

**INDIANA UNIVERSITY  
RETIREMENT PLAN**

Amended and Restated Effective April 1, 2016

**TABLE OF CONTENTS**

|               | <b><u>Page</u></b>                               |
|---------------|--|
| ARTICLE I     | ESTABLISHMENT AND RESTATEMENT OF PLAN..... 1     |
| Section 1.01. | Plan Establishment and History..... 1            |
| Section 1.02. | Plan Restatement ..... 1                         |
| Section 1.03. | Plan Funding..... 1                              |
| ARTICLE II    | CONSTRUCTION AND DEFINITIONS ..... 1             |
| Section 2.01. | Construction and Governing Law..... 1            |
| Section 2.02. | Definitions ..... 2                              |
| ARTICLE III   | ELIGIBILITY AND PARTICIPATION ..... 7            |
| Section 3.01. | Participation..... 7                             |
| Section 3.02. | Cessation of Contributions ..... 7               |
| Section 3.03. | Cessation of Participation ..... 8               |
| ARTICLE IV    | CONTRIBUTIONS ..... 8                            |
| Section 4.01. | University Contributions ..... 8                 |
| Section 4.02. | Post-Retirement Continued Contributions..... 8   |
| Section 4.03. | Rollover Contributions to the Plan ..... 9       |
| Section 4.04. | Leave of Absence ..... 9                         |
| Section 4.05. | Expenses of Plan..... 9                          |
| ARTICLE V     | LIMITATIONS ON CONTRIBUTIONS..... 9              |
| Section 5.01. | Code Section 415 Limits ..... 9                  |
| Section 5.02. | Excess Annual Additions..... 10                  |
| ARTICLE VI    | NONDISCRIMINATION..... 10                        |
| Section 6.01. | Compliance with Code Section 403(b)(12) ..... 10 |
| Section 6.02. | Compliance with Code Section 401(a)(17) ..... 10 |
| ARTICLE VII   | ACCOUNTING ..... 11                              |
| Section 7.01. | Participant Accounts..... 11                     |
| Section 7.02. | Participant Statements ..... 11                  |
| Section 7.03. | Value of Account..... 11                         |
| ARTICLE VIII  | INVESTMENT OF CONTRIBUTIONS..... 11              |
| Section 8.01. | Vendors and Investment Options..... 11           |
| Section 8.02. | Default Investments ..... 12                     |

|                |  |    |
|----------------|--|----|
| ARTICLE IX     | DISTRIBUTIONS .....  | 12 |
| Section 9.01.  | Commencement of Distributions.....   | 12 |
| Section 9.02.  | Form of Distribution .....   | 12 |
| Section 9.03.  | Death Benefit.....   | 12 |
| Section 9.04.  | Hardship Distributions.....  | 13 |
| Section 9.05.  | Required Distribution Rules .....  | 13 |
| Section 9.06.  | Additional Tax on Early Withdrawals.....   | 15 |
| ARTICLE X      | LOANS .....  | 15 |
| ARTICLE XI     | VESTING .....  | 15 |
| Section 11.01. | Participants Prior to September 1, 2010 .....  | 15 |
| Section 11.02. | Participants on or after September 1, 2010.....  | 15 |
| Section 11.03. | Forfeitures.....   | 16 |
| ARTICLE XII    | ROLLOVERS FROM THIS PLAN .....   | 16 |
| Section 12.01. | Definitions for this Article.....  | 16 |
| Section 12.02. | Direct Transfer of Eligible Rollover Distribution .....                                  | 17 |
| Section 12.03. | Mandatory Withholding of Eligible Rollover Distributions.....                            | 18 |
| Section 12.04. | Explanation of Plan Distribution and Withholding Requirements .....                      | 18 |
| ARTICLE XIII   | ADMINISTRATION OF THE PLAN .....   | 18 |
| Section 13.01. | Authority of the Administrator .....   | 18 |
| Section 13.04. | Employment of Consultants .....  | 19 |
| ARTICLE XIV    | REQUESTS FOR INFORMATION AND OTHER CLAIMS<br>PROCEDURES.....                             | 19 |
| Section 14.01. | Requests for Information Concerning Eligibility, Participation<br>and Contributions..... | 19 |
| Section 14.02. | Requests for Information Concerning Funding Vehicles .....                               | 19 |
| Section 14.03. | Processing of Claims .....   | 19 |
| ARTICLE XV     | AMENDMENT AND TERMINATION .....  | 20 |
| Section 15.01. | Amendment and Termination .....  | 20 |
| Section 15.02. | Adverse Effects.....   | 20 |
| Section 15.03. | Distribution Upon Termination of the Plan .....  | 20 |
| ARTICLE XVI    | MISCELLANEOUS .....  | 21 |
| Section 16.01. | Non-Alienation .....   | 21 |
| Section 16.02. | Military Service .....   | 21 |
| Section 16.03. | Limitation of Rights and Obligations .....   | 22 |

