



IMPLEMENTATION AGREEMENT

BETWEEN

THE UNIVERSITY OF AUCKLAND

AND

FUDAN UNIVERSITY

FOR THE DEVELOPMENT OF THE CONFUCIUS INSTITUTE

in AUCKLAND

BACKGROUND

- A. In order to strengthen educational cooperation between China and New Zealand, support and promote the development of Chinese language education, and increase mutual understanding among people in China and in New Zealand, according to the Constitution and By-laws of Confucius Institutes, the Confucius Institute Headquarters of China ("Headquarters") and the University of Auckland signed an agreement on 19 December 2014 in relation to the development of the Confucius Institute in Auckland. That

agreement was renewed by its parties on the terms set out in a Renewal of Agreement Relating to the Co-Development of the Confucius Institute in Auckland dated 12 November 2019 ("**Renewal Agreement**")

- B. Chinese International Education Foundation (the "**Foundation**") was officially established on 19 June 2020 and has begun its operations. The primary tasks for the Foundation are related to the support of Confucius Institutes (including Confucius Classrooms). The Foundation and the Headquarters have agreed to transfer to the Foundation the operation of the brands of Confucius Institute and Confucius Classroom. In the meantime, the Center for Language Education and Cooperation was launched under the Ministry of Education to better facilitate Chinese language teaching overseas.
- C. An Assignment of the Renewal Agreement has been signed by the University of Auckland, the Centre for Language Education and Cooperation (as assignor), and the Foundation (as assignee) following the restructuring referred to in paragraph B above.
- D. The University of Auckland, New Zealand ("**UoA**") and Fudan University People's Republic of China ("**Fudan**"), together "the Parties", signed the Memorandum of Understanding from 12 May 2006 to work collaboratively towards the establishment and continuing operation of The Confucius Institute in Auckland (the "**CI**"). Upon the end of its initial term, UoA and Fudan entered into an Implementation Agreement dated 19 May 2017 to identify the rights and responsibilities of UoA and Fudan in the ongoing management of the CI, and build on and expand the partnership in respect of the CI.

- E. The Parties now wish to vary and restate the Implementation Agreement on the terms set out in this "**Agreement**" with effect from the date that this restated agreement is signed by both Parties.

AGREEMENT

1. Nature and Scope of Activities

The CI may carry out the following activities, having regard to the Constitution and By-laws of Confucius Institutes, the laws of New Zealand and UoA's policies, each to the extent they apply to the CI and as updated from time to time:

- a) Assisting the teaching of Chinese language, providing Chinese language teaching resources and carrying out research on Chinese language teaching;
- b) Training Chinese-language instructors and developing Chinese-language teaching materials;
- c) Organizing the Chinese Proficiency Tests and tests for the Certification of the Chinese Language Teachers;
- d) Providing information and consultative services concerning China's education and culture;
- e) Conducting language and cultural exchange activities; and
- f) Other activities as agreed by the parties.

The Parties each acknowledge that this Agreement does not affect or in any way limit UoA's autonomy or academic and intellectual freedom, including in respect of its research, teaching and operations.

Overview

The CI is a non-profit educational unit within UoA. Under the terms of the Renewal Agreement, UoA has oversight and responsibility for the operations of the CI.

The Parties agree to operate their relationship in accordance with the management governance and reporting arrangements set out in the Renewal Agreement.

All staff working for CI in Auckland shall be subject to the laws of New Zealand and UoA's applicable policies.

2. Advisory Board

UoA and Fudan shall establish an Advisory Board to provide oversight and guidance on major issues concerning the CI. Its duties include: formulating development plans for the CI; decision-making on significant issues including teaching, research and operational; fund raising; advising on the appointment of the Director of the CI; examining and approving the annual project work plan and budget and the annual financial accounts of the CI; and reporting to the Parties on the operation status and significant issues.

The two Universities shall consult on the size of the Advisory Board. UoA and Fudan shall each nominate Members of the Advisory Board, which must include senior level leaders of each Party. Unless the Parties agree otherwise the Advisory Board will comprise an equal number of nominees from UoA and Fudan.

