



**IMPLEMENTATION AGREEMENT BETWEEN
SIMPSON COUNTY BOARD OF EDUCATION
("SCBOE") AND
NORTH CHINA ELECTRIC POWER UNIVERSITY
FOR THE DEVELOPMENT OF THE CONFUCIUS INSTITUTE OF
WESTERN KENTUCKY**

THIS IMPLEMENTATION AGREEMENT is hereby made and entered into on this the _____ day of _____, 2019, by and between the **SIMPSON COUNTY BOARD OF EDUCATION** (the “**SCBOE**”), a public school district of the Commonwealth of Kentucky, 430 South College Street, Franklin, Kentucky U.S.A. 42134 and **NORTH CHINA ELECTRIC POWER UNIVERSITY** (the “**NCEPU**”), _____, _____, People’s Republic of China.

WHEREAS, 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 between the peoples of China and the United States, the Confucius Institute Headquarters of China (“**Headquarters**”) and the Simpson County Board of Education (“**SCBOE**”) signed that certain *Agreement Between Confucius Institute Headquarters of China and Simpson County Board of Education of the United States for the Establishment of the Confucius Institute of Western Kentucky* dated _____, 2019 (the “**Establishment Agreement**” attached hereto and incorporated herein by reference) with the purpose of identifying the rights and responsibilities in the operation of the Confucius Institute of Western Kentucky; and

WHEREAS, in accordance with the Establishment Agreement, Headquarters has appointed the NCEPU as the Chinese executive institution to collaborate with the SCBOE in the establishment of the Confucius Institute of Western Kentucky (the “**Institute**”); and

WHEREAS, the Establishment Agreement contemplated that there would be a certain supplementary agreement between SCBOE and NCEPU to implement the goals and objectives of the Institute;

NOW THEREFORE, in consideration of the mutual promises and benefits hereunder and other good and valuable consideration, the parties hereto hereby agree as follows:

Article 1. Content and Objectives of the Agreement.

1.1. NCEPU and the SCBOE will abide by the Establishment Agreement between the Confucius Institute Headquarters and the SCBOE for the establishment of the Confucius Institute of Western Kentucky in the spirit of cooperation and good will.

Article 2. Activities of the Confucius Institute of Western Kentucky

2.1. The Institute will be a non-degree granting, non- profit educational institution with the task of offering courses in Chinese language and culture, training Chinese language teachers, and organizing cultural and academic activities relevant to the tasks of the Institute.

2.2. The Institute will be engaged in Chinese language teaching and cultural activities

as Confucius Institute Headquarters requires, including but not limited to:

- (a) Teaching Chinese language and providing Chinese language teaching resources;
- (b) Conducting activities and competitions related to Chinese language teaching and Chinese culture;
- (c) Administering HSK tests, proficiency tests for Certificate of Teaching Chinese as a Foreign Language and other tests;
- (d) Providing services to the communities and training Chinese language teachers for local primary schools, high schools or colleges in the neighborhood;
- (e) Providing information, consultancy and services for studying in China;
- (f) Providing consultancy and services for personages in education and other fields;
- (g) Organizing TV programs and movie shows concerning China and Chinese culture; and
- (h) Developing diversified ways of Chinese teaching, including employing audio-visual resources, multi-media and the Internet.

Article 3. Organization of the Confucius Institute of Western Kentucky

3.1. The parties shall establish a Board of Advisors of the Confucius Institute of Western Kentucky. The mission of the Board of Advisors is to provide recommendations for the overall management of the Institute, including reviewing program plans, budgets and financial reports.

3.2. The Board of Advisors shall meet at least once per year at a time and place to be determined by the Board of Advisors. A quorum shall consist of no less than a simple majority of the number of members appointed, provided that one member of the Board from each party is always present. All issues before the Board of Advisors shall be voted and decided by at least three-fourths consensus. Minutes of the meetings shall be kept in writing and made available to each party following the meetings.

3.3. The Board of Advisors shall provide at least annually (and more often if required by agreement between the parties) an updated report to the Headquarters, the SCBOE, and the NCEPU on their recommendations regarding the activities and plans for the Institute.

