

**MEMORANDUM OF UNDERSTANDING**  
**(As Approved by Board of Governors on January 15, 2005)**

This Memorandum of Understanding is entered as of the \_\_\_\_ day of January, 2005, by and between THE PENNSYLVANIA STATE UNIVERSITY ("Penn State") and THE DICKINSON SCHOOL OF LAW OF THE PENNSYLVANIA STATE UNIVERSITY ASSOCIATION ("Association").

**Recitals**

**WHEREAS**, Penn State is an institution of higher education duly organized and existing in good standing under the laws of the Commonwealth of Pennsylvania; and

**WHEREAS**, The Dickinson School of Law ("Dickinson" or "Law School") became an academic unit of Penn State pursuant to the terms of an Affiliation Agreement and an Agreement and Plan of Merger dated as January 17, 1997 (the "Merger Agreement"); and

**WHEREAS**, since the effective date of the Merger on July 1, 2000, Dickinson has been an integral part of Penn State; and

**WHEREAS**, Penn State takes great pride in its merger with Dickinson, acknowledging that few American law schools enjoy such a long and distinguished tradition of producing graduates who have gone on to become leaders of the Bar, the judiciary, and government and that few American universities possess the curricular resources and research capabilities of Penn State; and

**WHEREAS**, a continuation and strengthening of the relationship and role of Dickinson as an integral part of Penn State is in the best interests of Dickinson and its current and future faculty, staff and students; and

**WHEREAS**, after review of various possible alternatives for the future nature and operation of Dickinson, both Penn State and the Association believe that the best interests of Dickinson lie in the maintenance and strengthening of Dickinson as a single academic unit of Penn State with two campuses, one to be located at Dickinson's historic location in Carlisle, Pennsylvania, and one to be located at University Park; and

**WHEREAS**, Penn State and the Association believe that an immediate improvement of physical facilities for the Carlisle campus is a priority; and

**WHEREAS**, funding for such an immediate capital improvement of the Carlisle campus, totaling as much as \$40 million, may be available through a combination of a \$10 million capital investment by Penn State, a contribution of funds from the Commonwealth of Pennsylvania through an appropriate redevelopment body of as much as \$25 million and additional funds raised through private fundraising.

**NOW, THEREFORE**, subject to preparation and approval of a final agreement reflecting the terms hereinafter set forth, Penn State and the Association agree as follows:

1. **Name and Exclusivity.**

(a) Penn State shall continuously engage in fully accredited J.D. based legal education.

In addition, Penn State shall engage in J.D. and LL.M. based legal education, continuing legal education and J.D. or LL.M. based joint degree programs only by and through Dickinson and no other entity, affiliate, college or unit of Penn State; provided however, that the foregoing shall not be construed to preclude Penn State from continuing courses or programs having legal components existing as of January 17, 1997.

(b) The name of the unit of Penn State which offers Penn State's J.D. or LL.M programs and joint degree programs with J.D. or LL.M components continuously shall be "The Dickinson School of Law of The Pennsylvania State University." Academic and honorary degrees conferred by Penn State shall be conferred continuously under such name, and diplomas evidencing such degrees shall so state.

2. **Rural and Public Interest Law.**

Penn State agrees to permit Dickinson to continue its practice of encouraging its graduates to practice in (i) Pennsylvania's non-urban areas, (ii) public interest law, and (iii) in government, by permitting Dickinson to reserve up to 10 seats in each entry level class for persons who have evidenced an intent to practice in such areas.

3. **Operational Authority.**

Penn State shall at all times possess complete and unfettered operational authority and discretion over Dickinson except as provided herein. Penn State expressly agrees to operate until at least June 30, 2015, a fully accredited, full time J.D. program including first, second and third year classes at Dickinson's Carlisle campus. It is the present intention of Penn State to operate the Dickinson campus at Carlisle as a fully accredited full time J.D. program including first, second and third year classes beyond June 30, 2015.

