Second Agreement

between

THE GEORGE WASHINGTON UNIVERSITY

and

NANJING UNIVERSITY

for

COOPERATION ON GW'S CONFUCIUS INSTITUTE

2018-2022

PREAMBLE

This second agreement ("Second Agreement") is made effective as of November 12, 2018 by and between the George Washington University ("GW"), a congressionally-chartered not-for-profit corporation located in the District of Columbia, U.S.A. and Nanjing University ("NJU"), located in Nanjing, China (each, a "Party", and together, the "Parties"),

WITNESSETH:

WHEREAS, the Parties entered into an agreement in November 2013 ("First Agreement") to make Chinese language instructors available to teach in GW's non-degree language programs in its Confucius Institute ("Institute") pursuant to an agreement between GW and CI Headquarters in China ("the Headquarters") to establish GW's Confucius Institute ("Establishing Agreement");

WHEREAS, the First Agreement expired in November 2018 and the Parties wish to renew and extend their collaboration to run concurrent with the Establishing Agreement, which will expire in December 2022; and

WHEREAS, the Parties wish to reaffirm principles which will continue to guide GW's governance, management and operation of its Institute for the term of this Second Agreement.
NOW THEREFORE, based on the mutual promises set forth herein, and
other good and valuable consideration, the receipt and sufficiency of which is
hereby acknowledged, GW and NJU, intending to be legally bound, have agreed
as follows:

A. DUTIES AND OBLIGATIONS

1. Program. GW and NJU agree to cooperate in support of the Institute,
which offers non-degree Chinese language training and cultural events,
and which is managed and operated as a GW educational unit housed
in its Columbian College of Arts and Sciences. The Institute is subject
to all applicable GW academic standards and values, including those
pertaining to academic freedom, GW policies and procedures, and any
Program reviews GW deems necessary.

2. Governance, Management and Administration.

   a. Consistent with the Establishing Agreement, GW is solely
      responsible for oversight, management and day-to-day
      operations of its Institute, to include providing a Chair and other
      members for a Board of Directors for the Institute, providing GW
      managerial staff, leading the Institute’s Advisory Council, and
      providing and managing facilities and services required for the
      activities contemplated under the Establishing Agreement, as
determined by GW. Facilities include classrooms and office
      space appropriate for Institute participants, as determined by GW.

   b. GW further agrees to make efforts to obtain funding to pursue
      the continuing operation of the Institute through public and
      private sources.

   c. NJU shall be responsible for identifying qualified instructors of
      Chinese (“Instructors”). The Parties expect that the process of
      selecting Instructors should be transparent to GW. To that end,
      upon GW’s request, NJU shall provide to GW information
      concerning its selection and employment processes necessary, in
      GW’s sole discretion, to ensure selection of Instructors is

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substantially aligned with GW vetting procedures. This information includes, but is not limited to, any rules or standards of conduct or behavior for Instructors as well as all contracts or agreements between Instructors and The Headquarters, the Instructors’ home universities, or any other entity related to their employment as Instructors at the Institute. GW will continue to retain final decision-making authority over the selection of Instructors for its Institute.

d. The Parties acknowledge that, under the Establishing Agreement, The Headquarters shall be responsible for the cost of Instructors’ travel, salaries and other related expenses. The Parties acknowledge that GW is not responsible for any costs related to the Instructors, including, but not limited to, airfare, salaries, required insurance, taxes, transportation within the United States and visa or other government fees.

e. The Parties agree that neither shall discriminate on the basis of race, color, religion, sex, national origin, age, disability, veteran’s status or sexual orientation, political belief or political association in connection with the Program.

