

**AGREEMENT BETWEEN XIAMEN UNIVERSITY OF CHINA**

**AND**

**VICTORIA UNIVERSITY OF WELLINGTON**

**IN RESPECT OF**

**THE CONFUCIUS INSTITUTE AT VICTORIA UNIVERSITY OF WELLINGTON**

*In order to strengthen the partnership between Xiamen University and Victoria University of Wellington,*

*and*

*To strengthen educational cooperation between China and New Zealand, and to support and promote the study of Chinese language and culture in New Zealand,*

*and*

*Recalling that the Confucius Institute Headquarters of China ("the Headquarters") and Victoria University of Wellington ("Wellington") signed an agreement to establish the Confucius Institute at Wellington ("the Institute") on 7 June 2010 ("Headquarters Agreement")*

*and that*

*Xiamen University ("Xiamen") and Wellington (together "the Universities") signed a supplementary agreement to cooperate in the establishment of the Institute and the management of its activities on 19 June 2010 ("Xiamen Agreement").*

*Both Universities now wish to continue this cooperation, to identify the rights and responsibilities of Xiamen and Wellington in the ongoing management of the Institute during the term of this Agreement, and build on and expand the partnership in respect of the Institute. They wish to restate as follows:*

## **Article 1 Nature and Scope of Activities**

1. The Institute, with a focus on Chinese language training and cultural exchange, may carry out the following activities, having regard to the Constitution and By-laws of Confucius Institutes, the laws of New Zealand and Wellington's policies; each to the extent they apply to the Institute and as updated from time to time:
  - a. assist the teaching of the Chinese language in schools and in the community;
  - b. conduct language and cultural exchange activities, including the organization of student and teachers' visits to China;
  - c. develop Chinese language education resources;
  - d. organise the HSK (Hanyu Shuiping Kaoshi) Examination (Chinese Proficiency Test); and
  - e. other activities as agreed by the Universities in writing from time to time.
2. The Universities acknowledge that this Agreement does not affect or in any way limit Wellington's autonomy or academic and intellectual freedom, including in respect of its research, teaching and operations.

## **Article 2 Organization, Operation and Management**

### **1. Advisory Board**

Wellington and Xiamen shall establish an Advisory Board, representing both universities, to provide oversight and guidance on major issues concerning the Confucius Institute.

- a) Wellington and Xiamen shall each nominate a Chair and Members of the Board. The two universities shall consult on the size of the Board.
- b) A meeting of the full Board appointed by both universities shall be held at least once a year. The full board shall review the Institute's development plan and discuss any other major issues concerning the Institute.
- c) Between such meetings the members of the Board resident in New Zealand shall meet regularly to receive reports from the Director of the Institute, consider and approve proposals for the management, operations and development of the Institute; approve recommendations for the establishment of subordinate Confucius Classrooms, examine and approve the annual work plan and budget, and submit it to Xiamen for funding.

## **2. Operation and Management of the Institute**

- a) Wellington will be responsible for the organization, operation and management of the Institute.
- b) The Institute will continue to be managed under the leadership of the Director who shall be appointed by Wellington. The Director shall manage the Institute in accordance with the regulations, policies and directions of the Vice Chancellor of Wellington or his or her nominated representative.
- c) The Deputy Director of the Institute shall be appointed by Xiamen University. The Deputy Director shall support the Director in the management of the Institute and shall act as a point of liaison between Xiamen and Wellington.
- d) Wellington has the right to determine the content of the curriculum and the manner of instruction for all programmes administered by the Institute subject to New Zealand's relevant laws and regulations and Wellington's policies.
- e) Chinese citizens working for the Institute in New Zealand shall be subject to the laws of New Zealand and Wellington's applicable policies.

## **Article 3      Rights and Obligations**

### **1. Xiamen shall**

- a) provide project funding for the Confucius Institute each calendar year based on the annual project work plan and budget approved by the Board and submitted to Xiamen.
- b) pay the salary and other costs of the Deputy Director during his or her term of service.
- c) work with Wellington to obtain support for the activities of the Confucius Institute as outlined in Article 1 of this Agreement.
- d) be responsible for getting permission from the 'Confucius Institute' brand-owner for the Institute 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 Universities from time to time.
- f) receive and support visiting delegations from the Institute, including principals, teachers, student and other groups; assist applicants for Confucius Institute Scholarships and the China Studies Program, and provide support for any other programs agreed between the Universities from time to time.
- g) send Chinese instructors or volunteer teachers (Mandarin Language Assistants) to work for the Institute.

