



# INDIANA UNIVERSITY

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UNIVERSITY HUMAN RESOURCE SERVICES

## **IU Replacement Retirement Plan** **(A 401(a) Early Retirement Plan)**

(A retirement plan designed to "replace" 18/20 Plan Interim Benefit provisions for certain employees)

Amended and Restated Effective April 1, 2016

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## IU REPLACEMENT RETIREMENT PLAN

### HISTORY

WHEREAS, it was and is the intention of Indiana University ("University") to establish and to continue indefinitely a defined benefit pension plan for the sole and exclusive benefit of those individuals who qualify as participants under its terms;

WHEREAS, it is the intention of the University to operate the plan in accordance with all applicable law including, but not limited to, the provisions of the Internal Revenue Code of 1986, as amended ("Code") and as interpreted by regulations prescribed by the Secretary of the Treasury, as a qualified governmental plan pursuant to Code Sections 401(a) and 414(d).

WHEREAS, the University established the IU Replacement Retirement Plan ("Plan"), effective July 1, 2002 (reference resolution adopted by the Board of Trustees of Indiana University in September 2002);

WHEREAS, the University most recently amended and restated the Plan effective January 1, 2009; and

WHEREAS, the University desires to amend and restate the Plan;

NOW THEREFORE, the University hereby amends and restates the Plan, effective April 1, 2016, except as specifically noted otherwise, as follows:

### ARTICLE I.

#### DEFINITIONS

Each of the following terms shall have the meaning set forth, unless the context otherwise requires. Singular nouns include the plural. The masculine gender may include the feminine or neuter, where appropriate.

**Section 1.01. Accrued Benefit or Accrued Retirement Benefit.** Accrued Benefit or Accrued Retirement Benefit means, as of the date of determination, the Standard Retirement Benefit which would be paid at Normal Retirement Age as a Standard Retirement Benefit based on the Participant's Average Salary and his Benefit Factor determined as of his benefit determination date.

**Section 1.02. Affiliated Employer.** Affiliated Employer means the University and any corporation which is a member of a controlled group of corporations (as defined in Code Section 1563(a), as modified by Code Section 1563(f)(5), and determined without regard to Code Sections 1563(a)(4) and 1563(e)(3)(C)), which includes the University; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the University; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the University; and any other entity

required to be aggregated with the University pursuant to regulations under Code Section 414(o) or Code Section 415. Solely for purposes of Code Section 415, in applying Code Section 414(b) and (c) to determine an Affiliated Employer, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in Code Section 1563(a)(1) and the regulations under 414(c). Each such Affiliated Employer shall be included as an Affiliated Employer only for such period or periods during which such employer is under such common control, so affiliated, or so aggregated and only to the extent required by any applicable provision of the Code.

**Section 1.03. Anniversary Date.** Anniversary Date means each July 1 while the Plan is in effect.

**Section 1.04. Annuity Starting Date.** Annuity Starting Date means the first day on which all events have occurred which entitle the Participant to a benefit. The Annuity Starting Date is the first date for which an amount is paid, not the actual date of payment.

**Section 1.05. Average Salary.** Average Salary means the Participant's average base salary for the five (5) year period preceding the earlier of his date of retirement or his attainment of age sixty-five (65). Average Salary shall mean the greater of:

(a) the Participant's average base salary for the five (5) year period preceding his date of retirement; or

(b) the Participant's average base salary for the five (5) year period preceding his attainment of age sixty-five (65).

Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a Participant which exceeds two hundred thousand dollars (\$200,000) (as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B)) may not be taken into account in determining Average Salary, as well as any benefits due from the Plan. Annual compensation means compensation each consecutive twelve (12) month period over which Average Salary is determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining Average Salary, or any benefit, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

**Section 1.06. Benefit Factor.** Benefit Factor means the number utilized in conjunction with a Participant's Average Salary when calculating his Standard Retirement Benefit.

**Section 1.07. Board of Trustees.** Board of Trustees means the governing body of the University.

**Section 1.08. Code.** Code means the Internal Revenue Code of 1986, as amended.

**Section 1.09. Continuous Full-Time Service.** Continuous Full-Time Service means the continuous period of time commencing on an employee's Employment Commencement Date and ending on his Severance from Service Date. No period of service occurring prior to a Severance From Service Date will be aggregated with any period of service occurring after a Severance From Service Date.