3. Managerial Structure.

a. GW will designate a Director for the Institute, who shall be the Dean of the Columbian College of Arts and Sciences or her or his designee. GW may, in its discretion, designate additional personnel (GW Faculty or Staff) to share management responsibility for the Institute. GW shall provide the names, current titles and contact information for the designated individual(s) to NJU. The GW Faculty or Staff will be compensated for services to the Institute solely by GW.

b. The Director shall serve under the advisement of a Board of Directors (“Board”), which is formed with members nominated from GW and NJU.

i. The Board will consist of a minimum of five (5) members, or more as mutually agreed by the Parties, with the majority of the members nominated by GW.

ii. GW will maintain a simple majority of the Board at all times.
iii. The Board will be chaired by GW’s Provost and Executive Vice President of Academic Affairs or his or her designee.

iv. The duties of the Board will include formulating and amending the policies of the Institute; formulating development plans for the Institute; final decision-making on significant issues including teaching, research and management; fundraising; appointment and removal of the Director of the Institute, examining and approving the annual budget proposal and final financial accounts of the Institute.

v. The Director shall provide the Board with a summary of financial accounts of The Headquarters funds spent and annual budget proposals for funds requested from The Headquarters. The Board shall provide The Headquarters with copies of approved annual budget proposals and financial reports.

c. In addition to the Board, GW will continue to convene its advisory committee ("Advisory Committee") to bring together representatives from GW as appropriate, or other external representatives as deemed necessary by GW. The structure and membership of the Advisory Committee shall be approved by the Board.

2. **Visas.** GW and NJU will facilitate the acquisition of appropriate visas and work permits for faculty/staff if applicable, from each institution. However, students, faculty and staff who may participate in this Second Agreement are ultimately responsible for obtaining required documents and visas in compliance with all relevant visa requirements and immigration laws. This includes payment of any U.S. or Chinese government or other fees that may be imposed for visa processing or immigration services.

**B. FINANCIAL ARRANGEMENTS**

GW shall continue to be responsible for the fiscal operation of the Institute and its activities in accordance with the Establishing Agreement.
C. TERM AND TERMINATION

1. **Term.** This Second Agreement is valid from the date of signature by authorized representatives of the Parties and will end concurrent with the expiration of the Establishing Agreement on December 20, 2022, unless terminated early in accordance with one of the provisions in section C(2) of this Second Agreement. It may be renewed by mutual written consent of the Parties.

2. **Termination.**
   a. **Termination without Cause.** Either Party may terminate this Agreement without cause by providing written notice of termination to the other Party at least ninety days (90) before the date of its intended termination, which shall be specified in the written notice of termination.
   
   b. **Termination for Cause.** Either Party may terminate this Second Agreement for cause in the event that:

      i. Either Party dissolves or ceases to exist, becomes bankrupt or insolvent, or takes a substantially equivalent action under applicable local law; or

      ii. Either Party commits a material default which is subject to cure and which is not cured within a thirty (30) day period following written notice of the nature of the default for non-financial matters, and within a ten (10) day period following written notice for financial matters, including, without limitation, the making of a payment required by this Second Agreement. For defaults not reasonably subject to cure within the cure period, this Second Agreement will terminate effective as of the date set forth in the default notice.

3. Should early termination occur, both Parties will reasonably cooperate in good faith to honor commitments to students participating in the Institute as of the date of termination.

4. The termination of this Second Agreement shall not affect any other agreement, contract or program between the Parties.
5. Notwithstanding any other provision of Section C, in the event that the Establishing Agreement is terminated, this Second Agreement will terminate effective as of the date of termination of the Establishing Agreement.

D. MISCELLANEOUS

1. **Representations and Warranties.** Each Party represents and warrants that: (a) it is duly authorized to operate under the laws of its respective jurisdiction; (b) it is in good standing under the applicable laws of such jurisdiction; (c) it is expressly and duly authorized by its respective institution to execute this Second Agreement; and (d) there are no legal restrictions or bars to each Party entering into this Second Agreement. Each Party also represents and warrants that it has not and will not offer, promise, or authorize the payment or provision of anything of value to any government official, or to any person with the knowledge or belief that he or she will give it to a government official, for the purpose of improperly influencing such government official or securing any improper business or commercial advantage related to this Agreement.

