MEMORANDUM OF UNDERSTANDING

between

THE GEORGE WASHINGTON UNIVERSITY

and

Nanjing University

for

Confucius Institute

2013-2017

PREAMBLE

This Memorandum of Understanding ("MOU") made this 12th day of November 2013 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, out of a desire to develop inter-institutional academic and cultural exchanges of Chinese language and culture, and to promote Chinese language in the United States of America, intend to establish and operate a Confucius Institute at GW ("the Institute") on the terms and conditions set forth herein;

WHEREAS, GW previously entered into an agreement with the Confucius Institute Headquarters of China ("Hanban") in Beijing, China, effective as of December 16, 2013, whereby the Hanban authorizes and agrees to support the establishment and operation of the Institute at GW ("Establishing Agreement");
WHEREAS, the Establishing Agreement provides that GW and a Chinese university shall collaborate on the creation and direction of the Institute;

WHEREAS, NJU has the desire and resources to participate in such collaboration;

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. With the support of Hanban, GW and NJU agree to cooperatively form and operate the Institute, an educational unit at GW.

2. Administration.

   a. GW shall be responsible for day-to-day operations of the Institute, to include the provision and management of facilities and services required for the activities contemplated under the Establishing Agreement, as determined by GW. Facilities include classrooms and office space appropriate for the 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 and supplying competent instructors of Chinese ("Instructors") for the Institute and will make arrangements for their travel to and residence in the United States of America for each GW academic year during the term of this MOU. GW shall assist NJU in this process as appropriate. The Parties acknowledge that, under the Establishing Agreement, Hanban 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.

3. **Managerial Structure.**

   a. GW will designate at least one Director for the Institute. GW may, in its discretion, designate an additional Director, whose title for this purpose will be Deputy Director, and shall provide the names, current titles and contact information for the designated individual(s) to NJU. One Director shall be the Dean of the Columbian College of Arts and Sciences or her or his designee. NJU will designate a Chinese Deputy Director for the Institute. The Director(s) and the Chinese Deputy Director shall be faculty or staff of their respective institutions. The Director(s) at GW will be compensated for services to the Institute solely by GW; the NJU Chinese Deputy Director shall be compensated for services to the Institute solely by NJU.

   b. The Directors 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. Consistent with Hanban practice for its CIs, NJU will nominate its Vice President International as the host of the CI Board meetings, conferences or other related activities when those meetings, conferences or related activities that take place on NJU’s campus. His title for this purpose will be co-Chair of the Board.
iv. The duties of the Board will include formulating and amending the policies of the Institute; formulating development plans for the Institute; decision-making on significant issues including teaching, research and management; fundraising; appointment and removal of the Directors of the Institute, subject to the approval of the respective home institution of the Director in question; examining and approving the annual budget proposal and final financial accounts of the Institute.

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

c. In addition to the Board, GW and NJU will seek to establish an advisory committee ("Advisory Committee") to bring together representatives from GW and NJU, and, as appropriate, representatives from other eminent universities, government officers, and representatives of industrial and commercial sectors from both the United States ("U.S.") and China. The structure and membership of the Advisory Committee shall be approved by the Board.

d. GW will be in charge of the daily operation and management of the Institute. GW shall be responsible for the fiscal operation of the Institute and its activities.

4. **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 MOU 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 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 MOU is valid for an initial period of five (5) years effective from the date of the last signature on this MOU (the “Effective Date”) and may be extended thereafter for additional five (5) year periods by written mutual consent of the Parties.

2. **Termination.**
   
a. **Termination without Cause.** Either Party may terminate this MOU without cause by providing written notice of termination to the other Party at least six (6) months 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 MOU 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 sixty (60) 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 MOU. For defaults not reasonably subject to cure within the cure period, this MOU 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 MOU shall not affect any other agreement, contract or program between the Parties.
5. In the event that the Establishing Agreement is terminated, this MOU 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 MOU; and (d) there are no legal restrictions or bars to each Party entering into this MOU.