3.4. The Board of Advisors shall be comprised of the following members:

- (a) Superintendent of SCBOE, who shall be the Chair of the Board;
- (b) President of NCEPU, who shall be the Vice-Chair of the Board;
- (c) Three (3) members appointed by the SCBOE;

- (d) Three (3) members appointed by NCEPU; and
- (e) Ex-officio, the Institute Director selected by the SCBOE.

3.5. Term of office for members of the Board of Advisors will be two years, and they will be eligible for re-appointment.

3.6. The Institute shall have a Director selected by the SCBOE and an Assistant Director selected by the NCEPU. The term of office for the Director and Assistant Director shall be determined by the respective appointing party. Any change of Director or Assistant Director shall be immediately reported to Headquarters, the SCBOE, and the NCEPU.

- (a) The Institute Director shall be responsible for the following:
 - (i) Overall administration and day-to-day operations of the Institute;
 - (ii) Publicity for the Institute;
 - (iii) Fiscal management of and budgeting for the Institute;
 - (iv) Planning and overseeing Institute programs, activities, and initiatives;
 - (v) Carrying out decisions of the Board of Advisors; and
 - (vi) Reporting to the SCBOE and the Board of Advisors.
- (b) The Institute Assistant Director shall be responsible for the following:
 - (i) Providing recommendations for curriculum plans, arrangements for instructors, textbook and materials selection, and assessment, all subject to prior approval by the Institute Director (U.S.A.);
 - (ii) Overseeing and coordinating all NCEPU-provided teachers;
 - (iii) Communications with NCEPU; and
 - (iv) Collaborating with and assisting the Institute Director.

Article 4. Responsibilities of the Parties.

4.1. Responsibilities of SCBOE. The SCBOE shall have the following obligations, in accordance with the Establishing Agreement:

- a. To open a special bank-account for the Institute in a financial institution acceptable to Headquarters; and

b. To ensure prompt payment of Institute expenses to the extent of funds provided by Headquarters.

Further, the SCBOE shall contract with a responsible independent third party contractor to perform the following:

- c. To provide a fixed office space 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.
- d. 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.
- e. To assist the Chinese instructors with visa applications and residence procedures.
- f. To the fullest extent permitted by law, the SCBOE shall indemnify and hold harmless the NCEPU, 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 and its employees 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.

4.2. Responsibilities of NCEPU

The NCEPU shall have the following responsibilities:

- a. NCEPU, as CI Headquarters requires, shall recommend or provide the requested number of outstanding instructors for the Institute each year. If needed, it may provide Chinese language volunteers.
- b. NCEPU shall provide consultancy in the fields of textbooks and academic research, etc.

- c. NCEPU shall provide consultancy for activities aimed at introducing Chinese culture.
- d. In accordance with an approved Institute program, NCEPU shall admit students from the Institute to study at NCEPU and/or host at NCEPU Chinese Language and Culture short-term training programs or summer camps organized by the Confucius Institute at SCBOE.
- e. To the fullest extent permitted by law, the NCEPU 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 the NCEPU contained herein; or (ii) any act or omission to act of a Chinese instructor provided hereunder; and (iii) any liability or obligation which is the legal obligation of the NCEPU. However, this indemnification shall not be construed to extend to the acts or omissions of any third party independent contractor.

Article 5. Resources of the Confucius Institute at SCBOE

5.1. The Institute Director shall be responsible for the management of Institute resources.

5.2. The Institute may raise additional funds through providing teaching programs and organizing other activities.

5.3. The resources of the Institute through shall be used only for the operation of and development of the Institute, and for programs and activities agreed by both parties through consultations, such as training Chinese language teachers in the United States or in China, organizing language field practice trips for students of the Institute, receiving and accommodating Chinese language experts who are giving lectures at Confucius Institute at SCBOE.

5.4. The Director shall propose the annual financial budget of the Institute for review by the Board of Advisors and submission to the Confucius Institute Headquarters for examination and approval.

5.5. Management of funds for the operation of the Confucius Institute at SCBOE shall follow regulations of the Confucius Institute Headquarters and the agreement between SCBOE and Headquarters.

