

**AGREEMENT OF MERGER AND PLAN OF TRANSITION  
BETWEEN  
THE ARKANSAS STATE UNIVERSITY SYSTEM  
AND HENDERSON STATE UNIVERSITY**

This Agreement of Merger and Plan of Transition (referred to as Agreement and/or Plan) is made and entered into on the date of full execution, indicated by all required signatures herein, between the Board of Trustees of the Arkansas State University System (ASU System), a state higher education system created pursuant to the laws of Arkansas, and the Board of Trustees of Henderson State University (Henderson), a state higher education institution created pursuant to the laws of Arkansas.

**WHEREAS**, the Board of Trustees of the Arkansas State University System has been vitally concerned with increasing educational opportunities in Arkansas and with providing an appropriate response to the need for expanded higher education opportunities for all citizens of the state; and

**WHEREAS**, the Board of Trustees of Henderson State University has expressed a similar concern for providing more accessible quality higher education opportunities suitable to the economic and cultural development of its service area; and

**WHEREAS**, there are cogent reasons for taking measures to increase and improve the efficient delivery of higher education in Arkansas for the benefit of the State of Arkansas, including those increased efforts which will produce the educational, scientific, technical, and cultural contributions required to correspond with the development of the state; and

**WHEREAS**, this Plan has been agreed upon for the expansion of both entities to more effectively and efficiently serve the increasing needs of the region and of the State of Arkansas as a whole, with additional educational opportunities for citizens, directly benefiting civic, business, and economic development interests of the region; and

**WHEREAS**, this Plan will enhance educational opportunities for the citizens in the specified region by providing the benefits of the Arkansas State University System while retaining the community commitment of Henderson State University as well as the loyalty, support, and contribution so demonstratively evidenced by alumni and supporters of Henderson State University; and

**WHEREAS**, this Plan will underscore and enhance the work, contributions, and aspirations of all who, with justified pride, are responsible for the fine institution known as Henderson State University and will achieve economy for the region and for the State of Arkansas as it meets increasing enrollments and educational demands without the initial outlay required to start a new institution by incorporating an established institution into the Arkansas State University System of higher education; and

**WHEREAS**, it has been determined that it is in the best interests of the parties, of the citizens served by Henderson State University, and of the State of Arkansas that the Board of Trustees of Henderson State University transfer to the Board of Trustees of the Arkansas State University System the assets and liabilities herein described, so that Henderson State University will become part of the Arkansas State University System, to be managed and controlled by the Board of Trustees of the Arkansas State University System for the benefit of citizens of the State of Arkansas; and

**WHEREAS**, the Arkansas State University System and Henderson State University have been collaborating on certain financial, budgetary and legal matters pursuant to a Memorandum of Understanding (“MOU”) executed by both parties on July 29, 2019; and

**WHEREAS**, since the time of the execution of the MOU both the Arkansas State University System and Henderson State University have realized that membership in the Arkansas State University System would be of significant benefit to Henderson State University; and

**WHEREAS**, the Board of Trustees of the Arkansas State University System is willing to accept the transfer of said assets, liabilities, and responsibilities, and the Board of Trustees of

Henderson State University is willing to transfer them upon the terms and conditions of this Agreement; and

**WHEREAS**, A.C.A. §6-60-102 authorizes and encourages the voluntary consolidation and merger of public higher education institutions, including existing systems of public higher education institutions that add four-year institutions to the system;

**THEREFORE**, the respective Boards of these entities hereby agree as follows:

### **I. Merger and System Governance**

Henderson State University will become a member campus of the Arkansas State University System and, as a member of the System, will not be a branch campus or satellite campus of any institution in the ASU System at any time, unless required by a state or federal law or by an accrediting body. The ASU System agrees to maintain and oversee operations of Henderson State University as an institution of higher learning in the state of Arkansas and in the ASU System. This Agreement is entered into so that both parties can provide for sound growth of and sustain Henderson as a first-class university according to a plan of transition calling for specific action by the ASU System and Henderson. This Agreement is entered into so that Henderson will be fully merged into the Arkansas State University System, which will be the surviving legal institution and which will continue to be governed by the laws of the State of Arkansas with the ASU System receiving and assuming, upon the date of transfer, the assets and liabilities of Henderson to the extent provided herein.