In any case where binding Internal Revenue Service guidance dictates that the University be considered a member of a controlled group of corporations [as defined in Section 414(b) of the Code] or a member of a group of trades or businesses (whether or not incorporated) which are under common control [as defined in Section 414(c) of the Code], all members in the group shall be treated as a single Employer in crediting Continuous Full-Time Service for purposes of determining a Participant's nonforfeitable benefit and benefit eligibility under the Plan. In any case where binding Internal Revenue Service guidance dictates that the University be considered a member of an affiliated service group [as defined in Section 414(m) of the Code], the members of the affiliated service group shall also be treated as a single employer in crediting Continuous Full-Time Service for purposes of determining a Participant's nonforfeitable benefit and benefit eligibility under the Plan.

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

**Section 1.10. Effective Date.** Effective Date means July 1, 2002, the original effective date of this Plan.

**Section 1.11. Employee.** Employee means an employee of the University. "Employee" shall not include leased employees, independent contractors or any individual reclassified as an Employee by the Internal Revenue Service.

**Section 1.12. Employment Anniversary.** Employment Anniversary means each anniversary of an employee's Employment Commencement Date.

**Section 1.13. Employment Commencement Date.** Employment Commencement Date means the date on which an employee was first officially recorded as an employee for the University.

**Section 1.14. Late Retirement Date.** Late Retirement Date means, in the case of a Participant whose employment continues after his Normal Retirement Date, the first day of the month coincident with or next following the date on which his employment terminates for any reason other than death.

**Section 1.15. Normal Retirement Age.** Normal Retirement Age means age sixty-four (64), provided the Participant has:

(a) completed at least twenty (20) years of Continuous Full-Time Service with the University, and

(b) completed at least eighteen (18) years of participation in the IU Retirement Plan 15% Level.

(c) Notwithstanding the above, faculty Participants meeting the requirements of (a) and (b) with a 10-pay academic year appointment may initiate Plan benefits just prior to age sixty-four (64) on:

(i) January 1, if their sixty-fourth (64<sup>th</sup>) birthday falls during the following Spring semester, or

(i) July 1, if their sixty-fourth (64<sup>th</sup>) birthday falls during the following Summer or Fall semesters.

**Section 1.16. Normal Retirement Date.** Normal Retirement Date means the first day of the month coincident with or next following the date on which a Participant has reached Normal Retirement Age and retires.

**Section 1.17. Optional Retirement Benefit.** Optional Retirement Benefit means a nondecreasing monthly benefit, commencing on the Participant's Normal Retirement Date and ceasing on the earliest to occur of either a Participant's death or the completion of sixty (60) monthly payments.

**Section 1.18. Participant.** Participant means an Employee (or former Employee) who has fulfilled the requirements to participate in the Plan as provided in Article II and who is entitled to receive a benefit or may become entitled to receive a benefit under the Plan. A Participant shall cease to be such upon the distribution or forfeiture of his entire benefit under the Plan.

**Section 1.19. Plan.** Plan means the plan embodied herein (as it may be amended from time to time) known as the IU Replacement Retirement Plan,

**Section 1.20. Plan Administrator.** Plan Administrator means the University or such person(s) designated by the University who is (are) responsible for administration of the Plan pursuant to the provisions of Article VII.

**Section 1.21. Plan Year.** Plan Year means a period of twelve (12) consecutive months beginning July 1 of each year and ending on June 30.

**Section 1.22. Severance From Service Date.** Severance From Service Date means the earlier of:

(a) the date on which an employee's employment is terminated for any reason, whether voluntary or involuntary, or

(b) the first anniversary of the first date of a period in which an employee remains absent from service (whether paid or unpaid) for any reason other than a termination of employment (by retirement, discharge, quit or death) or an authorized leave of absence.

**Section 1.23. Standard Retirement Benefit.** Standard Retirement Benefit means a monthly pension payable during the Participant's lifetime.

**Section 1.24. Trust Fund.** Trust Fund means the fund established in conjunction with the Plan.

**Section 1.25. Trustee.** Trustee means the original Trustee or any successor Trustee appointed by the Directors.

**Section 1.26. University.** University means Indiana University. Any action or determination of the University under the Plan shall be by its Board of Trustees, except to such extent as the Board of Trustees have conferred power to act upon the University's officers.

