

JUNIOR ACHIEVEMENT USA US AREA OPERATING AGREEMENT

THIS OPERATING AGREEMENT (õAgreementö) is made this _____ day of _____, 20____, effective as of July 1, 2011 (õCommencement Dateö), between **JUNIOR ACHIEVEMENT USA**, a nonprofit corporation incorporated under the laws of the State of Colorado, USA, and having its principal office at One Education Way, Colorado Springs, Colorado 80906 (õJunior Achievement USAö), and **JUNIOR ACHIEVEMENT OF _____**, a nonprofit organization incorporated under the laws of the State of _____ and having its principal office at _____ (õJA Areaö), and operating in _____ as defined on Exhibit A (each a õPartyö and collectively, the õPartiesö).

RECITALS

- A. JA Worldwide[®], as the owner of the JA Worldwide Brand, holds the right to grant licenses to use the JA Worldwide Brand throughout the world.
- B. Junior Achievement USA is a nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code whose foundational purpose is education of youth in the principles of free enterprise, including work readiness, entrepreneurship and financial literacy.
- C. JA Worldwide and Junior Achievement USA have entered into the USA Agreement whereby JA Worldwide has licensed to Junior Achievement USA certain rights to use the JA Worldwide Brand.
- D. Each of JA Worldwide, certain JA Affiliates, and Junior Achievement USA have or may have the rights to use JA Programs and JA Materials.
- E. Junior Achievement USA has the right to license JA Programs and JA Materials owned by it or licensed to it by other Junior Achievement organizations.
- F. JA Area desires to obtain certain rights to use JA Properties exclusively in the Geographic Territory as described herein, and Junior Achievement USA is willing to grant to JA Area such rights, subject to the terms and conditions of this Agreement, the Policies and Procedures Manual.
- G. JA Area, as an independent legal entity, acknowledges that this Agreement is between it and Junior Achievement USA, and not with any of its employees, agents, board members, or representatives.

AGREEMENT

NOW, THEREFORE, the Parties have agreed and hereby agree as follows:

1. **Definitions.**

1.1. **“Brand/Product Developments”** means ideas, processes, products, events, programs, curricula, activities, materials and delivery methods made to, as enhancements of, as replacements for, or as new JA Programs and/or JA Materials.

1.2. **“Certification”** means acknowledgement by Junior Achievement USA that the operations, performance and accomplishments of JA Area meet the standards of this Agreement, the Policies and Procedures Manual and Operational Standards.

1.3. **“Digital Files”** means those JA Programs, JA Materials, and JA Worldwide Brand (whether provided and licensed by JA Worldwide or provided and licensed by JA Affiliates or created by Junior Achievement USA) existing in electronic and digital means, whether on computer disk, CD Rom, electronic mail, via the Internet or via any other medium now existing or developed at a later time.

1.4. **“Geographic Territory”** means the area described on Exhibit A.

1.5. **“JA Affiliate(s)”** means any organization affiliated with and endorsed or licensed by JA Worldwide, including without limitation Junior Achievement USA, JA Areas, Regional Operating Centers, and other organizations which have entered into an operating agreement or similar contract with a Regional Operating Center or JA Worldwide entitling them to use the JA Worldwide Brand.

1.6. **“JA Areas”** means all organizations which are licensees of Junior Achievement USA and have entered into a US Area Operating Agreement with Junior Achievement USA.

1.7. **“JA Materials”** means materials in physical, digital or any other format relating to or used in connection with JA Programs designed to educate and train youth in the concepts and practices of work readiness, entrepreneurship, financial literacy, business, ethics, and any related economic-based content, including without limitation educational and instructional materials and methods, designs and color schemes for curriculum and promotional materials prepared and distributed in relation to the JA Materials, other materials and specifications for certain products, and methods of operation, including manuals covering business practices and policies. It may include materials developed by Junior Achievement USA and any JA Affiliate.

1.8. **“JA Programs”** means curriculum, events, experiences, programs, processes, and activities in every form whatsoever relating to educating and training youth in the concepts and practices of work readiness, entrepreneurship, financial literacy, business, ethics, and any related economic-based content, and may include those developed by Junior Achievement USA and any JA Affiliate.

1.9. **“JA Properties”** means collectively, (a) JA Worldwide Brand, (b) JA Programs and JA Materials owned by JA Worldwide or JA Affiliates, as and when made available by Junior Achievement USA to JA Area under a license grant, and (c) JA Programs and JA Materials owned by Junior Achievement USA.

1.10. **“JA Worldwide”** means JA Worldwide[®], a nonprofit corporation organized under the laws of the State of Delaware.

1.11. **“JA Worldwide Brand”** means the brands, logos, trademarks, service marks, trade names, commercial symbols, and other proprietary property for use in JA Worldwide’s business, including but not limited to “Junior Achievement,” “JA Worldwide,” and “JA,” and other marks, copyrighted material, or proprietary property, and all derivatives and modifications thereof, that JA Worldwide makes available to Junior Achievement USA under a license grant.

1.12. **“Operational Standards”** means the minimum operational, performance, financial (including indebtedness and cash flow), and accountability standards and specified criteria for JA Areas and their boards of directors as established in writing, updated pursuant to the Policies and Procedures Manual, and distributed by Junior Achievement USA.

1.13. **“Policies and Procedures Manual”** means the policies and procedures manual attached hereto as Exhibit B.

