

**INDIANA UNIVERSITY**

**RETIREMENT & SAVINGS PLAN**

**Amended and Restated Effective: April 1, 2016**

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# **INDIANA UNIVERSITY RETIREMENT AND SAVINGS PLAN**

## **BACKGROUND**

Indiana University ("University") established the Indiana University Retirement and Savings Plan ("Plan"), effective July 1, 2013.

A. The University is now amending and restating the Plan, effective April 1, 2016.

B. The University intends for the Plan to be a defined contribution plan qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended ("Code"); a governmental plan as defined by Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); and a plan that is exempt from the provisions of Title I and Title IV of ERISA.

C. The University intends for the Plan to be funded through one or more qualified trusts under Code Section 501(a), custodial accounts treated as qualified trusts under Code Section 401(f), and/or annuity contracts treated as qualified trusts under Code Section 401(f), and in accordance with the qualification requirements of the Code.

## **ARTICLE I.**

### **PURPOSE AND TYPE OF PLAN**

The University establishes the Plan to provide retirement benefits to eligible employees. The Plan is structured as a defined contribution profit sharing plan, where contributions are made without regard to profits, and at the discretion of the University.

## **ARTICLE II.**

### **DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 2.01.** **Definitions.** When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:

(a) "Account" means, with respect to a Participant, the separate bookkeeping account maintained to reflect the interest of the Participant under the Plan. Where the context so permits, "Account" also means the amount credited to such bookkeeping account.

(b) "Administrator" means the Board of Trustees of the University. To the extent that the Board delegates any of its responsibilities as Administrator, the person to whom such delegation is made shall be treated as Administrator to the extent of such delegation. The Board hereby delegates its authority as Administrator to the University's Associate Vice President of Human Resources, which delegation shall remain in effect until revoked by the Board.

(c) "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.

(d) "Applicable Form" means the appropriate form as designated and furnished by the Administrator to make the election or provide the notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Administrator may prescribe an electronic or telephonic form in lieu of or in addition to a written form.

(e) "Beneficiary" means the person or persons determined under Section 7.03.

(f) "Board of Trustees" means the board of trustees of the University.

(g) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(h) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Sections 401(a)(17) and 415(d), as applicable for any year.

(i) "Disabled" or "Disability" means a Participant has terminated employment after becoming disabled as defined by the Social Security Administration. A Participant shall not be considered to be Disabled until he furnishes proof satisfactory to the Administrator of such Disability.

(j) "Effective Date" means July 1, 2013, the Plan's original effective date.

(k) "Eligible Employee" with respect to a Plan Year as of the last day of that Plan Year, means an Employee who:

(1) is hired on or after July 1, 2013, or transfers from a position covered by the IU Retirement Plan to Support Staff, Service Staff or Temporary position on or after July 1, 2013;

(2) is in one of the following University-designated employee categories: Support Staff, Service Staff, or Temporary position.; and

(3) has at least 50% full-time employee status for Support Staff and Service Staff positions, or has worked at least 900 hours in a calendar year for Temporary positions.

Eligible Employee does not mean any Employee who is performing services described in Code Section 3121(b)(10).

(l) "Employee" means any common law employee of the University, and shall not include an individual who is designated in good faith as an independent contractor, as determined by the University in its sole discretion, regardless of whether such individual is later determined to be a common law employee for tax purposes. Eligible Employee shall also not include a non-resident alien within the meaning of Code Section 410(b)(3)(C).

(m) "Fund" or "Funds" means a separate investment fund or funds established by the Trustee at the direction of the Administrator with TIAA-CREF or Fidelity Investments or a separate investment fund or funds established under an institutional retirement annuity contract, all at the direction of the Administrator.

(n) "Participant" means an Eligible Employee or former Eligible Employee who is, or may become, eligible to receive a benefit of any type from the Plan and who has commenced participation in the Plan in accordance with Article III hereof.

(o) "Plan" means the plan created and embodied herein, as amended from time to time, known as the "Indiana University Retirement and Savings Plan."

(p) "Plan Compensation" for a Plan Year means the actual budgeted base salary of a Participant actually received for services provided to the University in the Plan Year. Actual budgeted base salary shall exclude any amounts of budgeted base salary not actually paid to an Employee due to circumstances such as, but not limited to, unpaid periods of absence or leave.