## ARTICLE II.

### PARTICIPATION

#### **Section 2.01. Participants in the Plan**

Each Employee who is a participant in the IU Retirement Plan 15% Level whose Employment Commencement Date is after July 14, 1988, but before January 1, 1989, or who initiated participation in the IU Retirement Plan 15% Level after July 14, 1988, but before January 1, 1989, shall become a Participant in this Plan on July 1, 2002; except for employees in the Geological Survey department and employees associated with an external agency agreement that does not accept early retirement plan participation. Any Employee who did not meet these requirements on January 1, 1989, shall not become a Participant in this Plan.

#### **Section 2.02. Reemployment After Commencement of Benefits**

Any former Participant who, while receiving monthly benefit payments under the Plan, is reemployed by the University shall forfeit the payments that otherwise would have been payable during the period of reemployment, effective on the date such Participant is reinstated. Upon termination of reemployment, if any retirement benefit remains, it would resume at the amount and in the same form of benefit as was being paid before reemployment.



## ARTICLE III.

### FUNDING

#### **Section 3.01. Trust Fund**

(a) All contributions under the Plan shall be paid or transferred into the Trust Fund to be held, managed, invested and distributed in accordance with the provisions of the Plan and Trust Agreement.

(b) All benefits under the Plan shall be payable directly from the Trust Fund except those benefits which, as expressly provided herein, shall be payable through the medium of an annuity contract.

#### **Section 3.02. University Contributions**

The University shall, from time to time, contribute to the Trust Fund such amounts as are estimated by the actuary to be sufficient, upon an actuarially sound basis as required by applicable law and the Code, to provide the benefits under the Plan. Such contributions shall be made in cash.

#### **Section 3.03. Employee Contributions**

Employees shall not be required or permitted to make contributions under the Plan.

#### **Section 3.04. Remittance of the University Contribution**

University contributions for any particular fiscal year of the University shall be paid into the Trust Fund not later than three and one-half (3½) months following the close of the University's fiscal year. A contribution of the University paid into the Trust Fund after the last day of the University's fiscal year, but before the due date, shall be treated as being made on the last day of the fiscal year of the University, provided the University so designates such contribution to the Trustee or Plan Administrator. The amount of the University's contribution so paid shall constitute the University's contribution for such fiscal year of the University and shall not thereafter be subject to change, except as provided in Section 3.05. The University shall also designate to the Trustee and Plan Administrator the Plan Year to which its contribution for the fiscal year in question relates.

#### **Section 3.05. Return of the University's Contribution**

(a) The Plan and Trust Agreement are adopted and University contributions are made upon the express condition that the Plan and Trust Agreement are acceptable to the Internal Revenue Service as qualifying under Code Sections 401(a) and 501(a). In the event that the Internal Revenue Service shall fail to accept the Plan and Trust Agreement, the University, by action of the Board of Trustees, shall revoke and terminate the Plan and Trust Agreement and direct the Trustee to return contributions previously made into

the Trust Fund to the University in cash, in kind, or in a combination of both, within one year of denial of qualification. Such return of contributions or distribution of the Trust Fund shall be made without regard to any prior accrued benefits (whether forfeitable or nonforfeitable) which any Participant might otherwise have under the Plan. No rights or liabilities of the University, Trustee, Plan Administrator or any Participant shall thereafter exist under the Plan or Trust Agreement.

(b) In the event that a contribution is made pursuant to Section 3.02 which is attributable to a good faith mistake of fact, the University shall direct the Trustee to return within one (1) year of the date of payment the amount which equals the excess of the amount contributed over the amount that would have been contributed had there not occurred a mistake of fact. Earnings attributable to the excess contribution shall not be returned to the University, but losses attributable thereto shall reduce the amount to be so returned.

### **Section 3.06. Rollovers and Transfers to this Plan**

Participants are not permitted to rollover any Eligible Rollover Distribution, as described in Code Section 402(c)(4), to the Trust Fund. In addition, transfers of assets directly from the trustee of another retirement plan qualified under Code Section 401(a) are not permitted.

