

BOARD-MANAGED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
BRANCH, LLC
THE ENGLISH-SPEAKING UNION OF THE UNITED STATES

This Limited Liability Company Operating Agreement (this “**Agreement**”) of The English-Speaking Union of the United States Branch, LLC (the “**Branch**”), is based on the form provided by the English-Speaking Union of the United States, a Delaware nonprofit corporation (“**ESU**”), for a branch operating under the supervision of a governing Board.

ARTICLE I NAME, OFFICE AND TERM

This Agreement is entered into as of the ____ day of _____ 2016 by ESU as the sole member¹ of the Branch.

Pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. Sections 18-101, *et seq.*) as amended from time to time (the “**Act**”), ESU hereby states as follows:

1. The name of the limited liability company shall be The English-Speaking Union of the United States Branch, LLC.
2. The principal office of the Branch in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, or such other place or places as the Branch shall determine with the consent of ESU.
3. The name and address of the registered agent of the Branch for service of process on the Branch in the State of Delaware are Corporation Service Company; 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.
4. The term of the Branch shall commence as of the date of filing of the Certificate of Formation of the Branch with the Department of State of the State of Delaware and the Branch shall be dissolved and its affairs wound up as provided in said Certificate, in this Agreement or as otherwise provided in the Act.

¹ As used in this Agreement, the term “member” refers exclusively to the entity that holds the Interest (ownership rights) referred to in Article IV and as defined in the Act. Where the capitalized term “Member” is used in this Agreement, it refers to the individuals described in Article V.

ARTICLE II MISSION, PURPOSE AND CHARACTER

ESU and the Branch are committed to celebrating English as a shared language to foster global understanding and goodwill by providing educational and cultural opportunities for students, educators and Members (as hereinafter defined).

1. The Branch is organized and operated exclusively for educational and charitable purposes, and the Branch’s aims and objectives shall be compatible with the mission, objectives and policies of ESU as set forth from time to time.
2. The purposes of the Branch shall be to:
 - a) advance global understanding by providing educational opportunities through programs and scholarship for students, educators and Members;
 - b) promote communication and open exchange of ideas among the world’s speakers of English;
 - c) enrich the community through active involvement of its branch Members in outreach programs;
 - d) offer financial assistance to students and educators to further academic pursuits in English-related studies; and
 - e) develop common bonds through a shared interest in the English language and culture to strengthen friendship among Members and those they serve.

ARTICLE III ESU

Simultaneously with the execution and delivery of this Agreement and the filing of the Certificate of Formation with the Office of the Secretary of State of the State of Delaware, ESU is admitted as the sole member of the Branch in respect of the Interest (as hereinafter defined). The name and the mailing address of ESU are as follows:

<u>Name</u>	<u>Address</u>
The English-Speaking Union of the United States	144 East 39 th Street New York, New York 10016

ARTICLE IV INTEREST

The Branch shall be authorized to issue a single class of Limited Liability Company Interest (as defined in the Act) (the “**Interest**”), including any and all benefits to which the holder of such Interest may be entitled in this Agreement, together with all obligations of such person to comply with the terms and provisions of this Agreement.

ARTICLE V MEMBERSHIP AND DUES

1. Any person who speaks English and is in sympathy with the purposes and character of ESU shall be eligible for membership in the Branch (each a “**Member**” and, together, the “**Members**”). The term “Member” as used herein is intended to describe the group of dues-paying individuals participating in the Branch’s activities and does not create any rights or obligations for such Members with regard to the Branch. Notwithstanding any other provision herein, ESU is the sole member of the Branch for all corporate and tax purposes. Members shall not be deemed to be members of the Branch for the purposes of Sections 18-101(11) and Section 18-301, *et seq.*, of the Act or any other state or federal law, nor shall Members have any of the duties or obligations of a member under Section 18-301, *et seq.*, of the Act or any other state or federal law. Although Members are not members of the Branch, they may be members of ESU as provided in the Bylaws of ESU (the “**ESU Bylaws**”).
2. The Branch may have such classes of Membership as the Branch may determine pursuant to the provisions of the ESU Bylaws.
3. Membership dues comprise two components: (a) a Branch portion; and (b) an ESU portion. The apportionment of ESU dues shall be as provided by the ESU Bylaws. The Branch portion shall be determined by the Board (as hereinafter defined).
4. The Board (as hereinafter defined) shall have the power to terminate or suspend the membership of, or otherwise discipline, any Member for non-payment of dues or for other just cause.