2. **Counterparts.** This Second Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Second Agreement to produce or account for more than one such original. This Second Agreement was prepared and executed in the English and Chinese languages.

3. **Headings.** The headings used in this Second Agreement are for purposes of ease of reference only, and in no event or respect shall the substance of any provision or the intent of the Parties be interpreted or controlled by any such headings.

4. **Indemnification.** Each Party shall defend, indemnify and hold the other Party, its officers, agents and employees harmless from and against any and all liability, loss, expense (including reasonable attorneys’ fees) or claims for injury or damages arising out of the performance of this Second Agreement, but only in proportion to and to the extent of any negligence or fault by the indemnifying party, its officers, agents or employees. The obligations under this paragraph shall survive the termination of this Second Agreement.
5. **Limitation of Liability.** Neither Party shall be responsible for, nor
entitled to, any indirect, consequential (including lost profits) or punitive
damages, regardless of whether the theory giving rise to such damages is
tort or contract or otherwise.

6. **Force Majeure.** Neither Party shall be responsible for any failure or
delay in its performance under this Second Agreement due to causes
beyond its reasonable control, including but not limited to, labor disputes,
strikes, lockouts, shortages of or inability to obtain labor, energy, raw
materials or supplies, war, riot, acts of terrorism, civil unrest, an act of
God (including but not limited to fire, flood, earthquakes or other natural
disasters) or governmental action (including but not limited to any law,
regulation, Decree or denial of visas or residence permits). In the event
that either Party wishes to invoke *force majeure*, that Party shall within
ten (10) calendar days after the occurrence of the event of *force majeure*
has become known to that Party, send written notice of such event to the
other Party. In the event that a *force majeure* event prevents either Party’s
performance for a period of thirty (30) days, either Party shall be entitled
to terminate the Second Agreement upon written notice to the other Party.
The provisions of this paragraph shall not apply to the payment of fees or
to any other payments due from either Party.

7. **Governing Law.** The terms of this Second Agreement shall be
governed by and construed in accordance with the laws of the United
States and of the District of Columbia without regard to its principles
for conflicts of law, as if such Second Agreement were executed and
performed within the District of Columbia.

8. **Dispute Resolution.** In the event of a dispute, the Parties shall consult
with each other and agree to negotiate in good faith to find a mutually
agreeable resolution. Should such resolution not be reached, all
disputes arising out of or relating to this Agreement, or the breach
thereof, shall be determined by binding arbitration administered by the
International Centre for Dispute Resolution in accordance with its
International Arbitration Rules then in force. The place of arbitration
shall be Washington, DC. The arbitration shall be held in the English
language with Chinese interpreters. The costs of interpretation are to
be borne equally by each Party, unless the tribunal allocates the costs
of interpretation to the losing Party.
9. **Compliance with Law.** Each Party agrees that, in connection with this Second Agreement, it will take no action, or omit to take any action, which would cause another Party to be in violation of the applicable laws of the U.S., including but not limited to U.S. nondiscrimination laws, export control and anti-boycott laws and regulations, the U.S. Foreign Corrupt Practices Act, and any applicable reporting/disclosure requirements, or the applicable laws of China. In the event of a conflict, U.S. or the law of the District of Columbia shall prevail.

10. **Commercial Agreement/No Immunity.** NJU acknowledges and agrees that the exercise of rights and fulfillment of (or failure to fulfill) obligations under this Second Agreement are commercial in nature rather than governmental, and therefore acknowledges and agrees that it is not entitled to any right of immunity on the grounds of sovereignty or otherwise with respect to such activities or in any legal action or proceedings rising out of or relating to this Second Agreement.

11. **FCPA and Anti-bribery Laws.** The Parties agree to conduct their business in compliance, in all material respects, with the Foreign Corrupt Practices Act of 1977 ("FCPA") and any other applicable laws relating to bribery or corruption. Each Party has retained and will retain complete and accurate accounting records consistent with the FCPA and applicable laws, and have instituted and maintained policies and procedures designed to ensure continuing compliance. Each Party agrees that, in connection with this Agreement, it will not offer, give or promise to give, directly or indirectly, anything of value to any government official, political official, political candidate, or employee thereof or to any third party while knowing that such item of value or any portion thereof may be offered, promised or given to a government official, political party official, political candidate or employee thereof, for the purpose of obtaining or retaining business or to secure an improper advantage.