## **ARTICLE IV.**

### **FORMS OF RETIREMENT BENEFIT**

#### **Section 4.01. Standard Retirement Benefit**

The Standard Retirement Benefit to be provided for a Participant meeting the requirements of Section 1.14 shall be a monthly pension commencing on a Participant's Normal Retirement Date, in a monthly amount calculated by multiplying the Participant's Average Salary by a thirty-six percent (36%) Benefit Factor and dividing by twelve (12).

Unless otherwise elected under Section 4.02, a Participant's Retirement Benefit is the Standard Retirement Benefit.

#### **Section 4.02. Optional Retirement Benefit**

(a) A Participant meeting the requirements of Section 1.14 may elect the Optional Retirement Benefit, a nondecreasing monthly benefit, commencing on the Participant's Normal Retirement Date and ceasing on the earliest to occur of either a Participant's death or the completion of sixty (60) monthly payments, with such monthly amount calculated by multiplying the Participant's Average Salary by a one hundred percent (100%) Benefit Factor and dividing by twelve (12).

### **Section 4.03. Rules Governing Election of Optional Form**

(a) The Plan Administrator may prescribe uniform rules, procedures and forms, consistent with the provisions of this Article, with respect to Participants' elections, revocations or changes of an Optional Retirement Benefit.

(b) The election by any Participant of the Optional Retirement Benefit shall be made during the ninety (90) day period which ends on the Annuity Starting Date. Not more than ninety (90) days and not fewer than thirty (30) days before the Annuity Starting Date, the Plan Administrator shall provide by mail or personal delivery, a written nontechnical explanation of the form in which the Participant's benefit will be paid unless he elects otherwise, the availability of alternative form of benefit, the circumstances under which benefits will be paid based upon whether or not an election is made and the financial effect of an election. A Participant may waive the thirty (30) day period after such written explanation is given to him, provided that in no event shall the Participant's benefit commence prior to the seventh (7<sup>th</sup>) day after the explanation is provided.

(c) Each Participant may revoke or change a prior election of the Optional Retirement Benefit at any time prior to the Annuity Starting Date. A Participant who has revoked or changed his prior election may then elect to receive his benefit the Standard Retirement Benefit. In no event, however, shall a Participant be entitled to revoke or change a prior election of the Optional Retirement Benefit or of the Standard Retirement Benefit after the Annuity Starting Date.

## **ARTICLE V.**

### **QUALIFICATION FOR BENEFITS**

#### **Section 5.01. Normal Retirement Date**

Upon satisfaction of the requirements of Section 1.14, and attainment of his Normal Retirement Date, the Participant shall be entitled to the Standard Retirement Benefit or (if so elected) the Optional Retirement Benefit, determined in accordance with Article IV, commencing on his Normal Retirement Date.

#### **Section 5.02. Late Retirement Date**

A Participant whose employment continues after his Normal Retirement Date shall not be entitled to receive any benefit under the Plan until his Late Retirement Date, except as otherwise required under Section 5.06. At his Late Retirement Date, the affected Participant's Late Retirement Benefit shall be the Standard or (if so elected) the Optional Retirement Benefit commencing on the first day of the month next following his Late Retirement Date.

#### **Section 5.03. Vesting**

A Participant's Accrued Benefit is nonforfeitable when he reaches his Normal Retirement Age.

#### **Section 5.04. Forfeitures**

Any forfeiture arising from a Participant's termination of employment, death, or for any other reason, will not be applied to increase the benefits of any other Participant. Any amounts forfeited will be used as soon as possible to reduce University contributions under the Plan.

#### **Section 5.05. Commencement of Benefits**

Notwithstanding the applicable provisions of this Article, unless a Participant elects otherwise, the payment of benefits under this Plan to the Participant will begin not later than the sixtieth (60<sup>th</sup>) day after the close of the Plan Year in which the latest of the following occurs:

- (a) the date on which the Participant reaches his Normal Retirement Age, or
- (b) the date on which the Participant terminates his service (by retirement or otherwise) with the University.

#### **Section 5.06. Required Distributions**

(a) The Plan will pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Code Section 414(d). The Plan is subject to the following provisions:

(b) Distribution of the entire interest of a Participant must commence no later than the Participant's required beginning date, which is April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70½) or the calendar year in which he severs from employment with the University.