|                |   |    |
|----------------|---|----|
| Section 16.04. | Federal and State Taxes .....                 | 22 |
| Section 16.05. | Erroneous Payments .....                      | 22 |
| Section 16.06. | Limitation on Recovery .....                  | 23 |
| Section 16.07. | Benefit Payment Issue Resolution .....        | 23 |
| Section 16.08. | Release .....                                 | 23 |
| Section 16.09. | Liability .....                               | 23 |
| Section 16.10. | Necessary Parties .....                       | 23 |
| Section 16.11. | Information Provided by the Participant ..... | 23 |
| Section 16.12. | Family Medical Leave Act .....                | 23 |
| Section 16.13. | Indemnification .....                         | 23 |
| Section 16.14. | No Reversion .....                            | 24 |
| Section 16.15. | Finality of Determination .....               | 24 |
| Section 16.16. | Counterparts .....                            | 24 |

|            |                        |     |
|------------|------------------------|-----|
| APPENDIX A | APPROVED VENDORS ..... | A-1 |
|------------|------------------------|-----|

|            |   |     |
|------------|---|-----|
| APPENDIX B | ELIGIBLE EMPLOYEES FOR CONTRIBUTIONS BASED ON<br>BUDGETED BASE SALARY AND OVERTIME COMPENSATION ..... | B-1 |
|------------|---|-----|

**INDIANA UNIVERSITY  
RETIREMENT PLAN**

**ARTICLE I**

**ESTABLISHMENT AND RESTATEMENT OF PLAN**

**Section 1.01. Plan Establishment and History.**

(a) Indiana University ("University") is a public university established under Indiana law and an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended ("Code"). The University established the Indiana University Retirement Plan ("Plan"), effective July 1, 1937, to provide retirement benefits for eligible employees. The Plan was, and is intended to remain, a defined contribution plan under Code Section 403(b). The Plan is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974 ("ERISA"). As a governmental plan, ERISA does not apply.

**Section 1.02. Plan Restatement.**

(a) The Plan was most recently amended and restated dated February 19, 2010. The Plan is now being amended and restated effective April 1, 2016.

(b) 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 April 1, 2016, and to transactions under the Plan on and after April 1, 2016. The rights and benefits, if any, of individuals who are not Employees on or after April 1, 2016, shall be determined in accordance with the terms and provisions of the Plan that was in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

**Section 1.03. Plan Funding.** The Plan is funded exclusively through the purchase of Funding Vehicles. New University Contributions may only go into Funding Vehicles from the Vendor(s) identified in Appendix A attached hereto, as may be amended from time to time. The terms and conditions of the Funding Vehicles shall be considered part of, and shall be construed as having been incorporated into, this Plan. To the extent there is any conflict between the terms of any such Funding Vehicles and the terms of the Plan, however, the terms of the Plan shall govern, except as otherwise expressly provided herein.

**ARTICLE II**

**CONSTRUCTION AND DEFINITIONS**

**Section 2.01. Construction and Governing Law.**

(a) This Plan shall be interpreted, enforced, and administered in accordance with the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Indiana without regard to conflict of law principles.

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

(c) 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.

(d) 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.

(e) 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 causes the Plan to constitute a defined contribution plan under the provisions of Code Section 403(b) and causes the Plan to comply with all applicable requirements of the Code shall prevail over any different interpretation.