A quorum shall consist of not less than one half of the number of Members then appointed, provided always that at least one member of the Advisory Board from each of UoA and Fudan is present. All questions before the Advisory Board shall be decided by consensus.

The Chair of the Advisory Board shall be appointed by UoA and shall be UoA's Deputy Vice-Chancellor (Strategic Engagement).

A meeting of the full Advisory Board shall be held at least once a year.

Except for the formal Advisory Board meetings, the board members can meet with the CI management team to provide consultations on any CI-related issues; consider and advise on the operations and development of the CI; approve recommendations for the establishment of subordinate Confucius Classrooms. Should any critical issues arise, the Advisory Board chair will call a special Board meeting to examine and resolve the relevant issue.

Minutes of its meetings shall be kept in writing and made available to UoA and Fudan.

3. Management, Governance and Reporting

UoA will be responsible for the organization, operation and management of the CI in Auckland.

The CI shall adopt a Director's Responsibility System under the leadership of the Advisory Board, with the Director reporting to the Advisory Board.

The role of Director

The Institute will be managed under the leadership of the Director who shall be appointed by UoA. The Director of the CI shall be an employee of UoA (as shall all locally employed staff of the CI) and shall manage the Institute in accordance with the regulations and policies of UoA.

The Role of Deputy Director

The Deputy Director of the CI shall be appointed by Fudan and shall be a visiting faculty member from Fudan. The Deputy Director shall support the Director in the management of CI and shall act as a point of liaison between Fudan and UoA.

The Deputy Director shall be invited by UoA to provide educational and administrative services consistent with the mission and responsibilities of the CI. Individuals recommended by Fudan for this position will have academic credentials which meet the standards and requirements of UoA. The Deputy Director shall be appointed in the first instance as an honorary staff member of UoA for a term of two years during which time the Deputy Director's performance shall be reviewed. With the agreement of the Parties, the appointment may then be extended for an additional two years on the same basis. The Deputy Director shall report to the Director of CI on all matters relating to the CI and its activities. The Deputy Director shall meet all the usual UoA reporting requirements for staff and shall comply with all relevant UoA policies and procedures.

4. Rights and Obligations of the Parties

Fudan shall:

- a) Provide a set amount of annual funding according to the CI's needs, based on the annual project work plan and budget approved by the Advisory Board.
- b) Pay the salary and other costs of the Deputy Director during his or her term of service.
- c) Work with UoA to obtain support for the activities of the CI as outlined in Section 1 of this Agreement.
- d) Be responsible for getting permission from the 'Confucius Institute' brand-owner for the CI to continue use the 'Confucius Institute' brand.
- e) Provide teaching materials, courseware and other books and resources, and authorize the use of online courses, as agreed by the Parties from time to time.
- f) Receive and support visiting delegations from the CI, including principals, teachers, student and other groups; assist applicants for Confucius Institute Scholarships, Summer or Winter Camps in China, and the China Studies Program, and provide support for any other programs agreed between the Parties from time to time.
- g) Send Chinese instructors or volunteer teachers (Mandarin Language Assistants) to work for the CI in the greater Auckland region.

UoA shall:

- a) Work with Fudan to obtain support for the activities of the CI as outlined in Section 1 of this Agreement.

- b) Provide fixed office space and appropriate sites for teaching and other activities of the CI, equipped with office and teaching facilities, and be responsible for their administration and maintenance.
 - c) Provide a Director (0.5 FTE) and an administrative support person (0.5 FTE) for the running of the CI and provide the related payment;
 - d) Assist personnel from China with visa applications and provide necessary working facilities and support.
 - e) Open and maintain a special account for the CI that is separate from the UoA's operational funding or set up a separate account for independent accounting within UoA's financial system, and ensure funds sent by Fudan for the CI are properly received and accounted for in that account. UoA will ensure that the expenditure of such funds is consistent with the purposes for which they are provided by Fudan under this Agreement.
 - f) Provide a set amount of annual funding, based on the annual project work plan and budget approved by the Advisory Board.
5. UoA is expected to present and submit financial reports for the CI's activities at each of the Advisory Board meetings during the year, and an end-of-year financial report to Fudan.
6. The Parties will work together on the development of the programs of the CI which should meet the objectives set out in this Agreement and the Renewal Agreement and will involve activities in both New Zealand and in China where practicable to do so.