(c) If a Participant's interest is paid as a Standard Retirement Benefit, payments will satisfy the following requirements:

- (i) the benefit will be paid in monthly payments commencing on or before the Participant's required beginning date;
- (ii) the benefit period will be over the life of the Participant; and payments will be nonincreasing.

(d) If a Participant's interest is paid as an Optional Retirement Benefit under Section 4.02, the monthly benefit will commence on or before the Participant's required beginning date; and payments will be nonincreasing.

(e) There are no death benefits provided by the Plan, therefore the benefits will meet the incidental benefit rule set forth in Code Section 401(a)(9).

### **Section 5.07. Eligible Rollover Distributions from the Plan**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Participant's election under this Section, a Participant may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover. The following definitions shall apply to this Section:

(a) An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the Participant, except that an eligible rollover distribution does not include any distribution to the extent such distribution is required under Code Section 401(a)(9) or any distribution that is one of a series of substantially equal periodic payments (made not less frequently than annually) for the life of the Participant (the Standard Retirement Benefit).

(b) An "eligible retirement plan" is an individual retirement account described in Code Section 408(a); an individual retirement annuity described in Code Section 408(b); an annuity plan described in Code Section 403(a); a qualified trust described in Code Section 401(a); an eligible deferred compensation plan under Code Section 457(b) which is maintained by an eligible employer under Code Section 457(e)(1)(A) (so long as the plan agrees to separately account for amounts rolled into the plan); an annuity contract under Code Section 403(b); or effective January 1, 2008, a Roth IRA described in Code Section 408A.

(c) A "Participant" includes an Employee or former Employee.

(d) A "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the Participant.

Any Participant receiving an Eligible Rollover Distribution may specify the Eligible Retirement Plan to which such distribution is to be paid (in such form and at such time as the Plan Administrator may prescribe). After the Plan Administrator has determined that the applicable requirements of an Eligible Rollover Distribution have been satisfied and that it has been properly elected, it shall direct the Trustee to make a direct rollover [as that term is defined in Treasury Regulations Section 1.401(a)(31)-1] of such amount to the Eligible Retirement Plan specified by the Participant.

### **Section 5.08. Amendment to Vesting Schedule**

No amendment to the Plan's vesting schedule shall deprive a Participant of his nonforfeitable rights to benefits accrued to the date of such an amendment; provided, however, that such amendment was not required by the Internal Revenue Service as a condition for its approval of the Plan and Trust as qualifying under Code Sections 401(a) and 501(a).

## ARTICLE VI.

### ADMINISTRATION

#### **Section 6.01. Powers and Duties**

The Plan Administrator shall be the named fiduciary of the Plan and shall have the power and duty to do all things necessary or convenient to effect the intent and purposes of this Plan and not inconsistent with any of the provisions hereof whether or not such powers and duties are specifically set forth herein. Not in limitation, but in amplification of the foregoing, the Plan Administrator shall have power to:

(a) Provide rules and regulations for the administration of the Plan, and, from time to time, to amend or supplement such rules and regulations.

(b) Construe the Plan and Trust Agreement which construction shall be final and binding.

(c) Correct any defect, supply any omission, or reconcile any inconsistency in the Plan in such manner and to such extent as it shall deem expedient to carry the Plan into effect.

(d) Determine all questions that may arise under the Plan including directions to and questions submitted by the Trustee on all matters necessary for it properly to discharge its powers and duties.

(e) Delegate to such other parties as are appropriate pursuant to applicable law all or any part of the responsibilities specifically required of the Plan Administrator under the terms of the Plan or Trust Agreement.

The Plan Administrator shall establish and carry out a funding policy consistent with the purposes of the Plan and the requirements of applicable law, as may be appropriate from time to time. As part of such funding policy, the Plan Administrator shall, from time to time, direct the Trustee to exercise its investment discretion so as to provide sufficient cash assets in an amount determined by the Plan Administrator under the funding policy then in effect, to be necessary to meet the liquidity requirements for the administration of the Plan.

#### **Section 6.02. Finality of Action**

The acts and determinations of the Plan Administrator within the powers conferred by the Plan shall be final and conclusive for all purposes of the Plan and Trust Agreement. Consequently, benefits under the Plan will be paid if the Plan Administrator decides, in its discretion, that the applicant is entitled to them, The University, Employees, Participants, Trustee and all others having any interest under the Plan shall be bound thereby.