Actual budgeted base salary shall be limited in accordance with Article V. Actual budgeted base salary includes amounts of actual budgeted base salary excluded from taxable income because of an election under Code Sections 125, 132(f), 403(b), 457(b), and/or 402(g)(3). Plan Compensation shall not include supplemental or premium compensation. Plan Compensation during any Plan Year shall not exceed the Code Section 401(a)(17) limit (as increased by the Cost of Living Adjustment for the Plan Year).

(q) "Plan Year" means calendar year.

(r) "Retire" or "Retirement" means that a Participant Terminates Employment on or after his Disability retirement or Retirement Age.

(s) "Retirement Age" means the date a Participant Terminates Employment on or after attainment of age sixty-five (65) from an active employment status with the University.

(t) "Retirement Annuity Contract" means the institutional retirement annuity contract entered into by the University to hold certain assets of the Plan.

(u) "Section" means, when not preceded by the word Code, a section of this Plan.

(v) "Service Staff" means an employee appointed as Service staff and who normally works at least 50% full-time equivalent.

(w) "Support Staff" means an employee appointed as Support staff and who normally works at least 50% full-time equivalent.

(x) "Terminates Employment" or "Termination of Employment" means the Employee severed from the service of the University prior to attainment of Retirement Age for any reason other than Disability. Provided, however, that "Terminates Employment" or "Termination of Employment" shall not include: (i) temporary absence of such Employee due to vacation taken in accordance with University policy; (ii) absence due to uninterrupted and continuous Disability



(but shall include any absence following the cessation of such Disability); (iii) military leave for training or service, or both, with the Armed Forces of the United States to the extent required under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, et. seq., as amended from time to time ("USERRA"), provided such Employee is reemployed with the University as provided under USERRA; (iv) a leave which qualifies as a family or medical leave under the Family and Medical Leave Act of 1993, as amended from time to time; (v) a paid leave of absence; (vi) an unpaid leave of absence approved by the University which continues for less than twelve (12) consecutive months; or (vii) an unpaid leave of absence extension of up to a total of sixty (60) consecutive months of unpaid leave, when such leave is deemed to be of specific interest to the University, as approved by the respective Vice President or Chancellor and the University's Associate Vice President of Human Resources. Approval for such extension must be executed prior to the end of the first twelve (12) month leave period.

(y) "Temporary" means a position performing part-time work and which remains under 900 hours per calendar year.

(z) "Temporary with Retirement" means a position performing part-time work in which the Employee is expected to work 900 or more hours in a calendar year. Once an Employee becomes a Temporary with Retirement, he or she will remain in this category.

(aa) "Trust" means: (i) a trust or (ii) a custodial account or an annuity contract treated as a qualified trust under Code Section 401(f) established under the Plan to hold Plan assets.

(bb) "Trust Fund" means the assets of the Plan held by the Trustee pursuant to the terms of the Plan.

(cc) "Trustee" mean the entity or person(s) approved by the Board as a permitted trustee under the Plan and designated by the University as Trustee, and includes the entity or person(s) holding the assets of a custodial account or holding the annuity contract in accordance with Code Section 401(f).

(dd) "University" means Indiana University.

(ee) "University Contributions" means contributions made by the University pursuant to Section 4.02 or Section 4.03.

(ff) "Valuation Date" means the last day of each Plan Year or such other dates as the Administrator may designate. In the case of the valuation of an asset or Account effective as of a Valuation Date, such valuation shall be determined as of the close of business on such Valuation Date, or if such date is not a normal business day, as of the close of business on the first day preceding such Valuation Date which is a normal business day.

(gg) "Vested" or "Vesting," with respect to an Account, refers to the interest of the Participant or his Beneficiary in his Account, which, when Vested, is unconditional, legally enforceable, and nonforfeitable.

**Section 2.02. Construction and Governing Law.** The following rules of construction shall govern any interpretation of the Plan:

(a) The Plan shall be construed, enforced, and administered and the validity thereof determined in accordance with the Code and, when not inconsistent with the Code, the laws of the State of Indiana.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender, where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular, where appropriate.