In the event that after June 30, 2015 Penn State determines to (a) terminate all components of an accredited J.D. program at the Carlisle campus, or (b) close the Carlisle campus of Dickinson, Penn State shall provide a written notice of its determination to each member of the Board of Directors of the Dickinson Law Association (created pursuant to paragraph 11 of this Agreement) one (1) full calendar year prior to the implementation of any such determination.

In the event that Penn State decides at some future time after June 30, 2015 to sell or convey the facilities comprising the Carlisle campus of Dickinson, the proceeds from such sale or conveyance shall be placed in the permanent endowment of Dickinson.

4. **Endowment.**

Penn State shall, at all times, manage Dickinson's endowment for the sole and exclusive benefit of Dickinson and its educational mission and on the same basis and with at least the same degree of care, skill, diligence and prudence as it manages Penn State's endowment. Penn State shall use such endowment and all of Dickinson's charitable assets only in accordance with any applicable donative instruments and shall not divert such endowment or such assets for any other purpose.

5. **Carlisle Campus Capital Campaign.**

The parties agree that capital improvements and enhancements of Dickinson's historic Carlisle campus are a matter of urgency and that undue delay in the commencement of such improvements and enhancements is likely to harm the interests and operations of Dickinson. Accordingly, the parties agree that Penn State will use its best efforts to undertake immediately (a) a capital campaign designed to raise funds for capital improvements and enhancements of the Carlisle campus and (b) all planning necessary to commence and complete construction of improvements and enhancements of the Carlisle campus at the earliest time reasonably possible. The Board of Governors will use its reasonable best efforts in good faith to assist and cooperate with Penn State in the capital campaign to benefit Dickinson.

6. **Penn State Investment.**

Penn State agrees to contribute and to make available the sum of Ten Million Dollars (\$10,000,000) for immediate investment in capital improvements and enhancements of the Carlisle campus and to take all steps reasonably necessary to obtain on terms and conditions acceptable to Penn State matching funds in like amount from the Commonwealth. Penn State further agrees to take all steps reasonably necessary to obtain from the Commonwealth, on terms and conditions acceptable to Penn State, matching funds in an amount equal to funds raised from non-Penn State sources and available for capital investment in the Carlisle campus of Dickinson as of July 1, 2005. For purposes of this provision, the phrase "funds raised from non-Penn State sources" shall include pledges scheduled for payment within three years of July 1, 2005. Penn State agrees that it will act in a reasonable manner in considering terms for the matching funds referenced in this paragraph. If funds available for capital investment in the Carlisle campus of Dickinson from non-Penn State sources, including committed matching funds from the Commonwealth,

meet or exceed Forty Million Dollars (\$40,000,000) as of July 1, 2005, Penn State may, at its election, direct some or all of its Ten Million Dollar contribution as specified in this paragraph to non-capital programmatic needs of the Carlisle campus of Dickinson, rather than to capital improvements and enhancements of the Carlisle campus.

7. **Matching Funds.**

Penn State agrees to submit to the Cumberland County Redevelopment Authority, or to some other appropriate public disbursing authority, by the earliest date reasonably practicable an application for Commonwealth-provided matching funds for capital improvements and enhancements to the Law School's Carlisle campus. The parties agree that, if the Cumberland County Redevelopment Authority, or some different public disbursing authority, attaches any term or condition to the release of Commonwealth-provided matching funds that is materially inconsistent with any of the terms of this Agreement, as may be reasonably determined by Penn State in consultation with the Chair of the Board of Governors, the parties will use their best efforts to cause the Redevelopment Authority to eliminate the term or condition, or to modify the term or condition in a manner consistent with the terms of this Agreement. If the Redevelopment Authority or different public disbursing authority refuses or fails within ten business days of a request by Penn State to eliminate or modify the term or condition in a manner consistent with the terms of this Agreement, as may be reasonably determined by Penn State in consultation with the Chair of the Board of Governors, the parties will use their best efforts to otherwise obtain Commonwealth-provided matching funds on terms that are not materially inconsistent with this Agreement, including, but not limited to, seeking disbursement of the funds through an alternative public disbursing authority. Failing that, in the event that Penn State has not been able to obtain a reasonable assurance that it will obtain Commonwealth-provided matching funds on terms that are not materially inconsistent with this Agreement, in accordance with the provisions of this Agreement, the parties agree that as of July 1, 2005, Penn State shall have complete and unfettered operational authority and discretion with respect to the pursuit and acceptance of Commonwealth-provided matching funds for capital improvements and enhancements to the Law School's Carlisle campus.