12. **Amendment.** This Second Agreement may be amended in writing from time to time upon the mutual agreement of the Parties; provided, however, that any modification, amendment, or supplement to this Second Agreement will only be considered binding where it is signed by a duly authorized representative of each Party.
13. **Assignment.** Neither Party shall assign this Second Agreement, in whole or in part, without the other Party's prior written consent. Any attempt to assign this Second Agreement, without such consent, shall be null and void.

14. **Waivers.** There shall be no waiver of any term, provision or condition of this Second Agreement unless the waiver is set forth in a written document signed on by the waiving Party. No such waiver shall be deemed to be or construed as a continuing waiver of any such term, provision or condition unless the written waiver states to the contrary. The waiver by either Party of its rights or remedies under this Second Agreement in a particular instance shall only apply to matters arising from or in connection with this Second Agreement.

15. **Severability.** If any part, term or provision of this Second Agreement shall be held void, illegal, unenforceable or in conflict with any law of a government having jurisdiction over this Second Agreement, the validity of the remaining portions or provisions shall not be affected. However, if such invalidity changes the basic intent of the Parties, as set forth in this Second Agreement, the rights, duties or obligations of the Parties shall be subject to a good faith negotiation.

16. **Intellectual Property.** Subject to mandatory provisions of applicable laws, the use, ownership and licensing of any intellectual property rights derived from the establishment and operation of the Institute shall be governed by GW's intellectual property policies. The use, ownership and licensing of any intellectual property created by GW, NJU, or its faculty, staff or students shall be owned by GW, NJU, or its faculty, staff or students as the case may be. GW does not under this Second Agreement acquire any ownership rights in and/or to any software, documentation, tools, techniques, methodologies or other material which was not or is not created under this Second Agreement and which is proprietary to NJU. However, if NJU incorporates any other proprietary material into the Institute, or the Institute requires other proprietary material in order to operate or otherwise be useable by GW, NJU hereby grants GW a non-exclusive, royalty free, fully paid, perpetual, irrevocable license to use the other proprietary material as part of the Institute.
17. **Use of Name and Marks.** Each Party shall control the use of its names and registered marks and associated trademarks and service marks. Each Party shall have the right to use these names and marks of the other Party only for purposes of performing its obligations under this Second Agreement and only with the other Party’s prior written consent in each instance.

18. **No Agency.** The Parties are strictly independent contractors and are not, in any way, employees, partners, joint venturers or agents of the other. Neither shall, in any way, bind the other in any way unless such Party has received the written consent of the other.

19. **Confidentiality.** As GW is solely responsible for oversight, management and day-to-day operations of its Institute, the Parties do not expect the need to exchange confidential information under this Second Agreement. Nonetheless, in the event that GW determines there is a need to share any confidential information, the Parties agree to treat such information as confidential and only release such information under circumstances where a reasonable person would understand that such information is to be treated as confidential, and, in all cases, such information will not be released by NJU to third parties without the written consent of GW and/or the student whose educational records are sought, as appropriate. This Second Agreement is not confidential and GW may disclose its contents as it deems necessary.

20. **Authoritative Version.** The English version of this Second Agreement shall be the authoritative version of this Second Agreement for all purposes. In the event of a conflict between the English version and any translation of this Second Agreement, the English version shall control.