(c) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that: (i) causes the Plan to constitute a qualified plan under the provisions of Code Section 401 and the Funds as exempt from tax under Code Section 501, (ii) causes the Plan to be a "governmental" plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) causes the Plan to comply with all applicable requirements of the Code, shall prevail over any different interpretation.

(d) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(e) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

### **ARTICLE III.**

#### **ELIGIBILITY AND PARTICIPATION**

##### **Section 3.01. Participation.**

Except as otherwise specifically provided herein, an Eligible Employee shall be a Participant in this Plan as of his or her date of hire. If an Employee becomes an Eligible Employee at some point later than his or her date of hire, the Eligible Employee shall be a Participant in this Plan as soon as administratively feasible following the date he or she becomes an Eligible Employee, and in any event, within forty-five (45) days of becoming an Eligible Employee.

**Section 3.02. Cessation of Participation.** A Participant shall cease to be a Participant on the distribution or forfeiture of his entire interest in the Plan.

**Section 3.03. Reemployment.** A former Participant who is reemployed by the University as an Eligible Employee shall immediately become a Participant in this Plan as of their date of rehire as an Eligible Employee.

**Section 3.04. Completion of Forms by Participants and Beneficiaries.** Each Participant and any Beneficiary eligible to receive, or claiming a right to receive, any benefits under the Plan shall complete such Applicable Forms and furnish such proofs and information as may be required at any time by the Administrator.

#### **ARTICLE IV.**

#### **CONTRIBUTIONS**

**Section 4.01. Contributions.** Contributions shall be made to the Plan in accordance with this Article and subject to the limitations under Article V.

**Section 4.02. University Basic Contributions.**

The University shall contribute to the Plan for each Participant who is an Eligible Employee an amount equal to four percent (4%) of the Plan Compensation of such Participant received during such pay period, which amount shall be allocated to the Account of each Participant as soon as possible following such pay.

**Section 4.03. University Matching Contributions.** The University shall contribute to the Plan for each Participant who is an Eligible Employee an amount equal to the Participant's designated contributions to the University's TDA Plan during such pay period, but not to exceed four percent (4%) of the Participant's Plan Compensation received during such pay period.

**Section 4.04. Employee Contributions.** Employee contributions under the Plan are not required or permitted.

**Section 4.05. Payment and Nature of Contributions.** All University Contributions under Sections 4.02 and 4.03 shall be made within such time period as permitted by law.

**Section 4.06. Expenses of Plan.** All reasonable expenses of administering the Plan shall be charged against and paid from the Funds, unless the University pays such expenses.

**Section 4.07. 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 an Eligible Employee resumes employment in accordance with USERRA, the University shall make any University Contributions that would have been made if the Eligible Employee had remained employed during the Eligible Employee's qualified military service, reduced by the University Contributions, if any, actually made for the Eligible Employee during the period of such service. Contributions made under this section must be made no later than ninety (90) days after the date of reemployment or when contributions are normally due for the year in which the qualified military service was performed, if later. When determining the Contribution, an Eligible Employee shall be treated as receiving Plan Compensation from the University during such period of qualified military service equal to (i) the Plan Compensation the Eligible Employee would have received during such period if the Eligible Employee were not in qualified military service, determined based on the rate of pay the Eligible Employee would have received from the University but for the absence during the period of qualified military service,

or (ii) if the Plan Compensation the Eligible Employee would have received during such period was not reasonably certain, the Eligible Employee's average Plan Compensation from the University during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

To the extent provided under Code Section 401(a)(37), in the case of an Eligible Employee whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Eligible Employee shall be entitled to any benefit (other than benefit accruals) provided under the Plan as if the Eligible Employee timely resumed employment in accordance with USERRA and then terminated employment on account of death the next day.

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 Plan Compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

## **ARTICLE V.**

### **LIMITATIONS ON CONTRIBUTIONS AND OTHER ADDITIONS**

**Section 5.01. Applicability of Article.** Notwithstanding any provision of the Plan to the contrary, contributions to the Plan and additions to Accounts of Participants shall be limited as provided in Code Section 415 and as provided in this Article.