Penn State agrees to confer at the earliest time practicable with Governor Rendell, or his representatives, to discuss any requirements or conditions the Governor may wish to discuss with respect to Commonwealth-provided matching funds for capital improvements and enhancements of the Law School's Carlisle campus. If Penn State and the Governor are not able to agree on terms sufficient for the Governor to appropriate Commonwealth-provided matching funds, up to a possible maximum of Twenty Five Million

Dollars, Penn State shall inform the Board of Governors or, if appropriate, the Board of Directors of the Dickinson Law Association, of its inability to agree with the Governor. Penn State further agrees in that event that the provisions of this Agreement shall be suspended in favor of the pre-existing January 17, 1997 Affiliation Agreement and Agreement and Plan of Merger unless expeditious good faith discussions between the parties hereto conclude in an alternative plan for financing capital enhancements and improvements of the Carlisle campus at the full level contemplated by this Agreement.

8. **Carlisle Campus Construction.**

Penn State agrees to utilize funds available for capital investment as of July 1, 2005 to commence design and construction of capital improvements and enhancements of the Carlisle campus at the earliest time reasonably practicable.

9. **University Park Campus.**

The parties recognize that one of the purposes and principal advantages of the merger of Dickinson with Penn State is the integration of the Law School as completely and effectively as practicable with the academic programs and resources of the University. To that end, the University agrees that it shall establish a second campus of Dickinson at Penn State's University Park campus at such time as the University may determine is appropriate.

10. **Telecommunications.**

Penn State agrees to specify and cause to be implemented as an essential design aspect of both the Carlisle and University Park campuses of Dickinson a reciprocal audiovisual telecommunications network that will enable real-time digital-quality audiovisual telecommunications between as many classrooms, conference rooms, student areas and administrative areas of the two campuses as is determined to be reasonably feasible and educationally appropriate in the judgment of Penn State. The primary, but not exclusive, objectives of this network will be: (i) to enable the classroom curriculum of each campus, to the full extent desirable, to be delivered simultaneously to the other campus, so that students at both campuses will be able to enroll in classes taught at either campus; (ii) to enable classes, lectures and other programs conducted at both campuses to be digitally documented and archived, to the full extent desirable, for later access by students and others and for possible licensing to students and others wherever located; (iii) to enable students and faculty at both campuses to participate via the new Dickinson real-time interactive audiovisual telecommunications network in programs, conferences, classes and/or lectures conducted in any compatibly equipped facility worldwide; and (iv) to otherwise promote and enable real-time interaction and collaboration between the two campuses.

11. **Dissolution of The Dickinson School of Law of The Pennsylvania State University Association.**

The parties agree that the structure and provisions of this Agreement eliminate the need for a non-membership Pennsylvania non-profit corporation named The Dickinson School of Law of The Pennsylvania State University Association and its self-perpetuating Board of Governors. The parties agree to take all steps necessary to cause The Dickinson School of Law of The Pennsylvania State University Association to be dissolved on or before August 1, 2005.

Effective as of the date of dissolution of The Dickinson School of Law of The Pennsylvania State University Association, seven current members of the Board of Governors shall be appointed as the Board of Directors of a newly created non-stock, non-membership, non-profit corporation, the Dickinson Law Association. Three current members of the Board of Governors shall be appointed as members of the Board of Directors by the President of the University, three current members of the Board of Governors shall be appointed by the Chair of the Board of Governors, and the Chair of the Board of Governors as of the date of the final Agreement shall constitute the seventh member. Successor members of the Board of Directors shall be graduates of Dickinson and shall be appointed or elected as follows: (a) as to the three members appointed by the President of the University, successors shall be appointed by the President of the University; (b) as to the original Chair and three directors named by such Chair, any remaining members of this group shall elect any successors to members of this group.