1.14. **“Regional Operating Center(s)”** means a nonprofit corporation or similar legal entity, other than Junior Achievement USA, which is affiliated with JA Worldwide and which has been licensed by, and is authorized to act on behalf of, JA Worldwide with respect to operating agreements with local organizations in particular geographic areas of the world.

1.15. **“USA Agreement”** means the license agreement whereby JA Worldwide grants to Junior Achievement USA certain licenses to use and sublicense JA Worldwide Brand and/or JA Properties in the Geographic Territory.

2. **Grant of License Rights; Ownership.**

2.1. Subject to the terms and conditions of this Agreement and conditional upon payment of all fees and charges due hereunder, Junior Achievement USA hereby grants to JA Area, for the Term stated below, a nontransferable right and license solely within the Geographic Territory, which license shall be exclusive within the Geographic Territory, to:

(a) use, distribute, publicly perform and publicly display the JA Properties in the Geographic Territory;

(b) advertise to the public that it is part of the JA Worldwide and/or Junior Achievement USA network of organizations; and

(c) use the name, brand and logo of "Junior Achievement," "JA" and other JA Worldwide Brand, as changed, modified and enhanced from time-to-time by JA Worldwide, provided that such usage shall at all times comply in all respects with the then-current trademark usage policy provided by Junior Achievement USA.

2.2. Notwithstanding the foregoing, (a) Junior Achievement USA reserves for itself licensing rights in areas of the United States of America outside the Geographic Territory, pursuant to its USA Agreement, and (b) JA Area acknowledges that JA Worldwide has reserved for itself licensing rights as to JA Properties and/or JA Worldwide Brand in all territories, states, nations and other areas throughout the world other than the Geographic Territory.

2.3. The rights with respect to the JA Properties are licensed and not sold to JA Area. The only right granted to JA Area in the JA Properties is the license granted in this Section 2, and JA Area agrees that it shall not, at any time, acquire any ownership rights, title or interest in the JA Properties, or derivatives or modifications thereof, or Brand/Product Developments by virtue of any use it may make of such JA Properties regardless of whether any such rights have been registered. As necessary to evidence Junior Achievement USA's or JA Worldwide's ownership therein, JA Area hereby grants and conveys to Junior Achievement USA, as to JA Materials and JA Programs, and to JA Worldwide, as to JA Worldwide Brand, a perpetual, exclusive, transferable and sublicensable license to use, reproduce, distribute, adapt, modify, translate, publicly perform and publicly display any and all modifications or other derivative works of the JA Properties made by JA Area. The rights to the JA Properties are limited to the scope of this express license; there are no implied licenses. All rights and licenses not expressly granted under this Agreement are reserved by Junior Achievement USA.

3. **Use of the JA Properties.** JA Area accepts such license under the terms and conditions of this Agreement and agrees that it shall only use the JA Properties in the manner described in this Agreement. JA Area further agrees and warrants that:

(a) it will not authorize or permit any third party to use the JA Properties without Junior Achievement USA's consent;

(b) other than in connection with and in furtherance of the JA Programs and JA Materials, it will not use the JA Properties, or authorize or permit the JA Properties to be used or exploited, including in any manner that is deceptive or misleading or that reflects unfavorably upon the good name, goodwill, reputation or image of JA Worldwide or Junior Achievement USA, as

determined by either of them, nor in any manner that is inconsistent with, or contrary to applicable laws;

(c) it will only use JA Properties approved by Junior Achievement USA in its business and operations;

(d) it will not use any derivatives of or modifications to JA Properties (including, without limitation, the JA Worldwide Brand) nor Brand/Product Developments without the prior express written consent of Junior Achievement USA and as provided in Section 2.3;

(e) it will not directly or indirectly engage in or acquire any financial or beneficial interest in any nonprofit or for profit business, entity, organization or operation (including without limitation, corporations, limited liability companies, partnerships, trusts, incorporated associates and/or joint ventures) that promote programs or trademarks, names, logos or brands similar in any way to or competitive with the JA Worldwide Brand or JA Programs or that could adversely affect the name, goodwill, reputation and/or JA Properties of Junior Achievement USA or JA Worldwide as determined by either of them;

(f) during the Term (as defined below), it will not directly or indirectly become a co-venturer with, holder of an ownership or other interest in, or engage in a cooperative business with (including without limitation common fundraising) any other nonprofit or for profit organization or entity, without prior written consent of Junior Achievement USA, which may be given or withheld in its sole discretion;

(g) it will respect and comply with all applicable national and international trademark and copyright laws in connection with any use of the JA Properties or any portion thereof;

(h) it will not, during the Term (as defined below) or thereafter, attack, challenge or dispute the title or any rights of JA Worldwide and/or Junior Achievement USA in and to the JA Properties, Brand/Product Developments, and all derivatives of and modifications to them;

(i) it will not, during the Term (as defined below) and at any time thereafter, adopt or use any mark or materials that are confusingly similar to, or a simulation or colorable imitation of, the JA Properties; this provision shall survive the termination of this Agreement;

(j) it will promptly notify Junior Achievement USA in writing in the event it learns of any infringement of any of the JA Properties;

(k) it will cooperate with Junior Achievement USA and, if requested, JA Worldwide, to protect, monitor and defend the JA Properties at the sole cost and expense of Junior Achievement USA or JA Worldwide as the case may be unless caused by the acts or omissions of JA Area, in which case JA Area shall pay such costs and expenses;

(l) upon request, it shall promptly provide Junior Achievement USA with copies of all printed, electronic or other materials used by JA Area that include a name, symbol, or any other mark associated with the JA Properties; and

