



AGREEMENT BETWEEN
CONFUCIUS INSTITUTE HEADQUARTERS OF CHINA
AND
SIMPSON COUNTY KENTUCKY BOARD OF EDUCATION
(“SCBOE”) OF THE UNITED STATES
ON THE ESTABLISHMENT OF THE
CONFUCIUS INSTITUTE OF WESTERN KENTUCKY

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This Agreement is made and entered into on this the ____ day of _____, 2019, by and between the Confucius Institute Headquarters of China (the “Headquarters”), 129 Deshengmenwal, Xicheng District, Beijing, China 100088, and the Simpson County Board of Education (“SCBOE”), a public school district of the Commonwealth of Kentucky, 430 South College Street, Franklin, Kentucky, U.S.A. 42134.

In order to strengthen educational cooperation between China and the United States, support and promote the development of Chinese language education, and increase mutual understanding among people in China and in the United States, according to the *Constitution and By-laws of Confucius Institutes*, the Confucius Institute Headquarters of China and SCBOE of the United States hereby agree as follows for the establishment of the Confucius Institute of Western Kentucky (the “Institute”):

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Article 1. Purpose

The purpose of this agreement is to identify the rights and responsibilities of the Headquarters and SCBOE in the establishment and management of the Institute.

Article 2. Character

The Institute shall be a non-degree granting, non-profit educational institution.

Article 3. Executive Institution

The Headquarters will authorize and appoint North China Electric Power University (“NCEPU”) as the Chinese executive institution to collaborate with the SCBOE in the establishment of the Institute, and the SCBOE is willing to collaborate with NCEPU. The NCEPU and the SCBOE will sign a supplementary agreement on the details of cooperation during the operation of the Institute. During the operation of the Confucius Institute, if NCEPU is confirmed by the Headquarters to have failed to perform its responsibilities, the Headquarters can disqualify NCEPU and appoint another Chinese institution acceptable to the SCBOE as the Chinese executive institution hereunder. In this event, the SCBOE shall execute a new Implementation Agreement with the successor Chinese institution.

Deleted: If at any time hereunder NCEPU is determined by the SCBOE to have failed in the performance of its responsibilities, then the SCBOE may elect to either: (i) request that a replacement Chinese Institution be appointed by Headquarters; or (ii) terminate this Agreement.

Article 4. Transfer of Assets from the Former Confucius Institute at Western Kentucky University

4.1. Transfer of Assets. Upon the execution of this Agreement, all assets of the former Confucius Institute at Western Kentucky University (the “CI at WKU”) shall be transferred forthwith to the SCBOE for the establishment of the Confucius Institute of Western Kentucky. These assets shall include, without limitation, the following:

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1. The balance of any and all remaining cash accounts for the operation of the

former CI at WKU, estimated to be approximately \$192,000.00;

2. Any and all vehicles, including without limitation, the food truck and recreational vehicle (“RV”) provided for the operation of the former CI at WKU;

3. Any and all teaching materials, courseware, books, and audio-visual materials provided for the operation of the former CI at WKU; and

4. Any and all other assets provided for the operation of the former CI at WKU.

4.2. No Merger or Successor in Interest. This Agreement contemplates the transfer of assets from the former Confucius Institute at Western Kentucky University to the Confucius Institute of Western Kentucky but not a *de facto* merger of the entities. The Confucius Institute of Western Kentucky is not a successor in interest to the former CI at WKU. The SCBOE shall not assume or become liable for, and Headquarters shall indemnify and hold harmless the SCBOE against any and all debts, liabilities or obligations of any kind of the CI at WKU existing as of the date of execution of this Agreement or thereafter arising, whether known or unknown, absolute or contingent, mature or unmatured, liquidated or unliquidated, or accrued or pending.

Article 5. Scope of Activities

The Institute may provide the following activities:

1. Teaching Chinese language and providing Chinese language teaching resources;
2. Training Chinese language instructors;
3. Administering the HSK examination (Chinese Proficiency Test) and tests for the Certification of the Chinese Language Teachers;

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4. Conducting language and cultural exchange activities;
5. Other activities as agreed in writing by the parties.