**Section 5.02. Limitation under Code Section 415.** Notwithstanding anything in the Plan to the contrary, the following limitations shall apply:

(a) To the extent required under Code Section 415(c), in no event shall the "annual addition," as defined in paragraph (f), for a participant for any Plan Year exceed the lesser of:

(1) Forty Thousand Dollars (\$40,000), as adjusted for increases in the cost-of-living prescribed by the Secretary of the Treasury under Code Section 415(d), or

(2) one-hundred percent (100%) of the "compensation," as defined in paragraph (g), of such Participant received from the University during the Plan Year.

(b) The Plan shall be administered so as to comply with the limitations of Code Section 415.

(c) For purposes of this Section, all defined contribution plans of an Affiliated Employer are to be treated as a single defined contribution plan, and all Affiliated Employers shall be considered as a single employer. Notwithstanding the preceding sentence, however, any plan maintained by the University or an Affiliated Employer, the contributions to which are excludable from the gross income of a Participant under the provisions of Code Section 403(b), shall not be aggregated nor considered under this Article V with respect to a Participant for any Limitation Year unless required under the provisions of Treasury Regulation Section 1.415(f)-1(f).

(d) In any Plan Year, in the event contributions would exceed the Code Section 415(c) limitations, an adjustment to comply with this Article shall be made as soon as administratively possible, but no later than the time permitted under Internal Revenue Service guidance: (i) first, to the Indiana University Tax Deferred Account Plan; (ii) second, to the Indiana University Retirement Plan; and (iii) third, to any plan maintained by the participant or another employer that is required to be aggregated under 415(c) with the University's plans.

(e) After the end of any Plan Year, and after taking into account any reduction in the contributions for a Participant under any other aggregated defined contribution plan or aggregated 403(b) plan to satisfy the limitations under Code Section 415, if the annual addition

for a Participant under the Plan, determined without regard to the limitation of paragraph (a), would have been greater than the annual addition for such Participant as limited by paragraph (a), then if the excess is due to a reasonable error in estimating compensation or such other circumstances as found by the Secretary of the Treasury to justify application of this paragraph, any University Contributions of such Participant made shall be reduced, to the extent necessary to satisfy such limitation for the Plan Year, without any allocation of income or loss thereto, and the excess shall be used to reduce University Contributions for such year.

(f) For purposes of this Section, "annual addition" means the annual addition as defined in Code Section 415(c) and as modified in Code Section 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines the annual addition as the sum of the following amounts credited to a Participant's accounts for the Plan Year under this Plan and any other plan maintained by an Affiliated Employer required to be aggregated:

- (1) employer contributions;
- (2) employee contributions; and
- (3) forfeitures.

Amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by an Affiliated Employer are treated as annual additions to a defined contribution plan. Note: amounts "picked up" by the University within the meaning of Code Section 414(h) are not treated as annual additions to a defined contribution plan.

(g) For purposes of this Section, "compensation" means compensation as defined in Code Section 415(c)(3) and Treasury Regulation § 1.415(c)-2, and shall not exceed the annual limit under Code Section 401(a)(17) (increased pursuant to Code Section 401(a)(17)(B)). In



general, Code Section 415(c)(3) defines compensation as all of a Participant's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the University at election of the Employee and which is not includible in the gross income of the Employee by reason of Code Sections 125, 132(f), or 457.

Further, payments made within 2½ months after Termination of Employment, or, if later, the end of the Plan Year during which the Termination of Employment occurred will be taken into account in determining compensation for allocations if they are payments that, absent a Termination, would have been paid to the Participant while the Participant continued in employment with the University and are:

- (1) regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and the compensation would have been paid to the Participant prior to a Termination if the Participant had continued employment with the University; or
- (2) payments for unused accrued *bona fide* sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued; or
- (3) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Participant at the same time if

the Participant had continued employment with the University and only to the extent that the payment is includible in the Participant's gross income.

Any payments not described above are not considered compensation if paid after Termination of Employment, even if they are paid within 2½ months following Termination of Employment, or, if later, the end of the Plan Year during which the Termination of Employment occurred except for payments to the individual who does not currently perform services for the University by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the University rather than entering qualified military service.

## **ARTICLE VI.**

### **ACCOUNTING**

**Section 6.01. Participant Account.** The Administrator shall establish and maintain adequate records to reflect the Account of each Participant and Beneficiary. Credits and charges shall be made to such Accounts pursuant to the Plan to reflect additions, distributions, withdrawals and gains or losses. Each Participant shall have a separate Account. The maintenance of individual accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

**Section 6.02. Valuation.** As of the last Valuation Date of each Plan Year, and based on the fair market value of the Funds, the Administrator shall determine the value of the Account of each Participant as of such date.

