

INDIANA UNIVERSITY

**IU SUPPLEMENTAL
EARLY RETIREMENT PLAN**

Amended and Restated: April 1, 2016

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IU SUPPLEMENTAL EARLY RETIREMENT PLAN

PRELIMINARY INFORMATION

The IU Supplemental Early Retirement Plan ("Plan") was adopted, effective as of July 1, 1995, to provide supplemental early retirement benefits to eligible employees. It is a government plan within the meaning of Internal Revenue Code Section 414(d) and is thereby exempt from the provisions of Title I and Title IV of the Employee Retirement Income Security Act of 1974. The Plan is intended to comply with all applicable provisions of the Internal Revenue Code of 1986, as amended. The Plan was submitted for a determination letter from the Internal Revenue Service with respect to the Plan, which was received September 27, 2010.

The University entered into a trust agreement with Fidelity Management Trust Company, as Trustee, creating a trust to hold certain assets of the Plan and an institutional retirement annuity with TIAA-CREF to hold the remaining assets of the Plan.

ARTICLE I.

RESTATEMENT OF PLAN

The Plan is hereby amended and restated, effective as of April 1, 2016, for the purpose of providing supplemental early retirement and other benefits to eligible employees. Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are employees on and after such effective date and to transactions under the Plan on and after such effective date. The Plan is structured as a money purchase pension plan under Code Section 401(a).

ARTICLE II.

DEFINITIONS AND 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 a separate account maintained for each Participant reflecting the interest of that Participant in the Plan.

(b) "Administrator" means the Board of Trustees of the University.

(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.

(e) "Beneficiary" means the person or persons designated by the Participant on the Applicable Form to receive any benefits payable under the Plan in the event of a Participant's death.

- (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) for any applicable year.
- (i) "Disabled" or "Disability" means a Participant has been awarded disability 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) "Disability Retirement Age" means (i) the date a Disabled Participant attains age fifty-five (55) while Disabled, provided such Participant's Disability was continuous from his last day of active work with the University to his attainment of age fifty-five (55); or (ii) the date a Participant becomes Disabled on or after age fifty-five (55) while actively employed by the University.
- (k) "Effective Date" means July 1, 1995, the original effective date of the Plan.
- (l) "Eligible Employee" means an Employee appointed on or after January 1, 1989, but not after June 30, 1999, as a one hundred percent (100%) full-time equivalent: (i) Academic Employee, or (ii) Staff grade 16 or above who is also participating in the IU Retirement Plan with twelve percent (12%) contributions. Notwithstanding the preceding sentence, Eligible Employee shall not include any Employee in the Geological Survey Department.
- (m) "Employee" means any individual employed by the University. Notwithstanding any other provision of the Plan, for purposes of satisfying the requirements of Code Section 414(n)(3), a "leased employee" shall be treated as an Employee; provided, however, such leased employee shall not become a Participant unless he is an Employee without regard to this

sentence and he satisfies the participation requirements of Article III. The term "leased employee" means any person (other than an individual employed by the University) who pursuant to an agreement between the University and any other person ("leasing organization") has performed services for the University (or for the University and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one (1) year, and such services are of a type historically performed by Employees in the business field of University. Contributions or benefits provided to a leased employee by the leasing organization that are attributable to services performed for the University shall be treated as provided by the University. A leased employee shall not be considered an Employee if (i) such employee is covered by a money purchase pension plan providing (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code Section 415(c)(3), but including amounts excludable from the employee's gross income under Code Section 125, 402(a)(8), 402(h) or 403(b), (2) immediate participation, and (3) full and immediate vesting; and (ii) leased employees do not constitute more than twenty percent (20%) of the University's non-highly compensated work force, as defined in Code Section 414(a)(5)(C)(ii).

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

(o) "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.

(p) "Plan" means the plan created and embodied herein, as amended from time to time, known as the "IU Supplemental Early Retirement Plan."