**Section 2.02. 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 the separate accounts maintained for each Participant reflecting his or her interest in a Funding Vehicle as follows:

(1) "University Contribution Account" means the account maintained to reflect the Participant's interest in a Funding Vehicle attributable to his or her University Contributions pursuant to Section 4.01.

(2) "Excess Annual Additions Account" means the account maintained to reflect the Participant's interest in a Funding Vehicle attributable to his or her Excess Annual Additions pursuant to Section 5.02.

(b) "Administrator" means the University; provided, however, that to the extent that the Board has delegated any of the University's responsibilities as Administrator to University Human Resources, the term Administrator shall be deemed to refer to University Human Resources.

(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) "Annual Addition" means the annual addition as defined in Code Section 415(c) and as modified in Code Sections 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 Limitation Year under this Plan and any other 403(b) plan maintained by the University (or, if required by Code Section 415 and the regulations thereunder, to any other defined contribution plan):

- (1) employer contributions;
- (2) employee contributions;
- (3) forfeitures;
- (4) 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 the University or an Affiliated Employer, or both, as applicable; and
- (5) mandatory employee contributions to a defined benefit plan maintained by the University, unless the contributions are "picked-up" by the University pursuant to Code Section 414(h)(2).

Annual Additions shall not include (i) any elective deferrals made by a Participant who is age fifty (50) or older in accordance with and subject to Code Section 414(v), (ii) excess elective deferrals distributed in accordance with Treasury Regulation Section 1.402(g)-1(e)(2), or (iii) rollover contributions.

(e) "Annuity Contract" means a nontransferable contract as defined in Code Section 403(b)(1), established for Participants by the University, that is issued by a Vendor who is an insurance company qualified to issue annuities in the State of Indiana and that includes payment in the form of an annuity.

(f) "Applicable Form" means the appropriate form as designated and furnished by the Vendor or the Administrator to make any election or provide any 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 and/or the Vendor may prescribe an electronic or telephonic form in lieu of or in addition to a written form.

(g) "Beneficiary" means the person, company, trustee or estate designated by the Participant on the Applicable Form to receive any benefits payable under the Plan in the event of the Participant's death. Unless otherwise provided in the applicable Funding Vehicle, if the designated Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's estate shall be the Beneficiary. Beneficiary also means an alternate payee within the meaning of Code Section 414(p)(8).

(h) "Board" means the Board of Trustees of Indiana University.

(i) "Budgeted Base Salary" means, effective January 1, 2009, the current budgeted base salary actually paid to an Employee for services provided to the University. Budgeted Base Salary excludes supplemental payments, allowances, bonuses, or non-cash fringe amounts. Budgeted Base Salary shall also 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. Budgeted Base Salary shall include amounts of 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). However, Budgeted Base Salary shall be limited in accordance with Article V.

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

(k) "Contribution Level" means the percentage of University Contributions for which an Eligible Employee is eligible under the Plan.

(l) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 401(a)(17) or 415(d) for any applicable year.

(m) "Custodial Account" means a group custodial account, as defined in Code Section 403(b)(7), established by the University with a Vendor to hold assets of the Plan.

(n) "Eligible Employee" means an Employee meeting the following requirements:

(1) For the 15% Contribution Level, an Employee who is a one hundred percent (100%) full-time equivalent Academic Employee or Professional Staff Employee hired into a grade 16 and above appointed position before January 1, 1989;

(2) For the 12% Contribution Level, an Employee who is a one hundred percent (100%) full-time equivalent Academic Employee or Professional Staff Employee hired into a grade 16 and above appointed position on or after January 1, 1989, but no later than June 30, 1999;

(3) For the 11.25% Contribution Level, an Employee who is: (i) a fifty percent (50%) or more full-time equivalent Professional Staff Employee hired into a grade 15 and below appointed position before July 1, 1999; or (ii) an Academic Employee hired in an appointed position before July 1, 1999, who is less than a one hundred percent (100%) full-time equivalent, but at least a fifty percent (50%) full-time equivalent for twelve (12) pays, sixty percent (60%) full-time equivalent for ten (10) pays, or sixty-five (65%) full-time equivalent for nine (9) pays; and

(4) For the 10% Contribution Level, an Employee who: (i) is a fifty percent (50%) or more full-time equivalent Academic Employee or Professional Staff Employee hired or rehired in an appointed position after June 30, 1999; or (ii) no longer satisfies the eligibility requirements for the 15%, 12%, or 11.25% Contribution Levels, but satisfies the eligibility requirements for the 10% Contribution Level.



