including trust funds and funds restricted by donors or the Board; (iii) Its statement of source and application of funds, if ELSO prepares that statement; (iv) any other information required under the Act. This report may be distributed electronically but shall be distributed in paper form if requested by a Director.

The Board shall cause ELSO to comply with all other annual filings required by law, including but not limited to: (i) the annual corporate report filed with the State of Michigan; (ii) renewal of ELSO's charitable solicitation license with the Attorney General of the State of Michigan (which requires a copy of ELSO's tax return); (iii) an audit or review of its financial statements, if required by law or as otherwise deemed advisable by the Board; and (iv) all required quarterly and annual tax returns.

#### **ARTICLE 14**

##### **FISCAL YEAR**

The fiscal year for this ELSO shall begin on January 1st and shall end on December 31<sup>st</sup>.

#### **ARTICLE 15**

##### **AMENDMENTS AND REVISIONS**

These Bylaws may be adopted, amended or repealed by the vote of a majority of the Directors then in office. Such action is authorized only at a duly called and held meeting of the Board for which written notice of such meeting, setting forth the proposed Bylaw revisions with explanations therefor, is given in accordance with these Bylaws. If any provision of these Bylaws or applicable law requires the vote of a larger proportion of the Board than is otherwise required by law, that provision may not be altered, amended or repealed except by that greater vote.

## **ARTICLE 16**

### **CORPORATE SEAL**

The Board may adopt, use and alter a Corporate/Organization seal. The seal shall be kept at the principal office of ELSO. Failure to affix the seal to any corporate instrument, however, shall not affect the validity of that instrument.

## **ARTICLE 17**

### **CONSTRUCTION AND DEFINITIONS**

Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the Act, as amended from time to time, shall govern the construction of these Bylaws. Without limiting the generality of the foregoing, the term *person* includes ELSO and any other entity, as well as a natural person. If any competent court of law shall deem any portion of these Bylaws invalid or inoperative, then so far as is reasonable and possible (i) the remainder of these Bylaws shall be considered valid and operative, and (ii) effect shall be given to the intent manifested by the portion deemed invalid or inoperative.