21. **No Political Activities.** It is the Parties’ mutual understanding that neither any Party nor the Institute will undertake, in connection with this Second Agreement, any activity believed or intended to in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or foreign political party.
22. *Notices.* All notices required or permitted under this Second Agreement shall be in writing and served either personally, or in the United States of America, by Registered or Certified Mail or by overnight or email delivery, or in China by Chinese regular mail or by overnight or email delivery. All communications shall be sent to:

**For GW:**

Frances Taoran Sun  
Executive Director, Global Initiatives  
Office of the Dean, Columbian College of Arts & Sciences  
The George Washington University  
801 22nd Street, NW, Washington, DC, USA 20052  
(202) 994-4638  
tsun@gwu.edu

**For NJU:**

Xu Cheng  
Associate Dean, Institute for International Students  
Nanjing University  
Nanjing, Jiangsu, People’s Republic of China 210093  
011-86-25-83593561  
xcheng@nju.edu

Either Party may change its address for notices under this Second Agreement by giving written notice to the other Party by the means specified in this section.

23. *Entire Agreement; Order of Precedence.* This Second Agreement contains the entire agreement between the Parties and, except as otherwise expressly provided, supersedes any prior oral or written agreements, commitments, understandings or communications with respect to its subject matter.

[Signatures on following page]
For the George Washington University –

AGREED:

Teresa FerryMurphy
Deputy Provost for Academic Affairs
Chair, Board of Directors, GW Confucius Institute
George Washington University

Date: 9.20.19

For Nanjing University–

AGREED:

YANG Zhong
Executive Vice President
Nanjing University

Date:
南京大学与乔治·华盛顿大学
关于乔治·华盛顿大学孔子学院合作的
第二期协议
2018-2022

前言

此份二期协议（以下称“二期协议”）于2018年11月12日生效，签署及合作方为地处中国南京的南京大学（以下称“南大”）和地处美国华盛顿哥伦比亚特区的非营利机构乔治·华盛顿大学（以下称“华大”）。（两校单称为“合作方”，并称为“双方”）。

背景：

根据华大与中国孔子学院总部（以下称“总部”）所签协议（以下称“初始协议”），双方于2013年11月签署协议（以下称“首期协议”），配备汉语语言教师在华大孔子学院（以下称“孔院”）从事华大非学位语言项目的教学工作。

首期协议于2018年11月到期，双方希望继续延长合作，从而与有效期至2022年12月之初始协议保持一致。

同时，对于在二期协议中将继续指导华大运营、管理和运营其孔院的原则，双方希望再次予以确认。

综上，基于南大与华大之相互承诺，以及其他有效并有值之考量，且其可接受性与之充分性已获确认，双方愿意缔结法律关系，约定如下。

一、职责与义务

1. 项目。南大和华大同意，合作支持孔院开展非学位汉语语言培训和文化活动。孔院作为华大设在哥伦比亚文理学院的一个教学单位进行管理运营。孔院须遵守所有适用的华大学术标准与价值，包括学术自由、华大规章制度以及华大认为必要的任何项目审核。
2. 管辖、管理与行政

a. 根据初始协议，华大单独负责孔院之监督、管理与日常运营，包括配置孔院理事会理事长和其他成员、配备华大管理人员、领导孔院顾问委员会，提供并管理初始协议规定、华大决定的各项活动所需之设施与服务。设施包括为孔院项目参与人员提供适当的教室与办公空间，具体由华大决定。

b. 华大进一步同意，将努力获取公共及私人渠道的资助以维护孔院运营。

c. 南大负责遴选合格的汉语教师（以下简称“教师”）。双方期待教师之遴选过程对华大保持透明。为此，应华大要求，南大应向华大提供其必要的遴选和聘用过程之信息，并由华大全权酌处，以保证教师遴选总体符合华大之审核程序。有关信息包括但不限于：任何关于教师行为或举止的规定和标准、教师与往届、教师所在高校或与其作为孔院教师聘用相关的任何其他单位的所有合同或协议。华大将继续保持其遴选孔院教师之最终决定权。

d. 双方承认，根据初始协议精神，总部负责教师的旅费、薪金和其他相关费用。双方承认，华大不承担与教师相关的任何费用，包括但不限于：机票费、薪金、所需保险费、税费、差旅交通费、签证费和其他政府费用。