(q) "Plan Compensation" for a Plan Year means the base salary of a Participant received from the University in the Plan Year which is reportable as wages for federal income tax purposes, determined without regard to any salary reduction agreement pursuant to Code Section 403(b) or Code Section 125. Plan Compensation shall not include summer pay or supplemental compensation. Plan Compensation shall include compensation for temporary administrative responsibilities assigned to a faculty member. To the extent required by Code Section 401(a)(17). For Plan Years beginning on or after January 1, 1996, 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 year). Notwithstanding anything in the Plan to the contrary, Compensation during a Plan Year shall be limited as follows:

(1) Effective for Plan Years beginning before January 1, 1996, the limitations on Compensation under Code Section 401(a)(17) shall be deemed to be satisfied in accordance with the applicable rules and regulations prescribed by the Secretary of Treasury for governmental plans;

(2) For Plan Years beginning on or after January 1, 1996, if and to the extent, required by Code Section 401(a)(17) for a governmental plan, Plan Compensation taken into account under the Plan for any Plan Year for a Participant who was not a Participant on or before December 31, 1995 shall not exceed, (i) for Plan Years beginning after 1995 and before 2002, \$150,000 (as increased by the Cost of Living Adjustment for the year) and, (ii) for Plan Years beginning after December 31, 2001, \$200,000, (as increased by the Cost of Living Adjustment for the year).

(3) For Plan Years beginning on or after January 1, 1996, as provided in the transitional rule of P.L. 103-66, § 13212(d)(3), Plan Compensation taken into account under the Plan for any Plan Year for an individual who became a Participant on or before December 31, 1995 (an eligible participant within the meaning of P.L. 103-66, § 13212(d)(3)(B)) shall be limited to: (A) for Plan Years beginning after 1995 and before 2002, \$150,000 (as increased by the Cost of Living Adjustment for the year), or, (B) for Plan Years beginning after December 31, 2001, \$200,000, (as increased by the Cost of Living Adjustment for the year). If the terms of the Plan as in effect on July 1, 1993, did not impose a limitation on the maximum amount of Compensation that could be taken into account under the Plan, there shall be no limitation on the maximum amount of Compensation that Participants can make as described in this paragraph.

(r) "Plan Year" means:

(1) the period beginning on the Effective Date and ending on June 30, 1996;

(2) the period beginning on July 1, 1996, and ending on December 31, 1996;

and

(3) thereafter, any twelve (12) month period beginning on January 1 and ending on the following December 31.

(s) "Retire" or "Retirement" means that a participant severs employment on or after his Disability Retirement Age or Retirement Age.

(t) "Retirement Age" means the date a Participant terminates employment after attainment of age fifty-five (55) in an active employment status with the University or, if later, the date following the date an Eligible Employee first becomes a Participant in the Plan under Section 3.01.

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

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

(w) "Terminate 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 "Terminate 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 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 Director of Benefits Programs. Approval for such extension must be executed prior to the end of the first twelve (12) month leave period.

(x) "Trust" means the trust established and maintained under the Trust Agreement to hold the Trust Fund.

(y) "Trust Agreement" means the "Trust Agreement for the IU Supplemental Early Retirement Plan" entered into by the University.

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

(aa) "Trustee" mean the trustee or any successor trustee or trustees designated and appointed under the Trust.

(bb) "University" means Indiana University.

(cc) "University Contributions" means contributions made by the University pursuant to Section 4.02.

(dd) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, *et. seq.*, as amended from time to time.

(ee) "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.

(ff) "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, and (ii) 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.

PARTICIPATION

Section 3.01. Participation.

(a) Except as otherwise specifically provided herein, an Eligible Employee shall begin participation in the Plan immediately upon appointment to the University.

(b) Notwithstanding paragraph (a) above, an Eligible Employee who is appointed before the Effective Date shall begin participating on the Effective Date, if actively employed as an Eligible Employee on such date.