(m) With respect to any Digital Files:

(i) JA Area shall use all Digital Files in strict accordance with and pursuant to the standards promulgated by Junior Achievement USA for Digital Files from time-to-time;

(ii) For those Digital Files provided and licensed by Junior Achievement USA to JA Area, those Digital Files will continue to be owned by JA Worldwide, the JA Affiliate, or Junior Achievement USA, as applicable, and JA Area shall not acquire any rights in the Digital Files, derivatives thereof or by virtue of any use it may make of such Digital Files regardless of whether any such rights have been registered. JA Area recognizes the value of the goodwill associated with the JA Worldwide Brand and Digital Files and that such goodwill is retained solely by JA Worldwide, the JA Affiliate, or Junior Achievement USA, as applicable;

(iii) JA Area is NOT to share the Digital Files provided and licensed by Junior Achievement USA to JA Area with any entity, including other JA Affiliates, outside or beyond the Region;

(iv) JA Area is NOT, under any circumstance whatsoever, to post the Digital Files (in part or in whole) in an online format at ANY time or in any manner, except as expressly allowed under the standards promulgated by Junior Achievement USA for Digital Files from time-to-time under the Policies and Procedures Manual; and

(v) Prominent display of the Junior Achievement name, trademark and/or logo must appear within the first two pages of all printed program materials generated from Digital Files. Examples of appropriate branding of program materials may be requested by contacting Junior Achievement USA.

4. **Responsibilities of Junior Achievement USA.** Junior Achievement USA will have the following responsibilities to JA Area:

- (a) adhering to the terms of this Agreement;
- (b) maintaining personnel to provide support as deemed appropriate by Junior Achievement USA and JA Area to support local operations;
- (c) not granting to any other JA Area the right to operate JA Programs in JA Area's Geographic Territory, without the consent of JA Area;
- (d) protecting exclusive fundraising rights of JA Area within its Geographic Territory for its local operations, and fostering collaborative fundraising efforts among and between various JA Areas; provided that no other JA Areas, Junior Achievement USA or JA Worldwide may fundraise within the Geographic Territory without JA Area's written consent, which consent will not be unreasonably withheld and in determining whether to withhold consent JA Area will take into account the legitimate interests of Junior Achievement USA and JA Worldwide in fundraising in the Geographic Territory and maximizing the aggregate fundraising for JA Worldwide, Junior Achievement USA and JA Area, or unless requested by a donor or prospective donor; and further provided, that if Junior Achievement USA or JA Worldwide believes in good faith that JA Area has unreasonably withheld its consent, Junior Achievement USA or JA Worldwide may appeal such denial to an appeals group to consist of two (2) members of JA Area's board of directors appointed by JA Area's board chair and two (2) members of Junior Achievement USA's board of directors appointed by Junior Achievement USA's board chair, whose decision by a majority vote shall be final and binding on the parties;
- (e) preparing an annual report and annual financial statements which will be made available to JA Area;
- (f) be responsive, transparent and accountable to JA Areas by:
 - (i) each January formally soliciting input from JA Areas regarding the organization's key strategic and operational needs (such as programming, finances, HR support, training, marketing, brand promotion/protection) for the fiscal year set to commence on the subsequent July 1;
 - (ii) in May of each year presenting an Operational Plan for Junior Achievement USA for the coming fiscal year, taking into account the input provided by JA Areas, the current national strategic plan, and operational knowledge gained by Junior Achievement USA, to address such strategic and operational needs; and
 - (iii) in September of each year presenting a formal "State of the Organization Report" to JA Areas detailing performance against the objectives set forth in the Operational Plan for the prior fiscal year;

(g) making available the JA Programs, the JA Materials, and other JA Properties as may be suitable for JA Area's Geographic Territory, and publishing (by any physical, electronic or other means whatsoever) the list of available programs each year;

(h) determining annually and publishing (by any physical, electronic or other means whatsoever) the price of all JA Programs and JA Materials offered to and purchased by JA Area, with the initial price to be consistent with Junior Achievement USA's existing pricing policy and the amount of any annual increase thereafter not to exceed the percent of increase charged by the vendors producing, distributing and warehousing the JA Materials and JA Programs;

(i) providing technical assistance and guidance as deemed appropriate by Junior Achievement USA to JA Area through internet and other electronic resources, periodic communications, conferences, events, and on-site visits at least once every five (5) years;

(j) assisting in recruiting JA Area's president (**JA Area President**) pursuant to the Policies and Procedures Manual and in training the JA Area President within six (6) months of hire pursuant to training standards established by Junior Achievement USA; and in training or recruiting other employees as agreed upon by Junior Achievement USA and JA Area;

(k) assisting in resolving disputes and conflicts between JA Area and any other JA Area(s), in accordance with a process as Junior Achievement USA shall consider appropriate in the circumstances;

(l) periodically evaluating, measuring and providing a Certification, if appropriate, of JA Area;

(m) complying with all local, state, and federal laws;

(n) making available to employees of JA Area an elective benefits package under Junior Achievement USA's health, welfare and retirement plans;

(o) developing and promoting JA Programs throughout the United States, its territories and possessions; and

(p) developing and reasonably updating JA Programs, the JA Materials and other JA Properties.