**Section 6.03. Value of Accounts of Participants.** The value of an Account as of any date shall be the value of the Account after all adjustments and allocations as of such date.

**ARTICLE VII.**

**BENEFITS**

**Section 7.01. Retirement and Terminated Benefits.**

(a) If a Participant Retires or Terminates Employment with a Vested Account, the Participant is entitled to receive his Account as provided in this Section.

(b) A Participant's Account shall be used to provide benefits pursuant to paragraph

(c). The Participant may make the request for distribution on an Applicable Form at any time after the Participant Retires or Terminates Employment, but in no event later than the date determined under Section 7.04.

A Participant shall notify the Administrator of his intended distribution date at least sixty (60) days before such date. After receipt of the notice from the Participant and at least thirty (30) days before the date, the Administrator shall provide the Participant with a written notice that satisfies the requirements of Code Section 402(f). The Participant shall elect the form in which he wishes to receive his Account on an Applicable Form not more than thirty (30) days before his distribution date. Notwithstanding the preceding provisions of this paragraph, but subject to the provisions of Section 7.04, the distribution date of a Participant shall not occur earlier than thirty (30) days after he has been given the notice required by the first sentence of this paragraph, unless the Participant affirmatively elects an earlier distribution date, but in no case earlier than the Participant's Termination of Employment.

(c) The Account of a Participant entitled to payment thereof under paragraph (a) shall be distributed, at the election of the Participant, in any of the following forms or combination thereof:

(1) to the extent the Participant's Account is not invested in a Fund that precludes single lump sum payments, a single lump sum payment,

(2) periodic payments over a period not to exceed the Participant's life expectancy or the Participant's and designated beneficiary's joint life expectancy;

(3) periodic payments over a period certain not extending beyond the Participant's life expectancy or the Participant's and designated beneficiary's joint and last life expectancy;

(4) a direct rollover pursuant to Section 7.07; or

(5) to the extent the Participant's Account is invested in an institutional retirement annuity contract, that Account may be paid in the form of an individually-owned retirement annuity contract.

(d) In the event no election is made, the Participant's Account shall be paid before the first April 1 after the end of the Plan Year in which the Participant attains his required beginning date under Section 7.04, in the following forms, to the extent applicable:

(1) to the extent the Participant's Account is not invested in a Fund that precludes single lump sum payments, a single lump sum payment,

(2) to the extent the Participant's Account is invested in an institutional retirement annuity contract, in the form of an individually-owned retirement annuity contract.

(e) Distributions payable as of any date shall be made on or as soon as administratively feasible after that date.

**Section 7.02. Death Benefits.**

If a Participant dies before the entire distribution of his Account has been made, his remaining Account balance shall be distributed to his Beneficiary as soon as administratively

feasible after the Participant's death, unless the Beneficiary elects a later payment date on the applicable form, subject to Section 7.04.

**Section 7.03. Beneficiaries.**

(a) Each Participant may designate on the Applicable Form one (1) or more primary and contingent Beneficiaries to receive any death benefits payable under the Plan on his death. Each such designation may be revoked, amended, or changed by the Participant by notice in writing on the Applicable Form to the Administrator or appropriate service provider.

(b) In the absence of a designation by the Participant pursuant to paragraph (a), or if all designated Beneficiaries predecease the Participant, the benefits, if any then remain, shall be paid to the estate of the Participant.

**Section 7.04. Other Distribution Rules Imposed by Federal Law.** Notwithstanding any provision of this Plan to the contrary, any distribution under the Plan shall be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder and shall comply with the following rule. Distribution of the Account of a Participant shall be made not later than the "required beginning date." For purposes of this Section, "required beginning date" means the April 1 of the calendar year following the later of the calendar year in which the Participant reaches age seventy and one-half (70½) or terminates employment.

**Section 7.05. Charge or Discount.** If any charge or discount is incurred by the Funds as an incident to the payment of any benefits hereunder, such charge or discount shall be charged against the benefits of the Participant or Beneficiary to which the same relates.