Article 6. Organization

1. The Institute shall adopt a Director Responsibility System under the oversight of a Board of Advisors.
2. The Board of Advisors shall be formed with members nominated from the SCBOE and the NCEPU as set forth in the Implementation Agreement between the SCBOE and the NCEPU.
3. The SCBOE shall appoint a Director of the Institute responsible for the overall administration and day-to-day operations of the Institute. The NCEPU shall appoint an Assistant Director. The Director and Assistant Director shall have the duties and responsibilities set forth in the Implementation Agreement between the SCBOE and the NCEPU.
4. The activities of the Institute will be conducted generally in accordance with the *Constitution and By-laws of Confucius Institutes*, the applicable regulations, policies, and practices of the school district to which Chinese instructors are assigned, cultural customs in the United States and China, and the laws and regulations of both countries. However, recognizing that the Institute will be based in the Commonwealth of Kentucky, United States of America, the parties agree that federal, state, and local laws of the United States, as well as the applicable school regulations, policies, and practices (including, without limitation, principles of academic freedom and non-discrimination) of the school districts to which Chinese instructors are assigned, will prevail in the event of any inconsistency or conflict.
5. The Institute Director shall recommend annual budget proposals and shall report to Headquarters and the SCBOE on all financial matters in a manner

determined by the parties.

Article 7. Obligations

7.1. The obligations of the Headquarters. The Headquarters shall have the following obligations hereunder:

1. To authorize the use of the title "Confucius Institute", logos and institute emblems.

~~2.~~ To provide: (i) the transfer of the balance of all accounts ~~and assets~~ of the CI at WKU in accordance with paragraph 4.1 hereinabove; and ~~(ii)~~ a set amount of annual funds according to the needs of the Institute as set forth in the annual budget.

~~3.~~ Based on the needs for teachers for the Institute, to send numbers of Chinese instructors and to pay for their international round-trip airfares and salaries. All Chinese instructors provided hereunder shall not be considered employees of the SCBOE. The SCBOE shall have no obligation for payment of salaries or other benefits for the Chinese instructors. The teaching activities of the Chinese instructors shall be subject to the applicable policies, rules and regulations of the school district to which they are assigned. The SCBOE further shall not be liable for any loss, injury, death, or damage to persons or property that at any time may be suffered or sustained by any person as a result of or arising out of any act or omission of a Chinese instructor provided hereunder.

~~4.~~ To the fullest extent permitted by law, Headquarters shall indemnify and hold harmless the SCBOE, its members, employees, agents and representatives, from and against any and all claims, damages, losses and expenses, arising out of: (i) any untrue representation or non-fulfillment of any covenant or agreement by Headquarters contained herein; or (ii) any act or

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to the needs of the Institute, including, without limitation 3,000 volumes of Chinese books, teaching materials, and audio-visual materials provided at startup of the Institute, and to authorize the use of online courses.¶
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omission to act of a Chinese instructor provided hereunder; and (iii) any liability or obligation which is the legal obligation of Headquarters. However, this indemnification shall not be construed to extend to the acts or omissions of any third party independent contractor.

7.2. The obligations of SCBOE. The SCBOE shall have the following obligations hereunder:

1. To open a special account for the Institute in a financial institution acceptable to Headquarters and to submit an annual financial audit report regarding the Institute's finances to Headquarters;
2. To ensure prompt payment of Institute expenses to the extent of funds provided by Headquarters.
3. In addition, the SCBOE shall contract with a responsible independent third party to perform the following:
 - (a) To provide a fixed office place and appropriate sites for teaching and other activities of the Confucius Institute; equipped with office and teaching facilities, and with responsibility for the setting, management and maintenance.
 - (b) To provide necessary administrative personnel (full time or part-time) and provide the related payment; to provide necessary working facilities and life conveniences for the Chinese instructors.
 - (c) To assist the Chinese instructors with visa application and residence procedures.
4. To the fullest extent permitted by law, the SCBOE shall indemnify and hold harmless Headquarters, its members, employees, agents and representatives, from and against any and all claims, damages, losses and expenses, arising out of: (i) any untrue representation or non-fulfillment of

any covenant or agreement by the SCBOE contained herein; or (ii) any negligent act or omission to act of the SCBOE, its employees, agents, and representatives with respect to the operation of the Institute; and (iii) any liability or obligation which is the legal obligation of the SCBOE. However, this indemnification shall not be construed to extend to the acts or omissions of any third party independent contractor.

Article 8. Intellectual Property

1. The Headquarters exclusively owns the title of "The Confucius Institute", its related logo, and emblem as its exclusive intellectual property. SCBOE cannot continue applying or transfer the title, logo, and emblem in any form, either directly or indirectly, after this agreement has been terminated.

2. The SCBOE retains exclusive ownership of its name, marks, logos, and emblems as its exclusive intellectual property, which may be used in relation to the Institute only with the express, written approval in advance by the SCBOE.

Article 9. Revision

With the consent of both parties, this Agreement may be revised during its term and any revisions will be made in writing, both in English and Chinese, and will take effect only if signed by authorized representatives of the parties.

Article 10. Term

The Agreement shall be in effect on the date when the two parties sign below. The Agreement shall have a term of five (5) years. The Agreement may be terminated pursuant to the provisions of Article 12 hereinbelow. The Agreement may be extended for additional terms by written agreement of the parties.