The ASU System recognizes the importance and significance of adding a university such as Henderson to the System. It is also recognized that the ASU System Board of Trustees should be of an appropriate size and composition to ensure suitable representation of the member campuses. Upon Henderson becoming a member of the ASU System, the ASU System Board of Trustees agrees to seek to expand the size of the Board of Trustees from five members to seven members. Recognizing that such a change will require action by the

Arkansas General Assembly, ASU System and Henderson officials agree to work with the General Assembly and the Governor of the state of Arkansas (Governor) to support these necessary changes in as prompt a manner as is possible. The two additional members of the enlarged ASU System Board of Trustees will be appointed by the Governor, and the ASU System President agrees to encourage the Governor to fill these two appointments with individuals who have significant familiarity with the Henderson campus, including those who attended Henderson. ASU System and Henderson officials also agree to work with policymakers to develop long-term criteria for use by the Governor in making all Board of Trustee appointments.

## **II. Institutional Programming and Traditions**

Henderson, as a campus in the Arkansas State University System, utilizing the facilities, faculty, staff, and other Henderson resources, will continue to offer a full array of programming consistent with any other comprehensive public university. These offerings will include, but are not limited to, academic degree programming as designed and directed by the faculty and academic administration, academic research initiatives, public service activities, student activities and services, and intercollegiate athletics.

The ASU System also recognizes that Henderson is the second oldest university in Arkansas under state control. This long history has resulted in multiple important traditions which should be preserved. These traditions include, but are not limited to, the “Reddie” mascot, “The School With A Heart” motto, institutional colors and logos, the institutional alma mater and spirit fight song, and the “Pine Tree Speech.” The ASU System realizes both the importance of the institution’s rich history and the significant interest in allowing the university to establish and continue its own customs and rituals.

## **III. Institution Name**

The Henderson Board of Trustees voted on October 24, 2019, to retain the name of Henderson State University. Where appropriate, the name will be followed by language indicating the University is a member of the ASU System. The ASU System recognizes the

importance to the Henderson State community that the name Henderson State University be retained. The ASU System shall at all times use reasonable efforts to maintain the name Henderson State University. The name Henderson State University shall not be changed by the ASU System unless it is required to be changed by law or unless the Henderson State University Board of Visitors and the ASU System Board of Trustees jointly agree to a change.

#### **IV. Board of Visitors**

A Board of Visitors for Henderson will be constituted. It is the expectation of the ASU System and Henderson that the Board of Visitors will be appointed by the Governor pursuant to legislative enactment. Both the ASU System and Henderson anticipate that legislation detailing this process, and establishing this Board of Visitors, will be presented to the General Assembly. Should efforts to establish a gubernatorially-appointed Board of Visitors not be successful, the ASU System and Henderson agree to develop an alternative process for establishing a Board of Visitors. The general purpose of the Board of Visitors will be to perform a liaison and advisory function between Henderson and residents of the state of Arkansas, to aid in securing financial support, to advise upon the educational and service needs of the university, to assist the ASU System as it endeavors to aid in the orderly transition of Henderson as it becomes an ASU System campus, and to furnish counsel and guidance for the resulting institution. The ASU System agrees that the Chairperson of the Henderson Board of Visitors or his/her designee will be invited to attend all meetings of the ASU System Board of Trustees to support effective representation of the interests of Henderson and so that the Henderson Board of Visitors will have an enhanced understanding of the policies, procedures, and operation of the ASU System Board of Trustees. All communication, including advice and recommendations, from the Henderson Board of Visitors will be transmitted through the Chancellor of Henderson to the President of the Arkansas State University System, who may then provide that communication to the Arkansas State University System Board of Trustees. The Chancellor of Henderson will be an executive employee of the Arkansas State University System and will report to the President of the ASU System.