The Board of Directors shall possess authority to enforce by specific performance, as referenced herein, Penn State's covenants under this Agreement. Penn State shall make available, upon demand by the Board of Directors, up to Two Hundred Fifty Thousand Dollars (\$250,000) Dickinson's unrestricted endowment to permit the Dickinson Law Association to specifically enforce Penn State's obligations under this Agreement, and in this regard, the parties acknowledge and agree that remedies at law for breach or threatened breach of any provision of this Agreement would be inadequate. In recognition of this fact, the parties agree that the covenants and provisions of this Agreement shall be enforceable through specific performance, temporary or permanent injunctive relief and other equitable relief. Both parties agree to waive any requirement for the securing or posting of any bond or proving potential damages in connection with the obtaining of any such equitable relief and that this provision is without prejudice to any other rights that the parties hereto may have for any failure to perform the covenants set forth in this Agreement. Any and all disputes concerning performance of the terms of this Agreement shall be brought in the Court of Common Pleas of Dauphin County.

The parties agree that it is both desirable and essential to involve alumni of Dickinson in meaningful advisory capacities with respect to the future affairs of the Law School. Effective as of the date of dissolution of The Dickinson School of Law of The Pennsylvania State University Association, Penn State agrees to create an advisory board for The Dickinson School of Law. To this end, Penn State shall create a Board of Counselors of The Dickinson School of Law. The purpose of the Board of Counselors shall be to (1) advise the officers of Penn State and the administrative officers of Dickinson concerning policies that should be adopted by the University and/or Dickinson to serve and benefit Dickinson; (2) act as an advocate for Dickinson and the University; (3) consistent with University policies and procedures, advise and assist the Dean, or his or her designee, in all matters related to the raising of funds for the improvement of the academic program, physical plant, equipment and services of Dickinson; (4) consistent with University policies and procedures, advise and assist the Dean, or his or her designee, in all matters related to the acquisition and solicitation of charitable gifts, equipment, supplies and property to be used by Dickinson in the service of its students and the community; and (5) consistent with University policies and procedures, advise and assist the Dean, or his or her designee, in such matters as are deemed desirable and appropriate to support and advance the educational mission of Dickinson. Penn State agrees that the seven members of the Board of Directors of the Dickinson Law Association, and their successors, will be appointed as members of the Board of Counselors of The Dickinson School of Law. Penn State further agrees to offer a two year appointment on the Board of Counselors to all current members of the Board of Governors as of July 2, 2005.

12. **Final Agreement.**

The parties agree that the final Agreement contemplated herein shall include all of the foregoing terms and shall not include any different or additional material terms. The final Agreement will be promptly distributed to the Board of Governors for their approval. As of the date of approval of the final Agreement by the Board of Governors, the final Agreement shall supplant, displace, and supersede the Affiliation Agreement and Agreement and Plan of Merger dated as of January 17, 1997 by and between The Dickinson School of Law and The Pennsylvania State University, and shall govern all issues and matters formerly within the scope of that January 17, 1997 Affiliation Agreement and Agreement and Plan of Merger and all issues and matters within the scope of the final Agreement.

13. **Entire Understanding.**

This Agreement represents the entire understanding of the parties hereto with reference to the transactions and matters contemplated herein and supersedes any and all other oral and written agreements heretofore made.

ATTEST

THE PENNSYLVANIA STATE UNIVERSITY

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BY: \_\_\_\_\_

ATTEST

THE DICKINSON SCHOOL OF LAW OF THE  
PENNSYLVANIA STATE UNIVERSITY ASSOCIATION

\_\_\_\_\_

BY: \_\_\_\_\_