An Eligible Employee shall not include: (i) a student performing services described in Code Section 3121(b)(10); (ii) a medical resident; or (iii) a non-resident alien within the meaning of Code Section 410(b)(3)(C).

(o) "Employee" means a 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.

(p) "Excess Annual Additions" mean, except as provided in Code Section 414(v), that portion of a Participant's University Contributions to the Plan and contributions to another 403(b) plan maintained by the University (or, if required by Code Section 415 and the regulations thereunder, to any other defined contribution plan) which exceeds the limits of Code Section 415.

(q) "Former Vendor" means any vendor that was approved by the University to receive University Contributions under the Plan, but is no longer approved under the Plan to receive University Contributions, until such time as the vendor no longer continues to hold Plan assets; provided, that a Former Vendor shall not include any vendor that ceased to be eligible to receive University Contributions under the Plan prior to January 1, 2005.

(r) "Funding Vehicles" means the Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the University for use under the Plan.

(s) "HEART" means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time.

(t) "Includible Compensation" means, effective January 1, 2009, all compensation received by an Employee from the University that is includible in his or her gross income for federal income tax purposes (computed without regard to Code Section 911) for the most recent period that is a year of service within the meaning of Code Section 403(b)(4) which precedes the taxable year by no more than five (5) years within the meaning of Code Section 403(b)(3). Includible Compensation also includes any amounts excludable from taxable income because of an election under Code Sections 457(b), 402(e)(2), 402(h)(1)(B), 402(k), 125, and 132(f)(4). Includible Compensation includes any compensation described in paragraphs (1) or (2) below, provided the compensation is paid by the later of two and one-half (2½) months after the Employee's Severance from Employment or the end of the calendar year in which the Employee has a Severance from Employment:

(1) any payment that would have been paid to the Employee prior to a Severance from Employment if the Employee had continued in employment with the University, and that would be Budgeted Base Salary or Total Salary if paid prior to the Employee's Severance from Employment; and

(2) a payment for unused accrued bona fide sick leave (if the Employee qualifies for such payment under the University's criteria), vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued

and the payment would have been included in the definition of Budgeted Base Salary or Total Salary if paid prior to the Employee's Severance from Employment.

Includible Compensation does not include any amounts picked up by the University within the meaning of Code Section 414(h). Includible Compensation is determined without regard to any community property laws. Includible Compensation shall not exceed the limits under Code Section 401(a)(17), to the extent applicable. Includible Compensation includes deemed Includible Compensation under Treasury Regulation Section 1.403(b)-4(d).

(u) "Investment Options" mean the investment funds available under the Funding Vehicles provided by the Vendor(s) and specifically approved by the Administrator, in its sole and absolute discretion, for use under this Plan in accordance with Article VIII.

(v) "Limitation Year" means the calendar year; provided, however, that if the Participant is in control of an employer within the meaning of Treasury Regulation Section 1.415(a)-1(f), the Limitation Year is the limitation year of that employer.

(w) "Participant" means any Eligible Employee who is or may become eligible to receive a benefit of any type under the Plan. A Participant shall also mean, when appropriate to the context, a former Eligible Employee who is eligible to receive a benefit of any type under the Plan.

(x) "Plan" means the Indiana University Retirement Plan, as amended from time to time.

(y) "Plan Year" means January 1 through December 31.

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

(aa) "Severance from Employment" means the complete termination of the employment relationship between the Employee and the University and any Affiliated Employer.

(bb) "Spouse" means the person to whom an Eligible Employee is married where the marriage was validly entered into in a state whose laws authorize the marriage, even if the Eligible Employee is domiciled in a state that does not recognize the validity of the marriage.