ARTICLE VI BRANCH TERRITORY

The territory of this Branch, over which its jurisdiction extends, shall be _____.

ARTICLE VII BOARD OF DIRECTORS

1. The business and affairs of the Branch shall be managed by a Board of Directors (the “**Board**”) of not fewer than three and not more than 20 in number (each a “**Director**” and, together, the “**Directors**”). The Directors shall be deemed to be the managers of the Branch for the purposes of Sections 18-101(10) and 18-401, *et seq.*, of the Act and any other state or federal law and Directors shall have the duties and obligations of a manager under Section 18-401, *et seq.*, of the Act and any other state or federal law.
2. To serve as a Director, an individual must be a dues-paying Member.
3. The Directors shall be elected by the Members at the Annual Meeting (as hereinafter defined). Nominations may be presented by a Nominating Committee, but any Member shall have the right to make additional nominations from the floor. Such nominations must be duly seconded. At the first Annual Meeting (as hereinafter defined) one-third of the Directors shall be elected for three years, one-third for two years and the remainder for one

year. Elections to the Board thereafter shall be for three years, except in filling vacancies where the Director-elect shall enter the class of his or her predecessor. No Director who has served two full consecutive terms may be re-elected as a Director until one year after the expiration of his or her second full term.

4. The Board shall have the power to elect an Executive Committee, which must include the President, Secretary and Treasurer and may include other Directors. The Board shall empower and provide for the functions, procedure and tenure of such Executive Committee. The Board may also elect a Nominating Committee, a Finance and/or Audit Committee, a Membership Committee and such other committees as the Board deems desirable and consistent with applicable law.
5. The Board shall have the power to fill Director, Officer (as hereinafter defined) or Committee vacancies until the next Annual Meeting (as hereinafter defined).
6. The Board may remove a Director at any time to the fullest extent permitted by the laws of the State of Delaware, as provided in the Branch Operations Manual or as provided in any other policies created by the Board.
7. No individual may serve as a Director for more than six successive years, regardless of whether the proposed election of such individual is as a Director pursuant to Sections 3 or 5 of this Article or as an Officer pursuant to Section 2 of Article VIII or Section 5 of this Article.

ARTICLE VIII OFFICERS

1. Each Officer shall also serve, *ex officio*, as a Director.
2. The Branch shall have a President and/or Chairman, a Treasurer and a Secretary, and may have one or more Vice Presidents, Vice Chairmen or other positions with such titles as the Board deems desirable and consistent with applicable law, who are elected at the Annual Meeting (each an “**Officer**” and, together, the “**Officers**”). The President and Secretary may be the same person. The Treasurer may not be the same person as either the President or the Secretary. The Vice Presidents or Vice Chairmen, if any, may include, without limitation: a Nominating Committee Chairman, a Finance and/or Audit Committee Chairman, a Membership Committee Chairman, a Program Chairman, an Education Chairman and such other positions as the Board deems desirable and consistent with applicable law.
3. The Officers shall be elected by the Members at the Annual Meeting and shall serve for one year or until their successors are elected. No Officer shall serve as the same Officer for more than three successive years (the “**Term Limit**”) and may not be elected to a new term until one year after the expiration of his or her Term Limit.

ARTICLE IX MEETINGS AND NOTICE

1. The Members shall hold an annual meeting, usually at the end of the fiscal year or as shall be

determined by the Board (the “**Annual Meeting**”). Written notice of the Annual Meeting shall be given to the Members at least three weeks before the date of the Annual Meeting in such manner as the Board shall determine. The Board may determine to provide a schedule of meetings, including the Annual Meeting (the “**Schedule**”), and the provision of the Schedule once a year shall be sufficient notice of such meetings.