7. Intellectual Property

The intellectual property rights in a program developed by a Party used by the CI shall vest in that Party. The Parties may consult on the ownership of

intellectual property rights in collaborative programs. In the event of any dispute regarding ownership of intellectual property rights, the Parties shall initially consult with each other in friendly cooperative negotiations in an endeavor to resolve the dispute and if they are unable to resolve the dispute within 20 days, Section 11 shall apply.

8. Term of this Agreement

This Agreement shall remain effective until January 31, 2026 from the date it is executed by both Parties. The Parties agree to review this Agreement, commencing the review in the third year following the date of execution. Subject to a satisfactory review, the term of the Agreement may be extended by the written agreement of the Parties for a subsequent term of five years or such shorter period as the Parties decide commencing from the expiry of the Initial Term. Unless agreed otherwise in writing by the Parties before the expiry of the Initial Term, this Agreement will end at the expiry of the Initial Term.

9. Termination

This Agreement may expire or be terminated as follows:

- a) In the event that either Party determines that the objectives of the CI are not being met, that Party may terminate this Agreement by giving not less than six months' notice in writing to the other Party.
- b) Where the actions of a Party severely harm the image and reputation of CI and/or the other Party and the Parties are unable to resolve the dispute under Section 11, the other Party may terminate this Agreement by giving the first Party notice in writing.

- c) A Party may terminate this Agreement with immediate effect if the other Party breaches a material term of this Agreement and does not remedy that breach within 28 days of being notified in writing by the other Party to do so.
- d) If the Renewal Agreement is terminated or expires, this Agreement shall terminate or expire on the same date.
- e) If Fudan ceases to be the Chinese executive institution for the purposes of the Renewal Agreement for any reason, this Agreement shall terminate or expire on the relevant cessation date.
- f) Either Party may terminate this Agreement without cause by giving the other Party notice in writing at least six months before the intended date of termination.

On expiry or earlier termination of this Agreement for any reason:

- a) UoA will use reasonable endeavours to facilitate the delivery or transition of any ongoing commitments related to the Institute (such as the Confucius Classrooms program and teaching commitments to enrolled students); and
- b) Any unexpended portion of the cash contributions of a Party for the relevant year will be returned to that Party.

The termination of this Agreement shall not affect other separate agreements, contracts or programs between the two Parties. The termination or expiry of this Agreement for any reason does not affect the accrued rights or remedies of either Party.

10. Force Majeure

To the extent that a national emergency, war, pandemic, strike or natural disaster or any other cause beyond the control of the Parties renders the performance of this Agreement by a Party temporarily or permanently impossible ("**Force Majeure Event**"), the affected Party will be released from its responsibilities under this Agreement during that Force Majeure Event. In such a circumstance, the affected Party must inform the other Party in writing of the extent to which it is unable to meet its responsibilities, and duly take reasonable measures to mitigate the loss of the other Party.

If a Party is unable to meet its obligations due to a Force Majeure Event for a period of six months or more, either Party may terminate this Agreement by giving the other Party notice in writing.

11. Dispute Resolution

In the event of any dispute between the Parties arising out of or relating to this Agreement, the matters relating to the dispute shall be referred, in the first instance, to the Advisory Board. In the event that the Advisory Board is unable to agree on a course of action to resolve the dispute, it shall refer the matter to the President and Vice- Chancellor of the respective Parties who shall determine the matter.

Each Party must continue to perform its obligations under this Agreement irrespective of the existence of any dispute.

12. Amendments

The Parties may by agreement in writing vary this Agreement. No amendment shall come into effect until it has been signed by both parties. This agreement is made in two copies and each copy is written in both Chinese and English. Both texts shall have the same effectiveness.

Signed for and on behalf of

Fudan University by



Name: XU Ningsheng

Position: President

Fudan University

Date: 6/7/2021

Signed for and on behalf of

the University of Auckland by:



Name: Dawn Freshwater

Position: Vice-Chancellor

University of Auckland

Date: 12/07/2021