The parties recognize that Henderson cannot be an autonomous institution and yet be a part of the ASU System. The legal relationship and the desirable educational direction required by this Agreement and the integration of the resulting institution into the ASU System are understood to include the governance of Henderson by the ASU System Board of Trustees and the President of the Arkansas State University System.

#### **V. Mission, Executive Role, Accreditation, and Intellectual Property**

The ASU System accepts and supports the comprehensive mission and purposes of Henderson State University. The ASU System accepts and supports the current mission, goals, strategic and operational plans, and productivity plan of Henderson State University as well as the state-assigned role and scope of Henderson State University and commits to continuation of the same.

Henderson will be led by a Chancellor who will be the chief executive officer. On the date that Henderson becomes a member of the ASU System, the President (acting, interim or permanent) of Henderson State University will become the Chancellor of Henderson. The Chancellor of Henderson will be responsible to the President of the ASU System and, through the President, to the ASU System Board of Trustees. The Chancellor's powers and responsibilities, prescribed by the ASU System President and the ASU System Board of Trustees, will be those usually associated with the chief executive officer of a four-year university. The Henderson Board of Visitors, the President of the ASU System, and the ASU Board of Trustees will establish the expectation that and assure that, in any future vacancies of the Chancellor position, all finalists for the position understand, appreciate, and commit to support and continue the unique mission and philosophy of Henderson. Effective immediately upon execution of this Agreement, the ASU System President shall chair the search committee for any search for the position of President of Henderson. The ASU System President shall appoint members to the search committee with representation from the ASU System and the Henderson campus consistent with the spirit of shared governance principles. The search committee will interview and recommend candidates to the ASU System President,

who will confer with the Henderson State University Board of Trustees, or Board of Visitors, prior to finalizing the hiring of a new President. This provision shall remain in effect after the date of transfer and shall apply to all vacancies of the Chancellor position.

Henderson will strive to deliver a broad program of undergraduate and graduate educational services. Henderson will sustain and/or achieve any required full accreditation for such programs. The ultimate determination by Henderson of the exact programs to be established or maintained, including curricula, scope of educational services, and community service are matters of informed educational judgment in relation to identified needs of the state. The ASU System will, in good faith and taking into full consideration any recommendation of the Henderson Chancellor and Board of Visitors, exercise judgment with a view toward the best welfare of Henderson regarding the educational offerings.

Henderson will be responsible for sustaining regional accreditation of Henderson by the Higher Learning Commission of the North Central Association and for program specific accreditations as well. Any and all costs associated with securing accreditation approval for this merger shall be borne solely by Henderson.

Income generated from intellectual property created by employees at Henderson, as well as any created by employees of Henderson State University which is carried forward with the merger, will be distributed to the Originator and to Henderson with any/all realized institutional revenues remaining on the Henderson campus.

#### **VI. Policies, Operating Procedures, Internal Governance, Budget, and Personnel**

As specified in this Agreement and its attachments, the ASU Board of Trustees will initially accept Henderson's current operating procedures and procedures for internal governance. Established traditions, which may differ from those specified for other ASU System campuses, will also be accepted. Retirement plans/providers for current employees will be continued for existing Henderson employees; however, any employees hired after the official merger date will be enrolled in ASU System retirement plans. Both the ASU System and Henderson will work in good faith to align policies and procedures of Henderson with the

ASU System in a timely manner after completion of the merger.

The Henderson Board of Visitors will have advisory responsibility to the Henderson Chancellor for the college's operating budget, including the establishment of tuition and fees and organizational model changes. The Henderson Chancellor will present recommendations to the ASU System President, who will be responsible for making recommendations to the ASU System Board of Trustees for final consideration and approval. In the same manner as other ASU chancellors, under delegated authority by the ASU System President, the Chancellor of Henderson will retain all rights and responsibilities pertaining to the employment of qualified faculty and staff to operate Henderson and to deliver quality educational programming and workforce training in support of the unique mission, purposes, and goals of the institution. The ASU System recognizes that Henderson will continue in its role and scope as officially designated by the Arkansas Department of Higher Education Coordinating Board. Henderson State University represents and affirms that its current and future faculty will possess the appropriate credentials for that institution.