5. **Responsibilities of JA Area.** JA Area will pursue, in accordance with this Agreement, implementation of the JA Programs within the Geographic Territory. In connection with the foregoing, JA Area will be responsible for:

(a) adhering to the terms of this Agreement, the Policies and Procedures Manual;

(b) operating the JA Area and all JA Programs in accordance with the Operational Standards;

(c) providing Junior Achievement USA with information as required by it for possible Certification of JA Area;

(d) registering as an independent, nonprofit, legal entity and maintaining bylaws appropriate to the organization approved by Junior Achievement USA, and remaining in good standing under the laws where it is organized;

(e) establishing, maintaining and training a volunteer board of directors of at least five (5) persons that will meet at least quarterly and will be responsible for the financial soundness, strategic direction, and oversight of the operation of JA Area, keeping minutes of all meetings of the board of directors and its committees, and on an annual basis and updated as changes occur, providing a list of its board members to Junior Achievement USA and a report of board development and training; provided, however, Junior Achievement USA may inform JA Area, at any time, that any individual board member is unacceptable to Junior Achievement USA, in which case JA Area will remove the board member from its board. Notwithstanding the foregoing, Junior Achievement USA will only identify a board member as being unacceptable if the individual's actions, either before or during the individual's term as a board member, in the sole and absolute discretion of Junior Achievement USA, could (i) damage the reputation and/or image of Junior Achievement USA, JA Worldwide or JA Area, (ii) constitute a breach of the individual's fiduciary duties as a board member, or (iii) create a conflict of interest with the individual's responsibilities as a board member;

(f) establishing multiple year goals giving consideration to JA Area's potential for expansion and securing the resources necessary to achieve those goals;

(g) hiring a full-time JA Area President:

(i) if JA Area has a Certification in place, by the JA Area board of directors providing Junior Achievement USA with a list of one or more candidates (without making an offer to any candidate) and copies of all qualification materials required by Junior Achievement USA for each candidate; if Junior Achievement USA determines in good faith that any candidate is not qualified to serve as JA Area President for JA Area and

gives written notice to JA Area of such determination within five (5) days after its receipt of the candidate's qualification materials, such candidate will not be eligible to serve as JA Area President for JA Area, or

(ii) if a JA Area does not have a Certification, from a list of candidates developed by JA Area and preapproved by Junior Achievement USA (which list may include candidate recommendations from Junior Achievement USA), such approval or disapproval to be given no later than five (5) days after submission to Junior Achievement USA of all required qualification materials for the proposed candidate(s).

The JA Area President shall administer JA Programs in accordance with this Agreement, the Policies and Procedures Manual, and Operational Standards. He/she shall be an employee of JA Area and responsible to JA Area's board of directors who will determine his or her salary and benefits, and evaluate his or her performance;

(h) paying to Junior Achievement USA and/or JA Worldwide all program and materials charges (based on JA Area's usage) and membership and license/access fees as required hereunder and as may be provided in the Policies and Procedures Manual;

(i) preparing and submitting to Junior Achievement USA, in accordance with the Policies and Procedures Manual, Operational Standards, and Junior Achievement USA's Certification requirements, such organizational reports, financial statements, and information as Junior Achievement USA may reasonably require and permitting an audit or review of JA Area's books, records, files, tax returns, programs, operations, and financial statements by Junior Achievement USA at any time deemed necessary by Junior Achievement USA for it to review and evaluate JA Area's operations and to ensure JA Area is complying with the terms of this Agreement, all JA Properties, and the Operational Standards, and, as necessary, to permit Junior Achievement USA to issue a Certification, if appropriate, of JA Area;

(j) providing any Brand/Product Developments developed by JA Area to Junior Achievement USA, as specified herein, and implementing new or modified JA Programs and JA Materials approved by Junior Achievement USA;

(k) promoting JA Programs and the JA Worldwide Brand, including goodwill, reputation and brand of Junior Achievement; JA Area acknowledges that consistency of image throughout the United States increases awareness and goodwill which benefits Junior Achievement USA, JA Worldwide and JA Area, and JA Area agrees to adhere to the image, message and standards determined by Junior Achievement USA and JA Worldwide and as may be published by Junior

Achievement USA or JA Worldwide in a Corporate Identity Brand Standards manual from time-to-time;

(l) establishing and maintaining insurance coverage and benefit programs to protect its interests, the interests of Junior Achievement USA, and the interests of JA Area's employees in compliance with the Policies and Procedures Manual and Operational Standards;

(m) using a nationwide information/data/management system made available by Junior Achievement USA, the cost of which shall be included in license fees charged to JA Area by Junior Achievement USA; adopting and utilizing organizationally approved technology platforms (including systems, software and hardware) as may be specified by Junior Achievement USA or JA Worldwide; and using such other technology as shall be specified in the Policies and Procedures Manual; and

(n) complying with all applicable local, state and federal laws.

6. **Entitlements of JA Area in Good Standing.** Provided JA Area is in compliance with the terms of this Agreement, the Policies and Procedures Manual, and Operational Standards, it shall be entitled to the following:

(a) using the corporate identification line, "A Junior Achievement USA Organization," "A JA Worldwide Organization," "A Junior Achievement Organization," "Junior Achievement of _____," or similar, and receiving recognition as a "Junior Achievement USA" or "JA Worldwide" organization or similar on communication pieces, the Junior Achievement USA and/or JA Worldwide website, and other marketing materials solely in connection with and in furtherance of the JA Programs and JA Materials;

(b) accessing and acquiring for its use JA Programs and JA Materials that are marketed by Junior Achievement USA as provided in the Policies and Procedures Manual, subject to the terms and conditions contained in Section 2 hereof;

(c) accessing Junior Achievement USA, JA Worldwide and Regional Operating Center sponsored competitions, activities, trainings, events and conferences;

(d) gaining eligibility for national and/or multi-national corporate grants that may pass through Junior Achievement USA and/or JA Worldwide;

(e) accessing exclusive Junior Achievement USA and JA Worldwide global information and resources, including best practices and success trends from within the network of JA Worldwide and its JA Affiliates.