(cc) "Total Salary" means Budgeted Base Salary and additional salary actually paid to an Employee for services provided to the University. Total Salary shall exclude any amounts of Budgeted Base Salary and additional salary not actually paid to an Employee due to circumstances such as, but not limited to, unpaid periods of absence or leave. Total Salary shall be limited in accordance with Article V. Total Salary shall include amounts of Budgeted Base Salary and additional salary excluded from taxable income because of an election under Code Sections 125, 132(f), 403(b), 457(b), and/or 402(g)(3).

(dd) "University" means Indiana University.

(ee) "University Contribution" means contributions made to the Plan by the University on behalf of a Participant pursuant to Section 4.02.

(ff) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(gg) "Vendor" means (i) a life insurance company authorized to do business in the State of Indiana or (ii) a bank or approved non-bank trustee or custodian under Code Section 401(f), the assets of which are invested exclusively in regulated investment company stock, that has been approved by the Board to make Funding Vehicles available to Participants under this Plan, and that is set forth in Appendix A hereto, as amended from time to time. The Administrator, in its sole and absolute discretion, shall select the Vendor(s) and may add or delete Vendor(s).

(hh) "Vested" means the interest of the Participant or Beneficiary in his or her Accounts which is unconditional, legally enforceable, and nonforfeitable at all times.

(ii) "Year of Vesting Service" means a year of University employment as a (i) a Participant in the Plan, (ii) a participant in the Indiana Public Employees' Retirement Fund, or (iii) effective July 1, 2013, a participant in the Indiana University Retirement & Savings Plan. A Year of Vesting Service shall not include employment with an Affiliated Employer. A Year of Vesting Service shall include University employment regardless of pay status, percentage of full-time equivalency (so long as the Employee meets the Plan eligibility requirements), or pay arrangement, and shall include a leave of absence from the University.

### **ARTICLE III**

#### **ELIGIBILITY AND PARTICIPATION**

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

(a) An Eligible Employee shall become a Participant in the Plan immediately after commencement of employment with the University.

(b) An Employee who is not an Eligible Employee upon employment with the University shall become a Participant in the Plan upon becoming an Eligible Employee.

(c) The University shall notify an Eligible Employee when he or she is eligible to participate in the Plan. An Eligible Employee should complete the online enrollment process and make investment elections with a Vendor on the Applicable Form. An Eligible Employee who has satisfied the participation requirements under paragraph (a) or paragraph (b), and who fails to complete the online enrollment process and/or the Applicable Form to make investment elections with a Vendor within thirty (30) days of when he or she becomes an Eligible Employee shall be automatically enrolled in the Plan and have his or her University Contributions invested in a default Investment Option.

**Section 3.02. Cessation of Contributions.** A Participant shall cease to be eligible for University Contributions under the Plan when he or she is (i) no longer an Eligible Employee or (ii) no longer meets the requirements for participation at the 10% Contribution Level.

**Section 3.03. Cessation of Participation.** A Participant shall cease to be a Participant on the distribution of his or her entire Account.

## **ARTICLE IV**

### **CONTRIBUTIONS**

**Section 4.01. University Contributions.**

(a) The University shall make a University Contribution to the Plan each pay period on behalf of each Eligible Employee as follows:

(1) **15% Contribution Level.** An Eligible Employee shall receive a University Contribution equal to the sum of the following:

(A) Eleven percent (11%) of the first Seven Thousand Eight Hundred Dollars (\$7,800) of Budgeted Base Salary; and

(B) Fifteen percent (15%) of Budgeted Base Salary thereafter.

(2) **12% Contribution Level.** An Eligible Employee shall receive a University Contribution equal to twelve percent (12%) of his or her Budgeted Base Salary.

(3) **11.25% Contribution Level.** An Eligible Employee shall receive a University Contribution equal to eleven and one quarter percent (11.25%) of his or her Total Salary.

(4) **10% Contribution Level.** An Eligible Employee shall receive a University Contribution equal to ten percent (10%) of his or her Budgeted Base Salary.