Both parties recognize that formalization of this agreement will not occur until final approval is granted by the Higher Learning Commission (HLC). Because this approval process typically takes multiple months, and because of Henderson's need for immediate support services from the ASU System, both parties agree that it is necessary to have an interim management arrangement. Henderson will compensate the ASU System for this management agreement under the same financial formula used to determine payment under the MOU signed on July 29, 2019. Immediately upon execution of this agreement, the ASU System President shall be responsible for overseeing operations of Henderson in concert with the Henderson CEO. It is recognized that the Henderson Board of Trustees must remain as the official governing body of the university until final approval is received from HLC, but immediately upon execution of this agreement the Henderson CEO will report through the ASU System President to the Henderson Board of Trustees during this interim management process.



## **VII. Transferability of Credit within the ASU System**

Once Henderson becomes a member of the ASU System, credit will be freely transferrable between Henderson and other ASU System campuses. The specific application of credits to the various degree programs of ASU System campuses will be determined by the respective colleges of the receiving campuses, which will make diligent efforts to assure that Henderson students will be advised of the extent to which credits will apply to various degree programs.

The ASU System will consider Henderson students to be students of the ASU System; and, as such, they will enroll with the same full faith, credit, and opportunity for success that they would have at any other ASU System campus, including access to scholarships, if they meet the academic criteria.

## **VIII. Equality of Treatment within the ASU System**

The ASU System declares its intent that the System policies and procedures applied in operating the Henderson campus will be the same as those applied to other campuses and divisions of the ASU System with the purpose that there will be no unwarranted distinctions which might operate to discriminate against Henderson. This equality of treatment among campuses and divisions of the ASU System will, as a principle, be observed by the ASU System Board of Trustees; and any distinctions in policy and procedure germane to Henderson now or in the future will be made only when there is a considered, rational foundation supporting the difference in classification or related changes in this Agreement.

## **IX. Transfer of Assets and Liabilities**

Henderson will transfer and assign to the ASU System, and the ASU System will accept and assume, all assets and liabilities of Henderson on the date of transfer. Henderson represents and warrants to the ASU System that as of the date of execution of this Agreement, there are no undisclosed liabilities which are material and the existence of which would materially affect the performance of this Agreement by the ASU System and

Henderson. The ASU System assumes liabilities of Henderson on outstanding bonded indebtedness, not as a general obligation of the ASU System, but as solely secured by a pledge of the revenues of Henderson set forth in the respective resolutions, agreements, and other documents and instruments in connection with such bond issues. In the event that Henderson becomes aware of a previously undisclosed liability which is material, or a new liability which is material, Henderson shall promptly notify the President of the ASU System in writing. A new liability, or a previously undisclosed material liability, shall be a sufficient justification for the ASU System not to proceed with this merger.

Henderson accepts that the university will be assessed an annual ASU System membership fee. Henderson will be assessed based on a formula utilized by the ASU System to assess all member campuses. The ASU System agrees that all current and future property and funds conveyed or transferred to it by Henderson under the terms of this Agreement or the proceeds thereof, will be used after the date of transfer by the ASU System only for the programs, purposes, and obligations of Henderson and its current and future students, and not for any other campus of the ASU System or System operations, to assure the continued high quality and excellence of Henderson.

#### **X. Henderson State University Foundation**

The ASU System is aware that Henderson currently has a charitable foundation used to support its mission. The ASU System Board of Trustees has recognized the autonomy of separate 501 (c)(3) organizations devoted to specific constituent groups of the ASU System. The ASU System acknowledges the Henderson Foundation, its status as an independent entity, its policies and procedures, and continuation of its right to continue on behalf of its chartered purposes and to manage the assets and expenditures under the direction of the Henderson State University Foundation Board of Directors. The sections of this Agreement that discuss transfer of Henderson State University assets to the ASU System shall have no application to the Henderson State University Foundation.