7. **Independent Contractors.**

7.1. JA Area will have no authority to act as an agent of Junior Achievement USA or JA Worldwide or any other Junior Achievement USA or JA Affiliate. JA Area is an independent entity responsible for obligations and liabilities of JA Area and its business. Neither JA Area nor any of its employees will have any authority to bind Junior Achievement USA or JA Worldwide to any financial obligation. JA Area will bear all responsibility for the costs and expenses of operations, including the cost of defending claims or lawsuits arising out of conduct (or alleged conduct) of JA Area.

7.2. Junior Achievement USA will have no authority to act as an agent of JA Area. Junior Achievement USA is an independent entity responsible for obligations and liabilities of Junior Achievement USA and its business. Neither Junior Achievement USA nor any of its employees will have any authority to bind JA Area to any financial obligation. Junior Achievement USA will bear all responsibility for the costs and expenses of its operations, including the cost of defending claims or lawsuits arising out of conduct (or alleged conduct) of Junior Achievement USA.

8. **Term.** The term of this Agreement (öTermö) shall commence upon the Commencement Date and, unless earlier terminated in accordance with the terms hereof, continue for a period of _____ (__) years. **[NOTE: The intent is that the Term will be 10 years. In order to accomplish that administratively through the Certification process, the JA Areas will have staggered initial terms for the first 10 years, with approximately 10% being certified annually and then extended for a full 10-year term.]** No later than one hundred eighty (180) days prior to expiration of the Term hereof (or any extension of it), Junior Achievement USA shall notify JA Area that it shall review JA Area and its operations for a current Certification, which notice and Certification process shall not be a waiver of any rights of Junior Achievement USA under this Agreement or otherwise. If there are any material deficiencies noted by Junior Achievement USA, it shall give JA Area written notice of them and a period of up to ninety (90) days to correct them to the reasonable satisfaction of Junior Achievement USA. If they are not corrected by JA Area, Junior Achievement USA may extend the corrective period, temporarily extend the Term of this Agreement to allow for appropriate corrective action, or give notice to JA Area that this Agreement will not be extended and will terminate at the expiration of the Term. If corrected, or if JA Area qualifies for Certification, upon issuance of the Certification, this Agreement shall be renewed for an additional period of ten (10) years unless either Party shall notify the other Party of its decision to terminate this Agreement in writing no less than ninety (90) days prior to the expiration date of this Agreement or unless otherwise terminated as provided herein.

9. **Breach of the Agreement by JA Area.** A breach of this Agreement by JA Area shall include, without limitation, the occurrence of any of the following events:

- (a) JA Area fails to comply with any of the material terms and conditions of this Agreement or the Policies and Procedures Manual;

(b) JA Area, its agents, board members, officers, or employees operate in a manner, or engage in activities, that are detrimental to the goodwill, reputation and brand of Junior Achievement USA, JA Worldwide or any other JA Areas or JA Affiliate or potentially expose Junior Achievement USA or JA Worldwide to civil or criminal liability;

(c) JA Area fails to operate the JA Programs or use the JA Worldwide Brand in a manner consistent with the minimum quality, procedures, or materials that are approved as part of the JA Programs and established by Junior Achievement USA for JA Areas;

(d) JA Area is unable to pay its debts, or a receiver is appointed by any court, or a voluntary or involuntary petition under any bankruptcy law is filed with respect to JA Area and, in the case of an involuntary petition, it is not discharged within sixty (60) days;

(e) JA Area fails to pay any fees, costs, expenses or charges owing to Junior Achievement USA or JA Worldwide in accordance with this Agreement and the Policies and Procedures Manual;

(f) JA Area fails to satisfy, bond or stay in connection with an appeal, within thirty (30) days after entry against JA Area (or such additional time as may be ordered by any court having jurisdiction over the matter), (i) any judgment or judgments that total at least Fifty Thousand Dollars (\$50,000.00) or (ii) any federal, state or local tax lien in excess of Ten Thousand Dollars (\$10,000.00); or

(g) JA Area fails to pay undisputed invoices from its suppliers as and when due.

10. **Action Upon Breach by JA Area.**

10.1. **Procedures.** Upon the failure of JA Area to receive a periodic Certification as and when prescribed by Junior Achievement USA or, between Certifications, its failure at any time to operate in accordance with the Operational Standards (**öFailure to Performö**), or upon any alleged breach or default of this Agreement, the following procedures may be taken:

10.1.1 Junior Achievement USA shall give notice in writing to JA Area of the alleged breach, default or Failure to Perform, with sufficient specificity that JA Area shall know the details. JA Area shall have thirty (30) days in which to cure the breach, default or Failure to Perform unless such matter cannot be reasonably remedied in that period of time, in which case JA Area shall have such additional time deemed appropriate by Junior Achievement USA to remedy the breach, default or Failure to Perform as is reasonably necessary, but not more than one hundred twenty (120) days from the date of the written notice from Junior Achievement

USA unless Junior Achievement USA allows additional time, in its sole discretion (**Cure Period**). During the Cure Period, Junior Achievement USA (i) shall consult with the JA Area President and chair of the board of directors of JA Area as considered appropriate by it, and (ii) may suspend:

- (a) any rights or entitlements of JA Area hereunder, including, but not limited to, any under Section 6;
- (b) eligibility for financial grants or other funding through Junior Achievement USA or JA Worldwide; and
- (c) any other entitlements or benefits provided by Junior Achievement USA and/or JA Worldwide, whether specified herein or in any other documents.

