

**MEMBER-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 \_\_\_\_\_ by ESU as the sole member<sup>1</sup> 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.

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<sup>1</sup> 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 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.
3. The Branch shall 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.

**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 <sup>th</sup> 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 ESU 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. ESU shall determine both the Branch portion and the ESU portion of the Membership dues.
4. ESU 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            MANAGEMENT; POWERS**

1. The management of the Branch shall be vested solely in ESU, who shall have all powers to control and manage the business and affairs of the Branch and may exercise all powers of the Branch. ESU shall have exclusive and complete authority and discretion to manage the operations and affairs of the Branch and to make all decisions regarding the business of the Branch. Any action taken by ESU shall constitute the act of and serve to bind the Branch. Persons dealing with the Branch are entitled to rely conclusively on the power and authority of ESU as set forth in this Agreement. ESU shall have all rights and powers of a manager under the Act, and shall have such authority, rights and powers in the management of the Branch to do any and all other acts and things necessary, proper, convenient or advisable to effectuate the purposes of this Agreement.
2. ESU may, from time to time, designate one or more officers with such titles as may be designated by ESU to act in the name of the Branch with such authority as may be delegated to such officers by ESU (each such designated person is an “**Officer**”). Any such Officer shall act pursuant to such delegated authority until such Officer is removed by ESU. Any action taken by an Officer designated by ESU pursuant to authority delegated to such Officer shall constitute the act of and serve to bind the Branch. Persons dealing with the Branch are entitled to rely conclusively on the power and authority of any Officer set forth in this Agreement and any instrument designating such Officer and the authority delegated to him or her.

## **ARTICLE VIII            LIMITS ON BRANCH ACTIVITY**

Notwithstanding any other provision of this Agreement, no action may be taken by the Branch in connection with any of the following matters without the written consent of ESU:

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 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 IX            LIABILITY OF ESU AND INDEMNIFICATION**

1. Except as otherwise required in the Act, the debts, obligations and liabilities of the Branch, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations and liabilities of the Branch, and ESU shall not be obligated personally for any such debt, obligation or liability of the Branch solely by reason of being the owner of the Interest or participating in the management of the Branch.
2. To the fullest extent permitted under the Act, ESU (irrespective of the capacity in which it acts) shall be entitled to indemnification and advancement of expenses from the Branch for and against any loss, damage, claim or expense (including attorneys' fees) whatsoever incurred by ESU relating to or arising out of any act or omission or alleged acts or omissions (whether or not constituting negligence or gross negligence) performed or omitted by ESU on behalf of the Branch; provided, however, that any indemnity under this Section shall be provided out of and to the extent of the Branch assets only, and neither ESU nor any other person shall have any personal liability on account thereof.
3. Unless otherwise provided in this Article, the Branch shall indemnify, defend, hold harmless and pay all judgments and claims against any Officer and may after obtaining the written consent of ESU 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.

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.

4. 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.
5. 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 X            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 XI           RESIGNATION OF ESU; DISTRIBUTION UPON RESIGNATION**

So long as it is the sole member, ESU may withdraw from the Branch. Upon resignation, ESU is entitled to receive the fair value of the Interest in accordance with Section 18-604 of the Act.

## **ARTICLE XII           DISSOLUTION**

1. The Branch shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the written consent of ESU; or (ii) any other event or circumstance giving rise to the dissolution of the Branch under Article 7 of the Act, unless the Branch's existence is continued pursuant to the Act.
2. Upon dissolution of the Branch, the Branch shall immediately commence to wind up its affairs and ESU shall promptly liquidate the business of the Branch. During the period of the winding up of the affairs of the Branch, the rights and obligations of ESU under this Agreement shall continue.

3. In the event of dissolution, the Branch shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Branch in an orderly manner), and the assets of the Branch shall be applied as follows: (i) first, to creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Branch (whether by payment or the making of reasonable provision for payment thereof); and (ii) thereafter, to ESU.
4. Upon the completion of the winding up of the Branch, ESU shall file a Certificate of Cancellation in accordance with the Act.

#### **ARTICLE XIII        AMENDMENT**

This Agreement may be amended only in a writing signed by ESU. The Members may request that ESU amend and restate this Agreement in the form that ESU provides for Board-Managed Limited Liability Companies by providing notice to the Executive Director of ESU.

#### **ARTICLE XIV        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 XV        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 undersigned has caused this Limited Liability Operating Agreement to be executed as of the day and year first above written.

**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) \_\_\_\_\_