### **Section 6.03. Claims Procedure**

(a) Each Participant may make application to receive a benefit under the Plan by filing such form as the Plan Administrator prescribes. Within sixty (60) days of the date that benefits may start, the Plan Administrator will inform the Participant, in writing, of the amount of benefit due, if any, or of the denial of the claim for benefit.

(b) Any denial of a claim for benefit will include a statement of the reasons for the denial., specific references to Plan provisions on which the denial is based, a description of any additional information the Plan Administrator needs to make a decision under the Plan, an explanation of why such information is necessary and an explanation of the Plan's claims procedure.

(c) Within ninety (90) days of the expiration of such sixty (60) day period, the Participant because of denial, inaction or otherwise, may request, in writing, that his application for a benefit be reviewed.

(d) Within thirty (30) days of receipt of a request for a review, the Plan Administrator will schedule a date to review the application and will notify the Participant, in writing, of such date at least seven (7) days before the date of the review. The Participant may, prior to the date of the review, inspect all documents and records pertaining to his claim for benefit and may submit issues and comments, in writing, to the Plan Administrator.

(e) Within sixty (60) days after receiving the request for a review, and after the date of the review, the Plan Administrator will submit to the Participant, in writing, a statement of the decision and reasons for arriving at such decision. After such statement has been given, the action of the Plan Administrator shall be final and conclusive and shall not be subject to further appeal or review.

(f) The Plan Administrator may extend, in writing, for a period not to exceed sixty (60) days, for reasonable cause, the time which the Participant has to comply with any of the provisions of this Section.

(g) Where a Participant does not comply with the provisions of this Section within the time prescribed (including extensions), the action of the Plan Administrator shall then be final and conclusive and shall not be subject to further appeal or review.

(h) Any action to be taken by a Participant pursuant to this Section may be taken by a representative designated by such Participant to act for him or to assist him.

### **Section 6.04. Liability**

(a) No fiduciary shall be directly or indirectly responsible or under any liability so long as:

(i) he shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and

familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and

(ii) he did not knowingly conceal a breach of duty of any other fiduciary.

(b) The University shall indemnify the Plan Administrator against any and all expenses and liabilities arising out of its own duties, except expenses and liabilities arising out of its own fraud, willful misconduct or breach of its responsibilities under Subsection (a) of this Section.

### **Section 6.05. Examination by Participants**

The Plan Administrator shall make available to each Participant for examination a copy of the Plan and such of its records or copies thereof as may pertain to any benefits of such Participant under the Plan.

## **ARTICLE VII.**

### **AMENDMENT AND TERMINATION OF PLAN**

#### **Section 7.01. Plan Amendment**

(a) The University shall have the right, by a resolution of the Board of Trustees, adopted in its sole and final discretion, to amend the Plan at any time and from time to time to any extent which the Board of Trustees may deem advisable. The Board of Trustees may also delegate to an officer this right.

(b) A certified copy of the resolution of the Board of Trustees making such amendment shall be delivered to the Trustee. The Plan shall be amended in the manner and effective as of the date set forth in such resolution, and the Employees, Participants, Trustee and all others having any interest under the Plan shall be notified of and bound thereby.

(c) No amendment [other than an amendment required by the Internal Revenue Service as a condition for its approval of the Plan and trust as qualifying under Sections 401(a) and 501(a) of the Code generally or with respect to any University and its Employees] shall retroactively decrease the Participant's Accrued Benefit or increase the duties or responsibilities of the Trustee or Plan Administrator without their written consent. Furthermore, no amendment to the Plan shall have the effect of decreasing a Participant's vested interest determined without regard to such amendment as of the later of the date such amendment is adopted or the date it becomes effective.

(d) For purposes of Subsection (c), a plan amendment which has the effect of (1) eliminating or reducing a Standard Retirement Benefit, or (2) eliminating the Optional Retirement Benefit with respect to benefits attributable to service before the amendment shall be treated as reducing a Participant's Accrued Benefit.



## **Section 7.02. Plan Termination**

(a) The University shall have the right, by action of its Board of Trustees, to terminate the Plan at any time. A certified copy of the resolution of the Board of Trustees shall be delivered to the Trustee, and the Plan shall be terminated as of the date of termination specified in such resolution.