(b) Effective April 1, 2005, for purposes of calculating the University Contributions under paragraph (a), Budgeted Base Salary shall include overtime compensation in an amount not to exceed One Thousand Five Hundred Dollars (\$1,500) per calendar year for Eligible Employees designated in Appendix B. This paragraph (b) shall apply to an Eligible Employee designated in Appendix B so long as he or she remains in the same employment position in which he or she was employed on April 1, 2005.

(c) University Contributions under the Plan shall be made each regular pay period except that for the first regular pay period upon becoming an Eligible Employee, the University Contribution will be made as soon as administratively practicable following the Eligible Employee's benefits enrollment election.

**Section 4.02. Post-Retirement Continued Contributions.** The University shall make University Contributions to the Plan for a Participant who meets the requirements for post-retirement continued contribution benefits, as set forth under the 18/20 Retirement Plan and the IU Replacement Retirement Plan. Such 18/20 post-retirement continued contributions shall be made at the 15% Contribution Level described in Section 4.01(a)(1), except that Terminal Base

Salary, as defined in the 18/20 Retirement Plan, shall be used instead of Budgeted Base Salary. Such 18/20 continued contributions shall be made for the period, and subject to the restrictions, set forth under the 18/20 Retirement Plan and the IU Replacement Retirement Plan. All such University Contributions are subject to the limitations set forth in Article V and the definitions contained in this Section.

**Section 4.03. Rollover Contributions to the Plan.** Rollover contributions to the Plan are not permitted.

**Section 4.04. Leave of Absence.** During a paid leave of absence, University Contributions shall continue to be made for a Participant on the basis of Budgeted Base Salary or Total Salary, as applicable, paid by the University during the leave. No University Contributions shall be made during an unpaid leave of absence.

**Section 4.05. Expenses of Plan.** All reasonable expenses of administering the Plan shall be charged against and paid from the Participant's Accounts, subject to the terms of the applicable Funding Vehicles, unless paid by the University. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with rules promulgated by the Internal Revenue Service.

## **ARTICLE V**

### **LIMITATIONS ON CONTRIBUTIONS**

**Section 5.01. Code Section 415 Limits.**

(a) Notwithstanding any provision of the Plan to the contrary, Annual Additions to the Plan and to any other Code Section 403(b) plan maintained by the University or an Affiliated Employer (or, if required by Code Section 415 and regulations thereunder, to any other defined contribution plan) for a Participant in a Plan Year shall not exceed the limitations set forth in Code Section 415(c), except to the extent permitted under Code Section 414(v).

(b) Effective January 1, 2009, the Code Section 415(c) limit for any Plan Year is the lesser of:

(1) Fifty Three Thousand Dollars (\$53,000) for 2016, increased by the Cost of Living Adjustment thereafter; or

(2) One Hundred Percent (100%) of the Participant's Includible Compensation for the Plan Year.

(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).

**Section 5.02. Excess Annual Additions.**

(a) Excess Annual Additions shall be allocated to an Excess Annual Additions Account under the Annuity Contract or Custodial Account in accordance with Treasury Regulation Sections 1.403(b)-3(b)(2) and 1.403(b)-4(f)(2) for the year of excess and each year thereafter. The Participant shall be liable for any excise taxes on his or her Account balance pursuant to Code Section 4973.

(b) If a Participant has Excess Annual Additions for a Plan Year, 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 this 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.

(c) 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 Section 5.01(b), would have been greater than the Annual Addition for such Participant as limited by Section 5.01(b), 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).

**ARTICLE VI**

**NONDISCRIMINATION**

**Section 6.01. Compliance with Code Section 403(b)(12).** The Administrator shall take any actions necessary to comply with the nondiscrimination rules of Code Section 403(b)(12) and the regulations thereunder as applicable to the Plan.