(c) Notwithstanding anything contained herein to the contrary, no one shall begin participation in the Plan on or after July 1, 1999.

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. A Participant shall cease to be an active Participant on the date he is no longer an Eligible Employee.

Section 3.03. Reemployment. A former Participant who is reemployed by the University is not eligible to become a Participant upon reemployment.

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 Contributions.

(a) For each pay period beginning on and after July 1, 1996, the University shall contribute to the Plan for each Participant an amount equal to two and four-tenths percent (2.4%) 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 period.

(b) Notwithstanding anything to the contrary in this Section 4.02, for each Participant employed by the University on the Effective Date who commenced employment prior to March 30, 1996, and for the period of time beginning on July 1, 1996 and ending on June 30, 1999, in lieu of the amount specified in paragraph (a) above, the University shall contribute to the Plan each pay period the following percentage of the Plan Compensation of such Participant

received during such pay period, based on the period in which such Participant was appointed to or commenced employment with the University:

<u>Date of Appointment or Commencement of Employment</u>	<u>Contribution Rate</u>
January 1, 1989 to September 30, 1989	9.54%
October 1, 1989 to September 30, 1990	8.42%
October 1, 1990 to September 30, 1991	7.33%
October 1, 1991 to September 30, 1992	6.29%
October 1, 1992 to September 30, 1993	5.29%
October 1, 1993 to September 30, 1994	4.32%
October 1, 1994 to September 30, 1995	3.39%
October 1, 1995 to March 30, 1996	2.49%

Such amount shall be allocated to the Account of each Participant as soon as administratively feasible following such pay period.

(c) Notwithstanding anything to the contrary in the Plan, no University Contributions shall be made on behalf of a Participant after the date he Terminates Employment, is no longer an Eligible Employee, or while such Participant is on an unpaid leave of absence.

Section 4.03. Employee Contributions. Employee contributions under the Plan are not required or permitted.

Section 4.04. Payment and Nature of Contributions. All University Contributions under Section 4.02 shall be made within such time period as permitted by law.

Section 4.05. 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 4.06. 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 USERRA, 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. 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).

Effective January 1, 2007, 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 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.

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 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) Fifty-Three Thousand Dollars (\$53,000), 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.

This compensation limit shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code Section 401(h) or Code Section 419A(f)(2)) which is otherwise treated as an annual addition.

(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 Treas. Reg. § 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 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,

the excess annual additions will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar Internal Revenue Service correction program).

(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, after March 31, 1984, 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, or, if later, the end of the Plan Year during which the Termination 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, even if they are paid within 2½ months following Termination, or, if later, the end of the Plan Year during which the Termination 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 Accounts 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 Benefits.

(a) If a Participant Retires, he is entitled to receive his Account as provided in this Section.

(b) A Participant's Account shall be used to provide retirement benefits pursuant to paragraph (c). The Participant may make the request for distribution on an Applicable Form at any time after he Retires, but in no event later than the date determined under Section 7.05.

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 7.05, 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 with the University.

(c) Subject to the terms of the funding vehicle, 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:

- (1) a single lump sum payment;
- (2) periodic lump sum payments;
- (3) any other form available under the funding vehicle or investment option that meets the requirements of Section 7.05;
- (4) a direct rollover pursuant to Section 7.08; 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 7.05, 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, or

(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.

(a) If a Participant dies before Retirement Age and before completion of ten (10) years of employment with the University, he shall forfeit all amounts in his Account.

(b) If a Participant dies after completion of ten (10) years of employment with the University or after attainment of Retirement Age, his remaining Vested Account (if any) shall be distributed to his Beneficiary. Distribution shall be made following the Beneficiary's completion of the Applicable Form, but in any event no later than the fifth (5th) year after the death of the Participant.

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.

(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. Termination of Employment.

If a Participant Terminates Employment before attainment of Retirement Age, he shall forfeit all amounts in his Account.