10.1.2 If JA Area remedies the alleged breach, default or Failure to Perform within the Cure Period to the reasonable satisfaction of Junior Achievement USA, no further action shall be taken and all of its rights and entitlements hereunder shall be restored.

10.1.3 If a Failure to Perform is not remedied pursuant to Section 10.1.1, Junior Achievement USA may refer the Failure to Perform (but not a breach or default) to a resolution committee, as arbiter, consisting of two (2) members of the board of directors of JA Area who are not staff, have not been staff, and are not married or related to staff of JA Area (**JA Area Representatives**), two (2) JA Area Presidents of JA Areas other than the JA Area, and two (2) members of the board of directors of Junior Achievement USA (**Resolution Committee**). The Resolution Committee members other than the JA Area Representatives shall be appointed by Junior Achievement USA on an annual basis to serve all JA Areas. If any member of the Resolution Committee has a conflict of interest in the matter referred to it, Junior Achievement USA shall replace that member with a temporary member from the same membership category as the conflicted member, to serve for this matter only.

(a) Within five (5) days after referral of a Failure to Perform to it, the JA Area Representatives shall be appointed to the Resolution Committee by the chair of the board of JA Area. Within thirty (30) days after referral of a Failure to Perform to it, the Resolution Committee shall meet to review all information related to the Failure to Perform as considered appropriate by it, and as provided by Junior Achievement USA and JA Area in their discretion. The Resolution Committee may hold one or more meetings in person or by other telephonic or electronic means at which Junior Achievement USA and JA Area may provide additional information and respond to inquiries as deemed appropriate by the Resolution Committee.

(b) After review of all such information and materials, the Resolution Committee shall, no later than forty-five (45) days after the initial referral of the Failure to Perform to it by Junior Achievement USA, issue its written findings

and decisions to Junior Achievement USA and the board chair of JA Area, which may include, but are not limited to, (i) adjustments to programmatic or other operations of JA Area, (ii) changes to the board of directors of JA Area or members or committees of it, (iii) requiring appropriate changes of management of JA Area by its board of directors, to include but not be limited to the JA Area President, or (iv) such other actions as may be deemed appropriate to correct the Failure to Perform. Any decisions of the Resolution Committee shall require the approval of the majority of the members of the Committee, which majority shall include the approval of at least one (1) of the members of the board of directors of Junior Achievement USA.

(c) The decisions, recommendations, procedures, or actions taken by the Resolution Committee shall be final and binding on Junior Achievement USA and JA Area, and neither party shall have any right to have the decisions, recommendations, procedures, or actions reviewed by any court in any jurisdiction, provided that Junior Achievement USA may maintain proceedings, in accordance with Section 10.1.4 in the event of a failure of JA Area to comply with the decisions of the Resolution Committee.

10.1.4 If JA Area fails to remedy the breach, default or Failure to Perform to the reasonable satisfaction of Junior Achievement USA or, if a Failure to Perform is referred to the Resolution Committee and JA Area fails to promptly implement the decisions made by it, then Junior Achievement USA after written notice to JA Area may take action deemed appropriate by it to include, but not be limited to, (a) suspension of some or all entitlements of JA Area hereunder, including, but not limited to, those in Section 6, (b) enforcement of the decisions of the Resolution Committee by a court as described in Section 15 by injunctive relief, specific performance, declaratory relief, or otherwise, (c) termination of this Agreement and revocation of all of JA Area's rights hereunder, and in and to any JA Properties in the Geographic Territory, (d) dissolution of JA Area, or (e) such other action as may be deemed reasonably necessary by Junior Achievement USA to protect the rights of Junior Achievement USA and JA Worldwide in and to the JA Properties in the Geographic Territory and under this Agreement. JA Area shall cooperate fully with Junior Achievement USA in implementing the proposed action, including such approvals and actions as may be appropriate by its board of directors.

10.2. The jurisdiction, procedures and actions of Junior Achievement USA hereunder are exclusive and in lieu of any other judicial or nonjudicial resolution under the laws of any state, and without waiver by Junior Achievement USA of any rights or remedies it may have in law or equity to enforce and protect its and JA Worldwide's rights under this Agreement and with respect to JA Properties. As provided in the USA Agreement (which provisions are incorporated herein) and/or the Bylaws of Junior Achievement USA, upon written notice to JA Area and Junior Achievement USA, JA Worldwide may enforce any or all the rights, remedies, terms and conditions of this Agreement.