## **XI. Service of Process**

The ASU System, as the institution of which Henderson will be a constituent institution, agrees that it may be served with process in the State of Arkansas in any proceeding for enforcement of any obligation of Henderson State University assumed pursuant to this Agreement, as well as for enforcement of any obligation arising from this Agreement of Merger and Plan of Transition. The Board of Trustees of the Arkansas State University System appoints the President of the Arkansas State University System as agent to accept service of process at the following address: President, Arkansas State University System, 501 Woodlane, Suite 600, Little Rock, AR 72201. The President of the Arkansas State University System will inform the Chancellor of Henderson of any service of process and the nature of the proceedings. Nothing within this Agreement will be deemed to waive the sovereign immunity of Henderson State University, the Arkansas State University System, or the State of Arkansas.

## **XII. Transfer of Assets Documents**

To facilitate the transfer of assets from Henderson State University to the Arkansas State University System, Henderson will furnish the following:

- A) Acceptable abstracts of title or policies of title insurance to all tracts of real property owned by or under Henderson control, showing marketable title, and the originals or true copies of all instruments under which Henderson holds endowment, trust, pledge, bequest, or gift funds;
- B) Documents showing unpaid accounts to contractors, laborers, and materialmen for which mechanics, laborers, or materialmen liens may be established against Henderson and/or its property and evidence showing bond or other protection thereon;
- C) Minute books of the Board of Trustees of Henderson State University for review and determination that all proceedings have been duly, legally, and properly held or taken;

- D) Documentation of all patents, trademarks, trade names, copyrights, policies of insurance, contracts, and commitments of Henderson State University which have not been completely performed;
- E) A Phase I environmental assessment acceptable to ASU System for all real property to be transferred to ASU System pursuant to this Agreement;
- F) Any other data or information needed by ASU System in order to plan an orderly transition and merger including, but not limited to, financial data, enrollment data, and budgets; and
- G) Copies of all audits for the past three (3) years performed by the State Office of Legislative Audit or by any outside auditor together with balance sheets, income statements, and other financial books and records of Henderson including those showing all securities held by Henderson.

### **XIII. Certification of Funds and Assets**

On the date of transfer, Henderson will certify that all funds and assets shown in the certificate of State Office of Legislative Audit described above are intact and on hand less and except expenditures for normal operations since the date of examination and said expenditures will be accounted for in full to the ASU System.

### **XIV. Transfer of Title**

Henderson will transfer title to all real, personal, tangible, and intangible assets, held in its name, whether of record or not, on the date of transfer to the ASU System, which will receive and use such properties and their proceeds for the sole use and benefit of Henderson, including all books, papers, records, and files under custody or control for the use of Henderson together with all funds, bank accounts, accounts receivable, bequests, trusts, endowments, investments, securities, grants, pledges, contracts, and other entitlements of Henderson. Said transfers are to be executed by appropriate instruments of transfer made by Henderson and accepted by the ASU System, provided that any assets originally received

by bequest, pledge, devise, gift or trust, containing conditions and restrictions, if assignable to Henderson without incurring liability thereby, will, if accepted by the ASU System, be accepted and held upon the same conditions and restrictions as imposed by the donor or donors. Henderson will furnish a complete inventory of all the assets prior to the date of transfer.

#### **XV. Relinquishment of Control, Responsibility, and Supervision**

From and after the date of transfer, the Henderson State University Board of Trustees will relinquish all control, responsibility and supervision vested by law, or exercised in fact, over and to the institution and assets now known as Henderson State University which will thereafter be both owned and operated by the ASU System as provided for in this Agreement. ASU System personnel understand that Henderson institutional funds should be invested and deposited locally when local opportunities are reflective of/equivalent to best investment options.