2. **Counterparts.** This MOU has been executed simultaneously in two (2) English and Chinese duplicate originals, each of which shall be deemed an original, and it shall not be necessary in making proof of this MOU to produce or account for more than one such original. The English version shall control.

3. **Headings.** The headings used in this MOU 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 MOU, 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 MOU.

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 MOU 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 MOU 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 or to the Party’s obligations to provide assistance to students on-site or to facilitate their return home.

7. **Governing Law.** The terms of this MOU 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 MOU 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. 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 MOU, 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 and the U.S. Foreign Corrupt Practices Act, or the applicable laws of China. Each Party agrees that, in connection with this MOU, 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.

10. **Commercial Agreement/No Immunity.** NJU acknowledges and agrees that the exercise of rights and fulfillment of (or failure to fulfill) obligations under this MOU 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 MOU.

11. **Amendment.** This MOU 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 MOU will only be considered binding where it is signed by a duly authorized representative of each Party.

12. **Assignment.** Neither Party shall assign this MOU, in whole or in part, without the other Party’s prior written consent. Any attempt to assign this MOU, without such consent, shall be null and void.

13. **Waivers.** There shall be no waiver of any term, provision or condition of this MOU 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 MOU in a particular instance shall only apply to matters arising from or in connection with this MOU.
14. **Severability.** If any part, term or provision of this MOU shall be held void, illegal, unenforceable or in conflict with any law of a government having jurisdiction over this MOU, 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 MOU, the rights, duties or obligations of the Parties shall be subject to a good faith negotiation.

15. **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 MOU 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 MOU 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.

16. **Use of Name and Marks.** GW shall control the use of the names and registered marks of The George Washington University (and any other relevant names), and associated trademarks and service marks. The NJU shall have the right to use these names and marks only for purposes of performing its obligations under this MOU and only with GW’s prior written consent in each instance.

17. **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.

18. **Confidentiality.** Information concerning either Party’s business methods, financial information, future plans, personnel data, trade secrets, information systems, financial and accounting policies or
similar matters, or information designated as "confidential" by a disclosing Party, including but not limited to the financial terms of this MOU, or released under circumstances where a reasonable person would understand that such information is to be treated as confidential, shall be treated as confidential. The Party receiving such confidential information shall take the same precautions as it takes to protect its own confidential information, but in all events reasonable precautions shall be taken, in order to preserve its confidentiality. Confidential information shall not be revealed to third parties without the written consent of the disclosing Party, and neither Party may use the other Party's confidential information for any purpose except for purposes of performing this MOU. This confidentiality requirement shall not apply to: (i) information in the public domain; (ii) information independently developed by either Party without use of the other Party's confidential information; (iii) information received by either Party from a third party under no duty of confidentiality; and (iv) a disclosure of information that is required by law.

19. Confidentiality of Student Educational Records. The Parties agree to treat personally identifiable information contained in student educational records as confidential and will not release such information to third parties without the written consent of the student whose educational records are sought.

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

21. Nondiscrimination. In performing this MOU, the Parties agree not to discriminate based on age, disability, sex, race, color, national origin, veteran status, religion, sexual orientation or gender identity or expression.

22. Notices. All notices required or permitted under this MOU shall be in writing and served either personally, or in the United States of America, by Registered or Certified Mail or by overnight or expedited delivery, or in China by Chinese regular mail or by overnight or expedited delivery. All communications shall be sent to:
For GW:

Frances Taoran Sun
Director, Financial Management & 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:

Aimin Cheng
Dean, Institute for International Students
Nanjing University
Nanjing, Jiangsu, People’s Republic of China 210093
011-86-25-83593585
amcheng@nju.edu.cn

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

23. **Entire Agreement; Order of Precedence.** This MOU 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]
The George Washington University

AGREED:

Steven Knapp
President
The George Washington University

Date: 10/12/2013

Nanjing University

AGREED:

Jun Chen
President
Nanjing University

Date: 10/12/13