2. Special meetings of the Members: (i) may be called by the Board; and (ii) shall be called by the President and/or Chairman upon the request of no fewer than twenty-five percent (25%) of the Members entitled to cast votes. Any such request by the Board or the President and/or Chairman shall provide not less than three weeks’ notice and state the time and place of the proposed meeting, and upon receipt of such request it shall be the duty of the Secretary to issue the call for such meeting promptly. If the Secretary shall neglect to issue such call, the President and/or Chairman or Directors making the request may issue the call.
3. Whenever notice is required to be given under the Act or this Agreement, it may be given by electronic notice to the address appearing on the books of ESU.
4. Except as otherwise provided by the Act or this Agreement, when a meeting is temporarily adjourned, it shall not be necessary to give any notice of the temporarily adjourned meeting, or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.
5. Directors shall further establish meeting times, dates and places and requisite notice requirements and adopt rules or procedures consistent with the terms of this Agreement for meetings of the Board. The Board shall meet at least once per year and preferably at least four times each year.
6. Any action required 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 at a meeting held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting. Notwithstanding anything to the contrary in this Article, the Board may take without a meeting any action that may be taken by the Board under this Agreement if such action is approved by the unanimous written consent of the Directors.
7. Except as otherwise provided in this Agreement, all powers to control and manage the business and affairs of the Branch shall be exclusively vested in the Board, and the Board may exercise all powers of the Branch and do all such lawful acts as are not prohibited by the Act, the Certificate of Formation or this Agreement or are directed or required to be exercised or done by ESU and in so doing shall have the right and authority to take all actions that the Board deems necessary, useful or appropriate for the management and conduct of the business of the Branch.

ARTICLE X QUORUM

A majority of the Directors shall constitute a quorum. Twenty percent (20%) of the Members shall constitute a quorum.

ARTICLE XI RESPONSIBILITIES OF ESU

ESU shall fulfill the following responsibilities with respect to the Branch, and the material failure of ESU to fulfill any one or more of the following shall constitute a breach of this Agreement by ESU:

1. Maintain the status of ESU as a tax-exempt entity described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”);
2. Conduct and administer Membership dues billings in accordance with policies established in the Branch Operations Manual for billing Members (the “**ESU Billing Policies**”);
3. Maintain the official database of current, due and lapsed Members in accordance with policies established in the Branch Operations Manual for membership (the “**ESU Membership Policies**”);
4. Provide online rosters of Members for use by the Branch with such information as agreed between ESU and the Branch from time to time;
5. Administer fundraising programs to benefit the Branch and ESU;
6. Prepare and file the annual information return with the Internal Revenue Service (Form 990, 990-EZ or 990-N) or such other forms as are required by the Internal Revenue Service, on behalf of the Branch;
7. Maintain updated state charitable solicitation registrations enabling ESU and the Branch to fundraise under state laws in accordance with policies established in the Branch Operations Manual for fundraising;
8. Provide the Branch with a website for the Branch to use to submit postings on programs, activities and other information for Members, media and the general public;
9. Provide the Branch with an official email address and other communication channels and tools;
10. Maintain and protect all trademarks and trade names of ESU and license such trademarks and trade names to the Branch;
11. Provide the Branch with promotional materials, templates for publications and resources for outreach;

12. Develop, facilitate and administer national educational programs that comply with the mission of ESU supporting the Branch to participate and to sponsor the same;
13. Organize and administer an annual general meeting for the Members of all ESU branches including this Branch;
14. Offer to the Branch coverage under Directors and Officers insurance (“**D & O Insurance**”) and group General Liability insurance (“**General Liability Insurance**”) maintained by ESU; and
15. Serve as a conduit to the international network of English-Speaking Unions.

ARTICLE XII RESPONSIBILITIES OF THE BRANCH

The Branch shall fulfill the following responsibilities in order to establish and maintain a relationship with ESU, and the material failure of the Branch to fulfill any one or more of the following shall constitute a breach of this Agreement by the Branch:

1. To operate within the terms of, and conduct educational programs compatible with, the mission statement of ESU;
2. To establish a minimum of 25 Members;
3. To operate in compliance with the Branch Operations Manual as established by ESU;
4. To operate in compliance with the ESU Billing Policies;
5. To operate in compliance with the ESU Membership Policies;
6. To submit to ESU prior to September 30 of each year an annual budget for the Branch;
7. To submit to ESU minutes of the Annual Meeting within 30 days of such meeting;
8. To maintain an official Branch address and contact information and to provide ESU with any updates or changes to this Branch address and contact information, including the most current electronic mail address of the Branch’s President, Secretary and Treasurer;
9. To carry appropriate insurance and remit the Branch’s proportionate share of the premiums to ESU at least annually in accordance with the Branch Operations Manual;
10. To submit to ESU, within the timeline ESU identifies, the information necessary for ESU to include the Branch’s financial data on the annual information return filed with the Internal Revenue Service (Form 990, 990-EZ or 990-N) and any related federal or state registrations or tax returns;
11. If the Branch hires employees, to comply with all applicable labor, employment and tax laws

relating to such employees;