Section 7.05. Other Distribution Rules Imposed by Federal Law.

(a) 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 Retires.

(b) Notwithstanding any other provisions of this Section 7.05, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009

RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), would have receive those 2009 distributions unless the Participant or Beneficiary elects not to receive such distribution. Participants and Beneficiaries described in the preceding sentence would have been given the opportunity to elect not to receive the distributions described in the preceding sentence. However, those Participants and Beneficiaries who receive required minimum distributions through an automatic payment system would have continue to receive 2009 RMDs unless he or she elects not to receive the 2009 RMDs.

Notwithstanding any other provisions of the Plan, and solely for purposes of applying the rollover provisions of the Plan, 2009 RMDs (amounts that would have been required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H)) and Extended 2009 RMDs (one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant's designated Beneficiary, or for a period of at least 10 years), will be treated as Eligible Rollover Distributions.

Section 7.06. 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 7.07. 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 7.08. 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) "Eligible rollover distribution" means 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:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code;

(3) the portion of any distribution that is not includible in gross income; provided, however, effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, but such portion may be transferred only:

(A) to an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code that agrees to

separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(B) on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code or to an annuity contract described in section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(C) on or after January 1, 2008, to a Roth IRA described in section 408A of the Internal Revenue Code; and

(4) any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of section 415 of the Internal Revenue Code or any distribution that is reasonably expected to total less than \$200 during the year.

Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code.

(b) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(1) an individual retirement account described in section 408(a) of the Internal Revenue Code,

(2) an individual retirement annuity described in section 408(b) of the Internal Revenue Code,

(3) an annuity plan described in section 403(a) of the Internal Revenue Code,

(4) a qualified trust described in section 401(a) of the Internal Revenue Code,

(5) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code,

(6) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or

(7) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code.

(c) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code. Effective January 1, 2009, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

(d) "Direct rollover" means 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) A Participant shall be Vested in his Account only after attainment of Retirement Age or Disability Retirement Age.

Section 9.02. **Forfeitures.**

(a) A Participant's Account shall be forfeited upon his Termination of Employment.

(b) A Participant's Account shall be forfeited upon the Participant's voluntary transfer to a position with the University wherein the Participant is no longer an Eligible Employee.

(c) Upon a Participant's involuntary transfer to a position with the University wherein the Participant is no longer an Eligible Employee, the Participant shall become an inactive Participant. As such, no further University Contributions shall be made to the Participant's Account, and the Participant shall (i) forfeit his Account upon Termination of Employment, or (ii) Vest in his Account only after attainment of Retirement Age or Disability Retirement Age.

(d) Amounts forfeited during a Plan Year shall be used to reduce University Contributions required under Section 4.02 as soon as administratively practicable, and shall be held unallocated until such date.

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.

(d) The Administrator shall not take any action with respect to any of the benefits provided hereunder or act otherwise in pursuance of the powers conferred herein upon the Administrator which would be discriminatory in favor of officers, supervisors, or Participants who are Highly Compensated Employees or which would result (i) in benefiting one (1) Participant or group of Participants at the expense of another, (ii) in discrimination as between Participants similarly situated, or (iii) in the application of different rules to a substantially similar set of facts.

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 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, 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 has under the Plan. The Administrator shall not be liable for any act or omission of such individual, committee, or organization in carrying out such responsibility.

(b) The Administrator specifically delegates to the University Director of Benefit Programs responsibility for:

- (1) processing claims under the Plan;
- (2) prescribing policies and procedures governing Participants' investment elections and options;
- (3) taking any actions and making such amendments to the Plan as are necessary to retain the Plan's qualified status; and
- (4) prescribing administrative policies and procedures necessary or helpful to administer the Plan and its provisions.

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 the University's Retirement 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, the issuer of the 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, Administrator, and all other persons having any interest under the Plan shall be bound thereby.

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, Administrator, and all others having any interest under the Plan shall be bound thereby.

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, 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: _____