Article 11. Force Majeure

Parties hereto will be released from their obligations under this Agreement in

the event of a national emergency, war, prohibitive government regulation or any other cause beyond the control of the parties hereto that renders the performance of this Agreement impossible. In the event of such circumstance, the party under the situation shall inform the other party in writing that the program may be delayed or terminated, and duly take the effective measures to mitigate the loss of the other party.

Article 12. Termination

1. This Agreement may be terminated by either party, with or without cause, upon giving a written notice to the other party at least six (6) months in advance of termination. However, the Agreement may be terminated in the event of any of the following occurrences:

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- (a) Determination by either party that this Agreement cannot achieve the anticipated aim due to changes in economic or political conditions;
- (b) In the event that the act of one party severely harms the image and reputation of the Confucius Institute;
- (c) Breach of a party hereto of the duties and responsibilities set forth hereunder and failure to cure said breach within ten (10) days of receipt of written notice of said breach; or
- (d) In the event of force majeure as set forth in Article 11 hereinabove.

2. Upon termination, the Institute shall wind up its affairs in accordance with this provision of the Agreement. The parties hereto shall determine the extent of the assets and outstanding liabilities of the Institute. Assets may be liquidated or distributed in kind and shall be applied first to the payment and discharge of all of the Institute's debts and liabilities, then to the necessary expenses of liquidation. Any assets remaining after the

payment of all liabilities of the Institute shall be returned to the contributing party in accordance with that party's contributive share of the assets of the Institute.

Article 13. Dispute Settlement

If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its applicable mediation procedures or other mediator mutually agreed to by the parties before resorting to litigation or other dispute resolution procedure.

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Article 14. Agreement Language

This Agreement is written in Chinese and in English. Each party shall keep one copy in Chinese and one copy in English of the signed Agreement. The Agreement, in both languages, shall have the same effectiveness.

Article 15. Other Terms

15.1. Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations between the parties with respect to the subject matter hereof. This Agreement is intended by the parties as the final expression of their agreement and may not be contradicted by evidence of any prior or contemporaneous agreement.

15.2. Assignment. Except to the extent expressly set forth herein, this Agreement and the rights, duties, and obligations hereunder may not be assigned or delegated by either party without the prior written consent of the other party.

15.3. Severability. If any provision of this Agreement, or the application thereof to any person, entity or circumstances, shall be invalid or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to other persons, entities or circumstances, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15.4. Binding Effect. This Agreement shall be binding on and shall inure to the benefit of the parties and their successors and assigns.

15.5. Notices. All notices under this Agreement must be in writing and be delivered by express mail service or by certified mail (return receipt requested) to the address of a party set forth herein. Notices will be effective upon delivery (as evidenced by delivery receipt or equivalent document).

15.6. Organization and Authorization. Each party warrants and represents to the other that it is duly organized, validly existing, and has the corporate power and authority to enter into and perform its obligations under this Agreement.

15.7. Independent Entities. The parties will remain independent entities, and nothing in this Agreement shall be construed as creating an employment, agency or representative relationship, or any form of legal entity or business enterprise between the parties. The parties expressly do not intend to form a partnership under either the Uniform Partnership Act nor the Uniform Limited Partnership Act of the Commonwealth of Kentucky. The parties do not intend to be partners one to another, or partners as to any third-party. Nothing in this Agreement will permit either party to act as an agent for the other party.

15.8. Third Party Beneficiaries. None of the provisions of this Agreement shall confer rights or benefits as third party beneficiaries or otherwise upon any party that is not expressly a party to this Agreement, and the provisions of this Agreement shall not be enforceable by any such third party.

15.9. Waiver. Failure to insist upon strict compliance with any of the terms, covenants or conditions under this Agreement at any time shall not be deemed a waiver of any of the terms, covenants, or conditions of this Agreement.

15.10. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the ~~United States and China; however, in the event of any inconsistency or conflict between such laws, the applicable federal, state, and local laws of the United States shall prevail.~~

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Deleted: , and the parties hereby agree that any dispute pursuant hereto shall be adjudicated by the Simpson Circuit Court.

15.11. Headings. Article titles or captions contained in this Agreement are inserted only as a matter of convenience and reference, and in no way define, limit, extend or describe the scope of this Agreement, or the intent of any provision hereof.

15.12. Draftsmanship. This Agreement shall not be interpreted in favor of either party by reason of draftsmanship.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date and year first above written.

Confucius Institute
Headquarters (HANBAN)
Chief Executive

Simpson County
Board of Education
Superintendent

Ma Jianfei

Dr. James Flynn

Date: _____

Date: _____