## 2. Wellington shall

- a) work with Xiamen University to obtain support for the activities of the Confucius Institute as outlined in Article 1 of this Agreement.
- b) provide fixed office space and appropriate sites for teaching and other activities of the Institute, equipped with office and teaching facilities, and will be responsible for their management and maintenance.
- c) provide necessary management and administrative personnel (full time or part-time) for the running of the Institute.
- d) assist Chinese personnel with visa applications and residence procedures.
- e) liaise with primary and secondary schools to determine the number of Teachers and Mandarin Language Assistants required for the following calendar year, and shall advise Xiamen of the number required. Wellington shall interview applicants to work as Chinese Teachers or Mandarin Language Assistants in the Institute or in schools, and Wellington's agreement shall be required before any Teacher or Mandarin Language Assistant is confirmed in an appointment to the Institute
- f) ensure that funds sent by Xiamen are kept in a specially designated account that is separate from the University's operational funding. Wellington will ensure that the expenditure of such funds is consistent with the purposes for which they are provided by Xiamen, and that such expenditure is approved and audited in accordance with the financial procedures and standards of the University.
- g) Within three months of the end of each calendar year Wellington will provide to Xiamen an Annual Report in respect of the cash and in kind contributions of each party to the Institute for the preceding year. If requested by Xiamen Wellington will also provide to Xiamen an audited financial report in respect of Xiamen's cash contribution to the Institute every three years for the preceding three years.

## **Article 4 Intellectual Property**

1. The Confucius Institute shall abide by relevant laws and regulations in the use of intellectual property owned by other parties. Any intellectual property developed or created through the activities of the Institute ("Institute IP") will be owned by the university who created or developed that IP, unless otherwise agreed by the Universities in writing.
2. If a dispute arises between Xiamen and Wellington with respect to Institute IP, Article 9 of this Agreement will apply to that dispute.

## **Article 5      Revision of the Agreement**

During the term of this Agreement, revisions to this Agreement or a supplementary agreement can be entered into with the consent of both Universities. All revisions shall be made both in English and Chinese in writing and shall take effect after being signed by authorized representatives of each University.

## **Article 6      Term of the Agreement**

The Agreement shall enter into force upon signature by both Parties. If the dates of signature are different, the later date shall prevail.

The Agreement will initially remain in force for five years (the "Initial Term"). If either party does not wish to extend the Agreement beyond the Initial Term, it must notify the other in writing during the 90 days before the end of the Initial Term, otherwise the Agreement will automatically be extended for another five years.

## **Article 7      Force Majeure**

In the event of a national emergency, war, strike or natural disaster or any other cause beyond the control of the Universities that renders the performance of this Agreement 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 that it is unable to meet its responsibilities, and duly take reasonable measures to mitigate the loss of the other party.

## **Article 8      Expiry and Termination**

1. This Agreement may expire or be terminated in any one of the following cases:
  - a) Where either party does not wish to extend the term of this Agreement in accordance with Article 6, the Agreement will end at the end of the Initial Term.
  - b) 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.
  - c) If a party is unable to meet its obligations due to a Force Majeure Event for a period of three months or more either party may terminate this Agreement by giving the other party notice in writing.

- d) Where the actions of a party severely harm the image and reputation of the Institute and the dispute is unable to be resolved as set out in Article 9, the other party may terminate this Agreement by giving the first party notice in writing.
  - e) 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.
- 2. On termination or expiry of this Agreement for any reason:
    - a) Wellington 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.
  - 3. The termination of this Agreement shall not affect other separate agreements, contracts or programs between the two Universities.
  - 4. The termination or expiry of this Agreement for any reason does not affect the accrued rights or remedies of either party.

## **Article 9     Dispute Settlement**

- 1. If any dispute or difference arises between the Universities in relation to this Agreement the Universities agree to:
  - a) give the other party notice in writing of the dispute or difference; and
  - b) negotiate in good faith using their best endeavours to resolve the dispute or difference.
- 2. If the Universities are unable to resolve a dispute or difference in accordance with Article 9.1 within thirty (30) days, the Universities agree to refer the dispute to, in the case of Wellington, the Deputy Vice-Chancellor (Engagement) or such other person nominated by the Vice Chancellor, and in the case of Xiamen, the person nominated by Xiamen.
- 3. If the Universities are unable to resolve a dispute or difference in accordance with Article 9.2 within thirty (30) days, then the matter may be submitted to an arbitration institution mutually agreed by the Universities. The costs of submission to the arbitration institution agreed pursuant to this clause will be met equally by the Universities.
- 4. Each Party must continue to perform its obligations under this Agreement irrespective of the existence of a dispute or difference.


## Article 10 Miscellaneous

Other matters not set forth by this Agreement shall be addressed through friendly and equal consultations between the Universities.

The undersigned hereby are duly authorized by each institution to execute this Agreement.

This Agreement is made in two copies and each copy is written in both Chinese and English. Both texts shall have the same effectiveness.

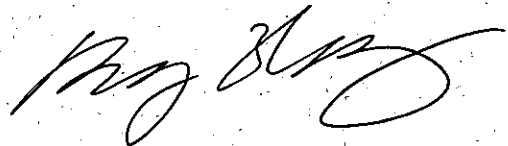
[Victoria University of Wellington]



Vice Chancellor

Date: 11 September 2020

[Xiamen University]



President

Date: Sept. 28, 2020