5.6. Various resources jointly created by both parties shall be used only for the operation and development of the Institute, and they shall be common property of both parties during the term of the current agreement. Upon the termination of this Agreement and winding down of

the Institute, any remaining resources shall be distributed in accordance with the terms and provisions of the Establishing Agreement.

Article 6. Duration and Termination of the Agreement

6.1. The agreement shall have an initial term of five (5) years. The Agreement may be extended for additional terms by written agreement of the parties.

6.2. This Agreement may be terminated by either party, with or without cause, upon giving written notice to the other party at least six (6) months in advance of termination. This Agreement shall be terminated without the requirement of notice by either party in the event that the Establishing Agreement between the Confucius Institute Headquarters of China and the SCBOE is terminated for any reason, with or without cause.

6.3. The parties hereto will be released from their obligations under this Agreement in the event of a national emergency, war, prohibitive government regulations or any other cause beyond the control of the parties hereto that renders the performance of this Agreement impossible. In the event of such circumstances, 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 7. Supplementary Agreements

7.1. The parties hereto may enter supplementary agreements from time to time as needed to address the development of the Institute and to solve such new problems related to teaching, academic researches and service. Any such supplementary agreements shall have the same legal status of the current agreement upon due execution by both parties.

Article 8. Versions and Languages of the Agreement

8.1. The agreement is made in four original copies, two in Chinese and two in English. Each version shall have the same effect. Each party shall keep a Chinese version and an English one. In the event of a discrepancy between the versions of the Agreement, the English language version shall prevail.

Article 9. Dispute Settlement

9.1. In the event of any dispute, the two parties should consult each other to reach a mutually agreeable resolution or submit the dispute to the court or administrative body with jurisdiction to resolve the dispute under applicable laws and regulations.

Article 10. Other Terms

10.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any and all prior agreements and understandings relative to the subject matter herein, whether oral or written.

This Agreement may be modified or amended only by a duly authorized written instrument executed by both parties.

10.2. Assignment. Except to the extent expressly set forth herein, this Agreement may not be assigned by either party without the other party's prior written consent.

10.3. Severability. All provisions of this Agreement are severable. Should any part or provision be ruled illegal or void, all other parts and provisions shall remain in full force and effect.

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

10.5. 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).

10.6. 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.

10.7. Independent Entities. The relationship of the parties to each other is solely that of independent contractors. No party shall be considered an employee, agent, partner or fiduciary of the other except for such purposes as may be specifically enumerated herein, nor shall anything contained in this Agreement be construed to create any partnership or joint venture between the parties. The SCBOE does not sponsor, endorse, or make any express or implied warranties for NCEPU.

10.8. 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.

10.9. Intellectual Property Rights. The parties shall ensure that intellectual property rights are fully addressed and agreed upon consistent with the policies of the SCBOE and NCEPU and existing laws and regulations of the United States prior to the initiation of each academic collaborative activity. Except as specifically provided for herein, neither party shall use, in its external advertising, marketing programs, or promotional efforts, any data, name, insignia, trademarks, pictures or other representation of the other party or its employees except with specific written authorization in advance by the party. All such requests for authorization shall be received in writing not less than ten (10) days in advance of the anticipated use date.

10.10. Compliance with Applicable Law. 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.

10.11. FERPA; KFERPA. All student data shall be considered to be confidential and any release of information shall be in compliance with the Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. §1232g; 34 CFR Part 99) and the Kentucky Family Educational Rights and Privacy Act (“KERPA”) (KRS 160.700, *et seq.*).

10.12. Waiver. The failure of a party to enforce any provision of this Agreement shall not be construed to be a waiver of such right.

10.13. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Kentucky, and the parties hereby agree that any dispute pursuant hereto shall be adjudicated by the Simpson Circuit Court.

10.14. Headings. The section headings contained herein are inserted as a matter of convenience only and shall not affect in any way the construction of the terms of this Agreement.

10.15. 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.

Signed on behalf of
Simpson County
Board of Education
Dr. James Flynn
Superintendent

Signed on behalf of
North China Electric Power University
Dr. Yang Yongping
President

Date: _____

Date: _____