11. **Breach of the Agreement by Junior Achievement USA.** The occurrence of any of the following events will constitute a breach of this Agreement by Junior Achievement USA:

(a) Junior Achievement USA fails to comply with any of the material terms and conditions of this Agreement;

(b) Junior Achievement USA, its agents, board members, officers, or employees operate in a manner, or engage in activities, which potentially expose JA Area to civil or criminal liability;

(c) Junior Achievement USA is unable to pay its debts, or a receiver is appointed by any court, or a voluntary or involuntary petition under any bankruptcy law is filed with respect to Junior Achievement USA and, in the case of an involuntary petition, it is not discharged within sixty (60) days;

(d) Junior Achievement USA fails to satisfy, bond or stay in connection with an appeal, within thirty (30) days after entry against Junior Achievement USA (or such additional time as may be ordered by any court having jurisdiction over the matter), (i) any judgment or judgments that total at least Fifty Thousand Dollars (\$50,000.00) or (ii) any federal, state or local tax lien in excess of Ten Thousand Dollars (\$10,000.00); or

(e) Junior Achievement USA fails to pay undisputed invoices from its suppliers as and when due.

12. **Action Upon Breach by Junior Achievement USA.** Upon a breach by Junior Achievement USA hereunder, the following procedures may be taken:

12.1. **Informal Review.** JA Area may attempt to resolve any such purported breach informally (**JA Area Informal Review**). During the JA Area Informal Review, a member of the staff of JA Worldwide appointed by the President of JA Worldwide will work directly with the President or other appropriate staff member of Junior Achievement USA, and with JA Area's board chair and JA Area President for a period of up to ninety (90) days (**Resolution Period**) to resolve any matters JA Area believes are a breach by Junior Achievement USA of this Agreement. If Junior Achievement USA and JA Area are unable to resolve the matter during the Resolution Period in their sole discretion, JA Worldwide may extend the Resolution Period and provide such additional assistance to Junior Achievement USA and JA Area as it deems appropriate; if the Resolution Period is not so extended, either Party may request a formal review pursuant to Section 12.2. Utilization of the JA Area Informal Review process shall be a prerequisite to a formal review.

12.2. **Formal Review.** The formal review will be conducted by the board of directors of JA Worldwide or a committee thereof appointed by the chair of its board of directors, which shall have exclusive jurisdiction over such matters and in lieu of any other

judicial or nonjudicial resolution under the laws of any state (all of which are waived by Junior Achievement USA and JA Area). Junior Achievement USA and JA Area may present evidence at the formal review, which may be conducted electronically, telephonically or by a televised or teleconference mechanism and by any process, rules and procedures deemed appropriate by the JA Worldwide committee conducting the formal review. Any decision, procedure or action taken by the committee conducting the formal review will be final and binding on Junior Achievement USA and JA Area, and neither Party may have the decision, procedure or action reviewed by any court or any other entity.

12.3. **Right to Terminate.** JA Area shall have the right to terminate the Term upon completion of the procedure set forth in Section 12.2.

13. **Consequences of Termination.**

13.1. In the event of the termination of this Agreement as provided herein, or at the conclusion of its Term (if not extended as provided herein), JA Area agrees (a) to cease the use of (i) the JA Worldwide Brand, including without limitation, "Junior Achievement USA," "Junior Achievement," "JA Worldwide," "JA" and any other name, service marks, trademark, brand and logo owned by Junior Achievement USA or JA Worldwide in any form whatsoever and on or in any and all materials, printed goods, property, or medium, including changing JA Area's name, if necessary, and (ii) all other JA Programs and JA Materials; (b) to turn over any and all copyrighted educational materials or printed goods bearing the name "Junior Achievement," "Junior Achievement USA," "JA Worldwide," or "JA" or other JA Worldwide Brand to a designee so determined by Junior Achievement USA; and (c) to not disclose, reveal, or publish all or any portion of the JA Programs, JA Materials or other JA Properties, provided that if the Term of this Agreement is terminated by JA Area due to a material breach by Junior Achievement USA of the terms and conditions of this Agreement, the foregoing shall not apply until the end of the school year in which the termination occurred.

13.2. Upon termination of this Agreement for any reason, any surplus funds or property remaining after all funds and property of JA Area have been applied to pay JA Area's debts and obligations, shall be, with the consent of Junior Achievement USA and, with respect to any restricted gifts, consistent with donors' written intentions, distributed to an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which operates in the same Geographic Territory, for a public purpose in such area. In distributing any remaining assets, priority will be given to the re-establishment of a Junior Achievement organization in the Geographic Territory previously served by the JA Area.

13.3. JA Area agrees to give Junior Achievement USA no less than ninety (90) days written notice of its intent to dissolve, liquidate or cease all or substantially all of its operations. In the event of dissolution or liquidation of JA Area, or if JA Area gives notice to Junior Achievement USA or Junior Achievement USA otherwise receives notice or information that JA Area voluntarily or involuntarily intends to cease all or substantially all of its operations, this Agreement shall be considered terminated and all properties and privileges of JA Area

hereunder shall automatically be subject to Sections 13.1 and 13.2, and Junior Achievement USA shall have all rights provided therein. The license, rights, privileges and conditions under this Agreement are not transferable to a successor organization without the specific consent of Junior Achievement USA and without a new signed operating agreement.

14. **Scope and Modification of the Agreement.**

14.1. **Scope of Agreement.** This Agreement (including all documents referenced herein) constitutes the entire agreement between the Parties and supersedes all prior, oral or written, agreements or understandings of the Parties.