12. To grant ESU access on reasonable written notice to all bank and investment statements received by the Branch for all bank and investment accounts maintained by the Branch;
13. Within two years of becoming a Branch, to participate annually in a minimum of two educational programs run by ESU or approved by ESU as fulfilling its mission;
14. To maintain and comply with a Conflict of Interest Policy in the form supplied by ESU;
15. To at all times conduct and carry on only those activities that are permitted to be conducted or carried on by an organization that is exempt from tax under Section 501(a) of the Code and described in Section 501(c)(3) of the Code and that shall not adversely affect the tax-exempt status of ESU under Section 501(a) of the Code and described in Section 501(c)(3) of the Code, including, without limitation that:
 - a. no part of the Branch's net earnings shall inure to the benefit of, or be distributable to, any contributor, director, officer of the Branch or ESU or any other individual, person or organization, except that the Branch shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein;
 - b. no substantial part of the activities of the Branch shall consist of carrying on propaganda or otherwise attempting to influence legislation; and
 - c. the Branch shall not participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office; and
16. To notify ESU promptly of any threatened or actual claim or action against the Branch.

ARTICLE XIII INDEMNIFICATION

ESU is responsible for maintaining D & O Insurance and General Liability Insurance for ESU and the Branch (the “**Insurance**”), which will be offered to the Branch at a share of the group price. ESU will coordinate the Insurance policy and liaise with the broker. The Insurance will include standard directors and officers insurance and general liability insurance coverage (including, but not limited to: officer indemnity, working with youth, host liquor liability and bodily injury and property damage at normal Branch events.) A full description of coverage will be provided as an addendum to the Branch Operations Manual. The Branch may request that ESU assist the Branch in obtaining additional insurance riders if the Branch requires coverage exceeding the scope of the Insurance.

1. Unless otherwise provided in this Article, the Branch shall indemnify, defend, hold harmless and pay all judgments and claims against any Director or Officer, and may by a resolution adopted by a vote of a majority of the Directors hold harmless, defend and indemnify employees and agents, relating to any liability or damage incurred by reason of any act

performed or omitted to be performed by any such individual in connection with the business of the Branch, including reasonable attorneys' fees incurred by such individual in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred. Unless otherwise provided in this Article, in the event of any action by ESU against any Director or Officer, including a derivative suit, the Branch shall indemnify, defend, hold harmless and pay all expenses of such Director or Officer, including reasonable attorneys' fees incurred in the defense of such action to the extent that the Director or Officer is successful on the merits or otherwise in connection therewith. Notwithstanding the provisions of this Article, this Article shall be enforced only to the maximum extent permitted by law, and no individual shall be indemnified from any liability for fraud, bad faith, intentional misconduct, gross negligence or a knowing violation of the law.

2. Expenses incurred by a person entitled to be indemnified under this Agreement shall be paid by the Branch in advance of the final disposition of any action, suit or proceeding upon receipt of: (a) a written affirmation by the person of his or her good faith belief that he or she has met the relevant standard of conduct required by the Act or any other present or future provision of the law; and (b) a written undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Branch.
3. Notwithstanding any other provision of this Agreement, the Branch shall not indemnify any individual for any liability incurred in a proceeding initiated or participated in as an intervenor or amicus curiae by the person seeking indemnification unless such initiation of or participation in the proceeding is authorized, either before or after its commencement, by a resolution of ESU.

ARTICLE XIV RIGHTS AND POWERS OF ESU

ESU shall not have any right or power to take part in the management or control of the Branch or its business and affairs or to act for or bind the Branch in any way. Notwithstanding the foregoing, ESU shall have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act.

Notwithstanding any other provision of this Agreement, no action may be taken by the Branch (whether by the Board or otherwise) in connection with any of the following matters without the written consent of ESU, and such taking of an action without written consent of ESU shall constitute a breach of this Agreement by the Branch:

1. The dissolution or liquidation, in whole or in part, of the Branch or the institution of proceedings to have the Branch adjudicated bankrupt or insolvent;
2. The filing of a petition seeking or consenting to reorganization or relief under any applicable federal or state bankruptcy law;
3. Consenting to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Branch or a substantial part of its property;