**Section 7.06. Persons Under Legal Disability.** If the Administrator is advised in writing that any benefit is payable to a minor or other person under a legal disability, the Administrator may direct that such payment be made to the legal guardian of such person or to

such other person or organization as a court of competent jurisdiction may direct in full satisfaction of any payment due under the Plan.

**Section 7.07. Plan Distributions and Withholding Requirements.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee 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 distributee 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 distributee, 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 or life expectancy of the distributee or the joint lives or life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more.

(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 a Roth IRA described in Code Section 408A. The definition of eligible retirement plan shall also

apply in the case of a surviving spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p).

(c) A "distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse is a distributee with regard to the interest of the spouse. A nonspouse beneficiary who is a designated beneficiary as defined in Code Section 409(a)(9)(E) may rollover the distributions only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

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

#### **ARTICLE VIII.**

##### **PLAN LOANS**

**Section 8.01.** **No Plan Loans.** Plan loans to Participants shall not be permitted.

#### **ARTICLE IX.**

##### **VESTING**

**Section 9.01.** **Vesting Standards.**

A Participant shall be Vested in his Account only after attainment of Retirement Age, Disability, Death or completion of three (3) full years of employment with the University as a Participant in this Plan, or completion of three (3) full years of employment with the University as a participant in the IU Retirement Plan, or completion of three (3) full years of employment with the University as a participant in the Indiana Public Employees' Retirement Fund (PERF). Years of Service shall be calculated based solely on periods of participation in this Plan, the IU Retirement Plan, or in the Indiana Public Employees' Retirement Fund (PERF), on an approved

leave of absence with the University, and periods of qualified military service under Section 4.06.

**Section 9.02. Forfeitures.**

(a) In all other circumstances not described in Section 9.01, a Participant's Account shall be forfeited upon his Termination of Employment.

(b) Amounts forfeited during a Plan Year shall be used to reduce University Contributions required under Section 4.02 as soon as administratively practicable.

(c) If a Participant forfeits his Account upon termination and returns to University employment as a Participant within six months of termination, the forfeited Account will be reinstated as soon as administratively possible.

**ARTICLE X.**

**ADMINISTRATION OF THE PLAN**

**Section 10.01. Administrator.**

(a) The Administrator shall have the authority to control and manage the operation and administration of the Plan. The Administrator is authorized to accept service of legal process.

(b) The Administrator shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable, or convenient to enable the Administrator to carry out its duties under the Plan. By way of illustration and not limitation, the Administrator is empowered and authorized:

(1) to make rules and regulations with respect to the Plan not inconsistent with the Plan or the Code, and to amend or rescind such rules and regulations;

(2) to determine, consistently therewith, all questions of law or fact that may arise as to the eligibility, benefits, status, and rights of any person claiming benefits or



rights under the Plan, including without limitation, Participants, former Participants, surviving spouses of Participants, Beneficiaries, Employees, and former Employees;

(3) to direct payments from the Fund or Funds to Participants, their Beneficiaries, and other persons as the Administrator may determine;

(4) to delegate such responsibility to individuals or committees as it deems appropriate from time to time; and

(5) subject to and consistent with the Code, to construe and interpret the Plan and to correct any defects, supply any omissions, or reconcile any inconsistencies in the Plan.

(c) Any action by the Administrator, which is not found to be an abuse of discretion, shall be final, conclusive, and binding on all individuals affected thereby. The Administrator may take any such action in such manner and to such extent as the Administrator in its sole discretion may deem expedient and the Administrator shall be the sole and final judge of such expediency.

**Section 10.02. Claims Procedure.**

(a) Any person who believes that he is entitled to any benefits under the Plan shall present such claim in writing to the Administrator on the Applicable Form. The Administrator shall within a reasonable period of time provide adequate notice in writing to any claimant as to the decision on any such claim. If such claim has been denied, in whole or in part, such notice shall set forth (i) the specific reasons for such denial, (ii) specific reference to any pertinent provisions of the Plan on which denial is based, (iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary, and (iv) an explanation of the review procedure for the

Plan. Such notice shall be written in a manner calculated to be understood by the Participant. Within sixty (60) days after receipt by the claimant of notification of denial, the claimant shall have the right to present a written appeal to the Administrator. If such appeal is not filed within said sixty (60) day period, the decision of the Administrator shall be final and binding. The claimant or his duly authorized representative may review any Plan documents which are pertinent to the claim and may submit issues and comments to the Administrator in writing.