14.2. **Modification of Agreement.** This Agreement is subject to modification and amendment pursuant to the following terms and conditions:

14.2.1 **Amendments to Agreement.** This Agreement may be amended or modified from time-to-time upon approval by the board of directors of Junior Achievement USA, and by thereafter presenting the proposed amendments or modifications to the JA Areas at a meeting of JA Areas called upon at least sixty (60) days written notice to consider such changes. Any amendments shall be adopted if (a) thirty percent (30%) or more of the JA Areas are represented at the meeting (in person or by proxy), and (b) the changes are approved by (i) a vote of a majority of JA Areas present and (ii) a majority of votes cast by JA Areas present based on the gross revenues paid by each such JA Area to Junior Achievement USA with each JA Area having one (1) vote for every Ten Thousand Dollars (\$10,000.00) (or portion thereof) paid, which gross revenues shall include but not be limited to payments for license fees, per student fees, and materials and content purchases. The amended Agreement will be binding on the JA Area unless the JA Area provides Junior Achievement USA written notice of its refusal of the amendment within thirty (30) days following the adoption of the amendment, in which case, Junior Achievement USA may, in its sole discretion, terminate this Agreement by written notice to JA Area.

14.2.2 **Policy and Procedures Changes.** The board of directors of Junior Achievement USA may amend the policies and procedures in the Policies and Procedures Manual provided that:

(a) the proposed changes have been distributed to board chairs of all JA Areas and JA Area Presidents with an invitation to comment on the proposed changes at least thirty (30) days prior to the effective date of the change;

(b) the board of directors of Junior Achievement USA or a committee designated by the board reviews all comments received concerning the proposed changes;

(c) the final changes adopted by Junior Achievement USA are distributed to the JA Area Presidents of all JA Areas at least ten (10) days prior to the effective date of the change; and

(d) such amendments are consistent with the material terms of this Agreement.

15. **Governing Law.** The terms and provisions of this Agreement are to be interpreted in accordance with and governed by the laws of the State of Colorado. Any action involving the terms and provisions of this Agreement shall be filed and litigated in the District Court of El Paso County, Colorado, which shall have exclusive jurisdiction.

16. **Notices.** Any notice hereunder will be in writing and will be considered delivered at the time it is hand delivered, faxed, placed in the United States mail with postage prepaid, certified or registered, transmitted electronically, or given to an overnight delivery service addressed to JA Area or to Junior Achievement USA at the following addresses.

For Junior Achievement USA: President and CEO (unless otherwise provided in
the Policies and Procedures Manual)
One Education Way
Colorado Springs, CO 80906

For JA Area: Board Chair and JA Area President
Address on file with Junior Achievement USA

Either Party, by written notice, may change the address to which notices are to be sent.

17. **Intent.** The use of the JA Worldwide Brand, JA Materials and JA Programs in accordance with the terms and conditions of this Agreement, and compliance with the terms and conditions of this Agreement including compliance with the Policies and Procedures Manual and Operational Standards established by Junior Achievement USA for JA Areas or by JA Worldwide for its JA Affiliates, are inherent to this Agreement. This Agreement, the Policies and Procedures Manual, and Operational Standards, and uniformity of standards and operating quality under them, provide the basis for valuable goodwill to JA Area and Junior Achievement USA and acceptance of the mission and brand of Junior Achievement USA and JA Worldwide and their proprietary properties, including the JA Properties. The provisions of this Agreement will be interpreted to give effect to this intent of the Parties so that JA Area will operate in conformity with JA Programs, JA Materials, Policies and Procedures Manual, and Operational Standards, as they exist now and as they may hereafter be amended and modified.

18. **Assignment.** This Agreement and the rights hereunder may not be encumbered, assigned, sold, transferred or conveyed by JA Area.

19. **Severability and Waiver.**

19.1. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent, but only to the extent, of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement, unless such a construction of such provision would be unreasonable.

19.2. No waiver by Junior Achievement USA or JA Area of any breach or a series of breaches of this Agreement will constitute a waiver of any subsequent breach or waiver of the terms of this Agreement.

20. **Interpretation.** The captions, subject, section, and paragraph headings and numbering in this Agreement are included for convenience and reference only and do not in any way codify, interpret, or construe the intent of the Parties or affect the construction or interpretation of any provision of this Agreement.

21. **Cost of Enforcement.** The prevailing party, in any matter commenced in accordance with this Agreement or in any other matter that relates to the terms of this Agreement, will be entitled to the payment of costs incurred and its reasonable attorney's fees from the nonprevailing party.

****** SIGNATURES APPEAR ON FOLLOWING PAGE(S) ******

IN WITNESS WHEREOF, the Parties have executed this agreement on the date first above written in the manner hereunder written:

JUNIOR ACHIEVEMENT USA:

Dated: _____

By: _____

Name: _____

Title: President and CEO

Address:

One Education Way

Colorado Springs, Colorado 80906

JA AREA:

_____ :

Dated: _____

By: _____

Name: _____

Title: President or CEO

Dated: _____

By: _____

Name: _____

Title: Chairperson of the Board

Address:

EXHIBIT A
GEOGRAPHIC TERRITORY

Junior Achievement USA (öJunior Achievement USAö) has granted to **Junior Achievement of _____** (öJA Areaö)

Area #: _____

in accordance with the terms of the attached Operating Agreement, the right, license, and privilege to exclusively adopt and use the JA Programs and JA Properties in the following specific territory:

JA Area may petition in writing Junior Achievement USA to modify its Geographic Territory. Junior Achievement USA retains the right to accept or deny any petition of JA Area requesting modification of the Geographic Territory. Junior Achievement USA retains the right to, in its sole discretion, modify the Geographic Territory in accordance with the terms of this Operating Agreement.

EXHIBIT B
POLICIES AND PROCEDURES MANUAL