#### **XVI. Conditions**

The obligation of the ASU System and Henderson to effect the agreed merger will be subject to the following conditions:

- 1) The representations herein contained will be substantially accurate in all material respects, and each institution will have performed or complied with them prior to the applicable date.
- 2) No material adverse change in financial conditions will have occurred, nor any material loss or damage to property or assets, whether or not covered by insurance, which change, loss or damage would materially affect or impair the ability of the other institution on the date of transfer.
- 3) ASU System maintains the right to retain a third party to review any and all aspects of Henderson's operations and financial standing. The ASU System may terminate this Agreement at any time prior to final approval of the Higher Learning Commission if the

ASU System's or third party's review makes a finding related to Henderson's operations or financial condition that, in the view of the ASU System, represents a significant risk to the ASU System. Termination under this section shall be at the sole discretion of the ASU System.

- 4) The execution of the terms of this Agreement will not conflict with, or result in a breach of, or constitute a default under, any agreement or instrument to which the other institution is a party except to the extent that the same will have been cured by written waiver, written consent of the other institution, or otherwise.

### **XVII. Amendments**

The President of the ASU System and the Chair of the Henderson State University Board of Trustees both understand and agree that further refinement of this Agreement may be desirable as policies and procedures affected by the merger are explored over the next few months. Therefore, both parties pledge themselves to finalize any additional clarifications or modifications, including appropriate Board approvals, prior to the date of transfer. Upon mutual acceptance of any subsequent amendments by the President of the ASU System and the Chair of the Henderson State University Board of Trustees, a revised document shall be executed in writing and signed by both parties, thereto reflecting the final agreement.

Notwithstanding any terms of this Agreement, or subsequent modifications executed over the next few months, the Agreement of Merger and Plan of Transition may be terminated and abandoned by the parties hereto at any time prior to the date of transfer by their mutual consent and thereafter neither party will have any further rights, obligations, or liabilities under this Agreement.

### **XVIII. Obligation of Execution**

Upon mutual agreement, the Chair of the Henderson State University Board of Trustees and the President of the ASU System each obligate themselves, prior to the effective date of the merger, to execute all necessary papers, documents, legal conveyances, and

other instruments required to effectuate the purposes and intents of this Agreement. This merger is contingent upon approval by the Board of Trustees of the Higher Learning Commission, a commission of the North Central Association.

#### **XIX. Disclosure**

This Agreement, together with agreed upon modifications, once accepted by both parties, and ratified by both Boards, will embody the entire agreement between the ASU System and Henderson with respect to this merger, and there have been and there are currently no agreements, representations, or warranties relating thereto between the parties other than those set forth herein or herein provided.

#### **XX. Communication**

All notices, requests, demands, and other communication regarding this Agreement will be made in writing and will be directed to President, Arkansas State University System, 501 Woodlane, Suite 600, Little Rock, AR 72201 and, if to Henderson, to Board of Trustees Chair, Henderson State University, 1100 Henderson Street, Arkadelphia, AR 71999. With respect to this Agreement, the ASU System and Henderson agree that each member of the ASU Board of Trustees and the Henderson State University Board of Trustees is acting in his or her official and representative capacity and not as an individual.

#### **XXI. Collaborative Effort**

The parties are deeply sensitive to the reality that the success of the merger depends upon the good faith and integrity of the respective Boards and their executive officers, and to the end that opportunities for quality higher education in Arkansas be made available to the citizens of the State of Arkansas, the parties hereto will work closely together for the accomplishment of the aims of this Agreement.

IN WITNESS WHEREOF, the parties hereto, pursuant to authority given to their respective Boards, have caused this Agreement of Merger and Plan of Transition to be entered into and signed by their respective officers in their corporate names, and to be attested by the respective Secretaries, all in accordance with their respective resolutions, of which copies are attached, which authorize this action and designate the officers so executing to act in that capacity, all as of the day and date set forth.

**HENDERSON STATE UNIVERSITY**

ATTEST:

\_\_\_\_\_  
Johnny Hudson, Chair  
Board of Trustees  
Henderson State University

\_\_\_\_\_  
Eddie Arnold, Secretary  
Board of Trustees  
Henderson State University

**ARKANSAS STATE UNIVERSITY SYSTEM**

ATTEST:

\_\_\_\_\_  
Niel Crowson, Chair  
Board of Trustees  
ASU System

\_\_\_\_\_  
Price Gardner, Secretary  
Board of Trustees  
ASU System