(b) Upon termination of the Plan or partial termination of the Plan, the rights of all affected Participants to any Accrued Benefits to the date of such termination, to the extent then funded, shall be nonforfeitable.

(c) Upon termination of the Plan, the Plan Administrator shall determine, and so direct the Trustee, (or, if the Plan Administrator fails to make such determination, the Trustee shall determine) the method, from among the following methods, of discharging and satisfying all obligations on behalf of Participants:

(i) By annuities payable through annuity contracts purchased from 'an insurance company; or

(ii) By the liquidation and distribution of the assets of the Trust Fund;  
or

(iii) By any combination of such methods.

(d) After the satisfaction of all fixed and contingent liabilities (including, but not limited to, reasonable expenses for attorneys' fees, actuarial fees, consultants' fees, accountants' fees, and other ordinary and necessary business expenses associated with the operation of the Plan and Trust) under the Plan, any overpayments made by the University into the Trust Fund as a result of erroneous actuarial computations shall be repaid to the University.

## **ARTICLE VIII.**

### **MISCELLANEOUS**

#### **Section 8.01. Persons Under Legal Disability**

In the event that any benefit is payable to a person under legal disability, the Plan Administrator, in its discretion, may determine that payment shall be made or applied for the benefit of such person, directly to such person or to the legal representative of such person or to some near relative of such person or directly for the support, maintenance or education of such person. The Trustee shall not be required to see to the application by any third party of any payments made pursuant to this Section.

### **Section 8.02. Forms and Proofs**

Each Participant eligible to receive any benefit hereunder shall complete such forms and furnish such proofs, receipts and releases as shall be required by the Trustee or the Plan Administrator.

### **Section 8.03. Nondiversion**

Irrespective of anything contained in the Plan or Trust Agreement, as now expressed or hereafter amended, it shall be impossible for any part of the Trust Fund to be used for or diverted to any purpose not for the exclusive benefit of Participants at any time prior to the satisfaction of all rights and liabilities, fixed and contingent, with respect to Participants hereunder, either by the operation, amendment, revocation or termination of the Plan or Trust Agreement.

### **Section 8.04. Military Service**

Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") [as codified at Chapter 43, Title 38, of the United States Code]; Code Section 414(u); and, effective January 1, 2007, Code Section 401(a)(37), as amended from time to time.

For purposes of this section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

If a Participant resumes employment in accordance with USERRA, a Participant shall be treated as receiving Average Salary from the University during such period of qualified military service equal to (i) the Average Salary a Participant would have received during such period if the Participant were not in qualified military service, determined based on the rate of pay the Participant would have received from the University but for the absence during the period of qualified military service, or (ii) if the Average Salary the Participant would have received during such period was not reasonably certain, the Participant's Average Salary from the University during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

Effective January 1, 2009, an Eligible Employee whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the University and the differential wage payment shall be treated as Average Salary. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

### **Section 8.05. Limitation of Rights and Obligations**

Neither the establishment and maintenance of the Plan or Trust Fund, nor any provisions or amendment thereof, nor the purchase of any insurance or annuity contract, nor any act or omission under or resulting from the operation of the Plan or Trust Fund shall be construed:

(a) As conferring upon any Employee, Participant, or any other person, firm, corporation or association, any right or claim against the University, the Trustee or Plan Administrator, except to the extent that such right or claim shall be specifically and expressly provided in the Plan or Trust Agreement or provided by law; nor against any officer, employee or director of the University.

(b) As an agreement, consideration or inducement of employment or as affecting in any manner or to any extent whatsoever the rights or obligations of the University or any Employee to continue or terminate the employment relationship at any time.

(c) As creating any responsibility or liability of the University, Trustee or Plan Administrator for the validity or effect of the Plan or Trust Agreement or of any insurance or annuity contract or other investment at any time included in the Trust Fund.

### **Section 8.06. Nonassignability**

No benefit under the Plan shall be liable for any debt, liability, contract, engagement or tort of any Participant, nor be subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution or other voluntary or involuntary alienation or other legal or equitable process, nor transferability by operation of law. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order.

### **Section 8.07. Merger, Consolidation or Transfer**

In the case of a merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant of this Plan shall become a participant in the successor plan and as of the date of such merger, consolidation or transfer, each Participant's benefit under the successor plan (if such plan then terminated) shall be equal to or greater than the Participant's benefit under this Plan (if this Plan had then terminated).