4. Any act that is reasonably likely to adversely impact the tax-exempt status of ESU;
5. The merger of the Branch with any other entity;
6. The sale, transfer, grant or donation of all or substantially all of the Branch's assets;
7. The amendment, amendment and restatement or other modification or termination of this Agreement or the Certificate of Formation;
8. The change of name of the Branch;
9. The issuance of any further Interest in the Branch;
10. Any addition to or change in the purposes to be pursued by the Branch;
11. The use by the Branch of any materials bearing the name or trademark of ESU that does not conform to ESU's Style Guidelines Sheet or Branch Operations Manual as developed from time to time;
12. Except to the extent included in a budget approved by the Directors and provided to ESU, incur, modify, offer, extend, provide, renew or prepay any money borrowings, loans or liens on behalf of the Branch, including any guarantees by any Member;
13. Confess or settle a judgment against the Branch greater than \$2,500;
14. Authorize any transaction, agreement or action on behalf of the Branch that is unrelated to its purpose as set forth in the Certificate of Formation, that otherwise contravenes this Agreement or that is not within the ordinary course of the business of the Branch; or
15. As otherwise required under the Act.

ARTICLE XV TAX CHARACTERIZATION

It is the intention of ESU that the Branch be disregarded for federal and all relevant state tax purposes and that the activities of the Branch be deemed to be activities of ESU for such purposes. All provisions of the Branch's Certificate of Formation and this Agreement are to be construed so as to preserve that tax status under those circumstances.

ARTICLE XVI BREACH OF AGREEMENT AND RESIGNATION OF ESU

Upon the breach of this Agreement by the Branch including, without limitation, by the Branch's failure to maintain any obligation described in Article XII herein or by the Branch's taking of an action without the written consent of ESU as described in Article XIV herein (the "**Breach**"), ESU may take any of the following actions in any order as is appropriate or necessary, after notice and at least 10 days opportunity to cure, unless the breach is incapable of being cured:

1. Call a special meeting of the Board upon providing notice of at least 48 hours to the Board of the Branch and the time and place, including by conference call, of the special meeting;
2. Remove, with or without cause, any or all of the Directors and elect new Directors who shall govern the Branch pursuant to Article VII until the next Annual Meeting;
3. Amend and restate this Agreement from this form, which is ESU's form for a branch that desires to operate under the supervision of a governing Board, to ESU's form for member-managed limited liability companies; or
4. Withdraw from the Branch to the fullest extent permitted by the Act, institute the dissolution or liquidation, in whole or in part, of the Branch or institute proceedings to have the Branch adjudicated bankrupt or insolvent, provided that, upon resignation, ESU is entitled to receive the fair value of the Interest in accordance with Section 18-604 of the Act.

ARTICLE XVII AMENDMENT

This Agreement may be amended only in a writing signed by ESU and the Branch. The Board may request that ESU amend and restate this Agreement in the form ESU provides for member-managed limited liability companies by providing notice to the Executive Director of ESU.

ARTICLE XVIII GOVERNING LAW

This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws, excluding any conflicts of laws, rules or principles that might refer the governance or construction of this Agreement to the law of another jurisdiction.

ARTICLE XIX SEVERABILITY

Except as otherwise provided in the succeeding sentence, every term and provision of this Agreement is intended to be severable, and if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement. The preceding sentence shall be of no force or effect if the consequence of enforcing the remainder of this Agreement without such illegal or invalid term or provision would be to cause any party to lose the benefit of its economic bargain.

[Rest of page intentionally blank; Signature page follows]

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have caused this Limited Liability Company Operating Agreement to be executed by their duly authorized representatives as of the day and year first above written. By executing this Limited Liability Company Operating Agreement on behalf of the Branch, the undersigned hereby represents and certifies that he or she has all the necessary authority and power to execute this document on behalf of the Branch and by so executing does hereby bind said Branch to the terms of this Limited Liability Company Operating Agreement.

BRANCH: THE ENGLISH-SPEAKING UNION OF THE UNITED STATES
BRANCH, LLC

By: _____

(Print) _____

State of: _____
County of: _____

On the ____ day of _____ 20____, before me, a Notary Public in and for said County and State, personally appeared _____, an authorized representative of the Branch, and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing agreement and, being duly sworn, acknowledged the execution of the foregoing agreement was his or her voluntary act and deed on behalf of the Branch and stated that any representations contained therein were true and correct.

Witness my hand and official seal

Notary Signature

Print Name

ESU: THE ENGLISH-SPEAKING UNION OF
THE UNITED STATES

By: _____

(Print) _____