(b) A decision by the Administrator shall be made within a reasonable period of time after its receipt of the appeal; provided, however, if the Administrator decides a hearing at which the claimant or his duly authorized representative may be present is necessary and such a hearing is held, such decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after its receipt of the appeal. Any such decision of the Administrator shall be in writing and provide adequate notice to the claimant setting forth the specific reasons for any denial and written in a manner calculated to be understood by a Participant. Any such decision by the Administrator shall be final.

**Section 10.03. Employment of Consultants.** The Administrator may employ one (1) or more persons to render advice.

**Section 10.04. Delegation by Administrator.**

(a) The Administrator or the Administrator's delegee under Section 2.01(b), or the University's Associate Vice President of Human Resources may from time to time delegate to an individual, committee, or organization certain of its responsibilities under the Plan. Any such individual, committee, or organization shall remain responsible therefor until such delegation is revoked by the Administrator, or the Administrator's delegee under Section 2.01(b), which revocation may be without cause and without advance notice. Such individual, committee, or

organization shall have such power and authority with respect to such delegated responsibilities as the Administrator or the Administrator's delegee under Section 2.01(b) has under the Plan. The Administrator or the Administrator's delegee shall not be liable for any act or omission of such individual, committee, or organization in carrying out such responsibility.

(b) The University's Associate Vice President of Human Resources specifically delegates to the University Director of Retirement Programs responsibility for:

- (1) processing claims under the Plan;
- (2) prescribing policies and procedures governing Participants' investment elections and options;
- (3) prescribing administrative policies and procedures necessary or helpful to administer the Plan and its provisions; and
- (4) such other tasks as deemed appropriate.

## **ARTICLE XI**

### **FUNDS**

All contributions under the Plan shall be transferred to the Funds to be held, managed, invested, and distributed as part of the Fund or the Retirement Annuity Contract in accordance with the provisions of the Plan. All benefits under the Plan shall be distributed solely from the Funds, and the University shall have no liability therefore other than the obligation to make contributions to the Funds as provided in the Plan.

(a) A Participant's Account shall be invested in one (1) or more investment Funds as directed by the Participant, and as are made available by the Administrator in its sole discretion. As of any time, the Administrator may add additional Funds or delete Funds.

(b) Except as otherwise provided by the Administrator, Contributions shall be invested in such Funds in accordance with the Participant's investment direction under this Plan.

**ARTICLE XII.**

**AMENDMENT OR TERMINATION OF PLAN**

**Section 12.01. Amendment or Termination.** The Board of Trustees shall have the right, in its sole and final discretion, to amend or terminate the Plan at any time and from time to time to any extent which it may deem advisable. A certified copy of the resolution of the Board of Trustees taking such action shall be delivered to the Administrator, any issuer of a Retirement Annuity Contract, and the Trustee, and the Plan shall be amended or terminated in the manner and effective as of the date set forth in such resolution, and the University, Employees, Participants, Beneficiaries, Trustee, issuer of a Retirement Annuity Contract, Administrator, and all other persons having any interest under the Plan shall be bound thereby. The Board of Trustees hereby delegates its authority under this Section to amend the Plan to the University's Associate Vice President of Human Resources, although the Board of Trustees also retains the right to amend this Plan.

**Section 12.02. Amendment for Qualification of Plan.** It is the intent of the University that the Plan shall be and remain qualified for tax purposes under the Code. The University shall promptly submit the Plan for approval under the Code and all expenses incident thereto shall be borne by the University. The University may make any modifications, alterations, or amendments to the Plan necessary to obtain and retain approval of the Secretary of the Treasury or his delegate as may be necessary to establish and maintain the status of the Plan as qualified under the provisions of the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration, or amendment of the Plan, made in accordance with this Section, may be made retroactively, if necessary or appropriate. The University, Employees, Participants, Beneficiaries, Trustee, issuer of a Retirement Annuity Contract, Administrator, and all others having any interest under the Plan

shall be bound thereby. The Board of Trustees hereby delegates its authority under this Section to amend the Plan to the University's Associate Vice President of Human Resources, although the Board of Trustees also retains the right to amend this Plan under this Section.