### **Section 8.08. Governing Law**

The Plan and Trust Agreement shall be construed, enforced and administered and the validity determined in accordance with applicable Federal law and the law of the State of Indiana. Should any provision be determined to be void by any court of competent jurisdiction, the Plan will continue to operate, and, for the purposes of the jurisdiction of that court only, will be deemed not to include the provision determined to be void.

## ARTICLE IX.

### MAXIMUM BENEFIT LIMITATIONS UNDER CODE SECTION 415

#### Section 9.01. Purpose

The purpose of this Article is to set forth the benefit limitation requirements of Code Section 415. This Plan shall operate in accordance with this Article at all times, and the provisions hereof shall override any other provisions of the Plan to the extent necessary to prevent the Code Section 415 limits from being exceeded with respect to any Participant.

#### Section 9.02. General Benefit Limitations

(a) This Section applies regardless of whether any Participant is or has ever been a participant in another qualified plan maintained by the University, or a welfare benefit fund [as defined in Section 419(e) of the Code] maintained by the University, or an individual medical account [as defined in Section 415(1)(2) of the Code] which provides an annual addition.

(b) Participation in Other Qualified Plans: Aggregation of Limits.

(i) The 415(b) limit with respect to any Participant who at any time has been a participant in any other defined benefit plan as defined in Code Section 414(j) maintained by the University in this Plan shall apply as if the total benefits payable under all such defined benefit plans in which the Participant has participated were payable from one (1) plan.

(ii) The 415(c) limit with respect to any Participant who at any time has been a Participant in any other defined contribution plan as defined in Code Section 414(i) maintained by the University or by an Affiliated Employer shall apply as if the total annual additions under all such defined contribution plans in which the Participant has been a Participant were payable from one (1) plan.

(c) Basic 415(b) Limitation.

(i) On the Effective Date, a Participant may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A), subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in the Plan. In no event shall a Participant's benefit payable under the Plan in any limitation year be greater than the limit applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code Section 415(d) Code and the regulations thereunder.

(ii) For purposes of Code Section 415(b), the "annual benefit" means a benefit payable monthly in the form of a straight life annuity (with no ancillary benefits).

(d) Adjustments to Basic 415(b) Limitation for Form of Benefit.

If the benefit under the plan is other than the form specified in subsection (c)(ii), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(i) If the form of benefit is not a straight life annuity, then the preceding sentence is applied by either reducing the Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(ii) For a benefit paid in a form to which Code Section 417(e)(3) does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same Annuity Starting Date as the form of benefit to the Participant, or

(B) The annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the form of benefit payable to the Participant, computed using a 5% interest assumption (or the applicable statutory interest assumption) and, for plan years prior to January 1, 2009, the applicable mortality table described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62); and for plan years after December 31, 2008, the applicable mortality tables described in Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Code Section 417(e)(3)(B)).

(e) Other Adjustments in 415(b) Limitation.

In the event the Participants retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Code Section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

(f) Less than Ten (10) Years of Service Adjustment for 415(b) Limitations.

The maximum retirement benefits payable to any Participant who has completed less than ten (10) years of service shall be the amount determined under subsection (c)

multiplied by a fraction, the numerator of which is the number of the Participant's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below ten percent (10%).

### **Section 9.03. Definitions Specifically Applicable to Article IX**

(a) "Annual Benefit" means a retirement benefit under the plan which is a stated annual benefit amount and payable monthly in the form of a straight life annuity.

(b) "Compensation" means wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the University maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements, and expense allowances), and excluding the following:

(i) University contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or University contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation; and

(ii) Other amounts which received special tax benefits, or contributions made by the University (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Code Section 403(b) (whether or not the amounts are actually excludible from the gross income of the Employee).

For purposes of applying the limitation of this Article, compensation for a Limitation Year is the Compensation actually paid or includible in gross income during such Limitation Year.

Compensation shall include any elective deferrals as defined in Section 402(g)(3) of the Code, and any amount which is deferred or contributed by the University at the election of the Participant and which is not includible in the gross income of the Participant by reason of Section 125, Section 132(f)(4) or Section 457 of the Code.

(c) "Limitation Year" means a calendar year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

**INDIANA UNIVERSITY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_