e. 双方均同意，在项目中不得有基于种族、肤色、宗教信仰、性别、国别、血统、年龄、残疾、退伍军人身份、性取向、政治信仰或政治关系等原因的歧视。

3. 管理结构

a. 华大将任命孔院院长一名，该院长应为哥伦比亚文理学院院长或其指定人员。华大亦将自主决定人员华大其他教职员工）分担孔院管理责任。华大应向南大提供其任命人员之姓名、当下职务和联系信息。华大将单独为其教职员工在孔院之服务提供补偿。
b. 院长在理事会建议下开展工作。理事会成员由南大和华大提名。

i. 经双方同意，理事会至少由5名及以上成员构成，多数成员由华大提名。

ii. 华大在理事会中一直保持简单多数。

iii. 理事会理事长由华大教务长兼学术常务副院长或其指定人选担任。

iv. 理事会职责包括：制定或修订校院政策、制定校院发展规划、最终决定重大事项，包括教学、研究与管理、资金筹措、校院院长任免、校院年度预算和决算之审核批准。

v. 院长须向理事会提交关于学校经费使用情况的财务账目摘要和学校经费年度预算报告。理事会须向校院提交经批准的年度预算报告和财务报告。

c. 除理事会之外，华大将继续召集其认为适当的本校代表或其认为必要的校外代表组成顾问委员会。顾问委员会之结构与组成人员须经理事会批准。

4. 签证。南大和华大将促成各自教职员工在符合本方的情况下获得适当的签证或工作许可。但是，参与此二期协议之学生、教师和职员须依照所有相关签证要求和移民法律规定，为获得所需之文件和签证负最终责任，包括任何向中国或美国政府部门支付的费用或其他签证手续和移民服务的费用。

二、财务安排

根据初始协议，华大将继续负责校院的财政运行及相关活动。

三、期限与终止

1. 期限。本二期协议自双方授权代表签字之日起生效。除非根据本二期协议第三部分第二条有关情形之规定而提前终止，本二期协议
将随 2022 年 12 月 20 日初始协议到期而同时失效。经双方书面同意，本二期协议可以延期。

2. 终止。

a. 无故终止。任何一方可在无理由提前终止此协议，但须在其建议之终止日期至少九十（90）日前提交书面终止通知。书面终止通知须写明建议终止日期。

b. 因故终止。任何一方可基于以下原因终止此二期协议：

   i. 任何一方解散或终止存在，破产或无力偿还债务，或者依据当地适用法律实施了本质相似之行为；
   
   ii. 任何一方发生可纠正的实质性违约，因非财务原因在书面通知违约性质三十（30）日后仍未予纠正，或者因财务原因在书面通知十（10）日后仍未予纠正。财务原因包括但不限于此二期协议所要求的款项支付。对于在纠正期限内明显不能纠正的违约，此二期协议将在违约通知书规定之日起失效。

3. 如发生提前终止情形，双方应善意保持理性合作，截至终止日期前仍须对参与协议的学生履行承诺。

4. 此二期协议之终止不应影响双方之间的任何其他协议、合同或项目。

5. 除第三部分其他规定之外，如初始协议终止，此二期协议亦将于初始协议终止之日起失效。

四、杂项

1. 声明与保证。双方均声明并保证：（a）其运营系经正式授权，依照各自司法辖区的法律而进行；（b）在各自司法辖区适用法律方面均声誉良好；（c）系经各自机构明确、正式授权而签署此二期协议；（d）对于签订此二期协议无法律禁令或限制。双方同时声明并保证：此前没有、今后也不会出于施加不当影响之目的，或出于由此协议获取任何不当业务或商业优势之意图，而提供、承诺或授权付予报酬或提供任何有
价之物给任何政府公务人员，或者知晓或认为会将该有价之物转予政府公务人员之个人。

2. 对应文本。本二期协议可签署一个或多个对应文本，每一文本均应视为原件，亦无须为证明此二期协议而制作不止一份原件或说明存在不止一份原件。本二期协议以汉语和英语成稿和签署。

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