**Section 12.03. Restrictions on Amendments.** Any amendment may be made to the Plan which is not contrary to the Code.

**Section 12.04. Allocation of Assets on Termination.** In the case of the complete or partial termination of the Plan, including a termination arising from the complete discontinuance of contributions, the Account of each affected Participant shall become irrevocably Vested. On such complete or partial termination, the affected portion of the Funds shall be liquidated pursuant to the direction of the Board of Trustees. The Plan shall remain in full effect with respect to any remaining Participants who are not affected by the partial termination of the Plan.

### **ARTICLE XIII.**

#### **NONALIENATION OF BENEFITS**

No benefit under the Plan, prior to actual receipt thereof by a Participant or a Beneficiary, shall be subject to any debt, liability, contract, engagement, or tort of any Participant or his beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or other voluntary or involuntary alienation or other legal or equitable process, nor transferable by operation of law.

### **ARTICLE XIV.**

#### **MISCELLANEOUS**

**Section 14.01. Non-Diversion.** The assets of the Plan shall never inure to the benefit of the University and shall be held for the exclusive purposes of providing benefits to Participants in the Plan and their Beneficiaries and defraying reasonable expenses of administering the Plan, except as follows:

(a) In the case of a contribution which is made by the University under a mistake of fact, such contribution shall be returned to the University, upon demand, within one (1) year after the payment of the contribution and shall be reduced for any loss incurred but unadjusted for any gains earned during the time the mistaken contribution was part of the Plan.

(b) Contributions by the University are conditioned on the initial qualification of the Plan under the Code, and if the Plan does not so qualify initially, then such contributions shall be returned to the University, upon demand, within one (1) year after the date of denial of qualification of the Plan.

**Section 14.02. Limitation of Rights and Obligations.** Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) as conferring upon any Participant, Beneficiary, or any other person a right or claim against the Funds, Trustee, issuer of a Retirement Annuity Contract, University, or Administrator, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the University for the validity or effect of the Plan;

(c) as a contract or agreement between the University and any Participant or other person;

(d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the University or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) as giving any Participant the right to be retained in the service of the University or to interfere with the right of the University to discharge any Participant or other person at any time, subject to any governing tenure rules.

**Section 14.03. Notice.** Any notice given under the Plan shall be sufficient if given to the Administrator, when addressed to its office, or if given to a Participant, when addressed to the Participant at his or her address as it appears in the records of the Administrator.

**Section 14.04. Right of Recovery.** If the Administrator makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Administrator may recover that incorrect payment, whether or not it was made due to the error of the Administrator, from the person to whom it was made, or from any other appropriate party. If any such incorrect payment is made directly to a Participant, the Administrator may deduct it when making future payments directly to that Participant.

**Section 14.05. Legal Counsel.** The Administrator and/or its designee, may from time to time consult with counsel, who may be counsel for the University, and shall be fully protected in acting upon the advice of such counsel.

**Section 14.06. Evidence of Action.** All orders, requests, and instructions to the Administrator by the University or by any duly authorized representative, shall be in writing and the Administrator shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions.

**Section 14.07. Receipt and Release.** Any payments to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Administrator.

**Section 14.08. Legal Actions.** If the Administrator is made a party to any legal action regarding the Retirement Annuity Contract, Trust or the Plan, any and all costs and expenses, including reasonable attorneys' fees, incurred by the Administrator in connection with such proceeding shall be paid from the assets of the Plan unless paid by the University.

**Section 14.09. Reliance.** The Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram, or other paper or document believed by the Administrator to be genuine or to be executed or sent by an authorized person.

**Section 14.10. Entire Plan.** The Plan document and the documents incorporated by reference herein shall constitute the only legally governing documents for the Plan. All statements made by the University or Administrator shall be deemed representations and not warranties. No such statements shall void or reduce coverage under the Plan or be used in defense to a claim unless in writing signed by the Administrator.

**Section 14.11. Counterparts.** The Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All the counterparts shall constitute but one (1) and the same instrument and shall be sufficiently evidenced by any one (1) counterpart.

**INDIANA UNIVERSITY**

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

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

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

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