**Section 6.02. Compliance with Code Section 401(a)(17).** Notwithstanding anything in the Plan to the contrary, Budgeted Base Salary or Total Salary, as applicable, of a Participant under the Plan during any Plan Year shall not exceed the Code Section 401(a)(17) limit (as increased by the Cost of Living Adjustment). The Code Section 401(a)(17) limit for 2016 is Two Hundred Sixty Five Thousand Dollars (\$265,000). Notwithstanding the preceding, the Salary of a Participant under the Plan during a Plan Year shall be limited as follows:

(a) For Plan Years beginning before January 1, 1996, the limitations on Budgeted Base Salary or Total Salary, as applicable, 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.

(b) 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, Budgeted Base Salary or Total Salary, as applicable, for an Eligible Employee 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).

(c) For Plan Years beginning on or after January 1, 1996, Budgeted Base Salary or Total Salary, as applicable, taken into account under the Plan for any Plan Year for an individual who became an Eligible Employee on or before December 31, 1995, shall have no limit.

## **ARTICLE VII**

### **ACCOUNTING**

**Section 7.01. Participant Accounts.** The Vendor(s) shall establish and maintain adequate records to reflect the Accounts of each Participant and Beneficiary. Credits and charges shall be made to such Accounts to reflect additions, distributions, and withdrawals, and to reflect gains or losses pursuant to the terms of each Funding Vehicle. The maintenance of individual Accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

**Section 7.02. Participant Statements.** The Vendor(s) shall provide to each Participant a quarterly statement reflecting the value of the Participant's Account as of the end of each quarter, and shall provide similar information to the Administrator upon its request.

**Section 7.03. Value of Account.** The value of the Account of a Participant as of any valuation date is the value of the Account balance as determined by the Vendor. The valuation date shall be the last day of the Plan Year and each other date designated by the Administrator or Vendor in a uniform and nondiscriminatory manner. All transactions and Account records shall be based on fair market value.

## **ARTICLE VIII**

### **INVESTMENT OF CONTRIBUTIONS**

#### **Section 8.01. Vendors and Investment Options.**

(a) All University Contributions under the Plan shall be transferred to the Vendor(s) to be held, managed, invested, and distributed in accordance with the provisions of the Plan and the Funding Vehicles as applicable. All benefits under the Plan shall be distributed solely from the Funding Vehicles, and the University shall have no liability for any such benefits other than the obligation to make University Contributions as provided in the Plan.

(b) Participants' Accounts shall be invested in one or more of the Investment Options available to Participants from Vendors approved under this Plan, as selected by the Administrator and communicated to Participants. The current Vendor(s) are listed in Appendix

A. The Administrator's current selection of Vendor(s) and Investment Options is not intended to limit future additions or deletions of Vendor(s) or Investment Options.

(c) A Participant shall have the right to direct the investment of his or her Accounts by filing the Applicable Form with the Vendor(s). A Participant may change his or her investment election as often as determined by the Vendor(s). A Participant may elect to transfer all or any portion of his or her Accounts invested in any one Investment Option to another Investment Option, regardless of whether offered by the same or a different Vendor, subject to the limitations of the Funding Vehicle(s), by filing a request on the Applicable Form with the Vendor(s) or by such other means that may be provided for by the Vendor(s). A Participant may also elect to transfer all or any portion of his or her Accounts invested in an Investment Option with a Former Vendor to an Investment Option with a Vendor, subject to the terms of the Funding Vehicles.

(d) An investment change that includes an investment with a Former Vendor or other vendor that is not eligible to receive University Contributions under the Plan is not permitted.

**Section 8.02. Default Investments.** If a Participant does not have a valid and complete investment direction on file with the Vendor on the Applicable Form, University Contributions may be invested in a default fund selected by the Administrator in its sole and absolute discretion, until the Participant makes an affirmative election regarding the investment of his or her Accounts.

## **ARTICLE IX**

### **DISTRIBUTIONS**

#### **Section 9.01. Commencement of Distributions.**

(a) A Participant or, if applicable, a Beneficiary, shall be eligible to receive a distribution from the Plan upon the earlier of (i) the Participant's Severance from Employment or (ii) the death of the Participant. A Participant employed under the IU Phased Retirement Program, effective January 1, 2009, is also eligible to receive a distribution from the Plan.

(b) The Participant or Beneficiary may submit a request for a distribution to the Vendor on the Applicable Form. The University shall certify that the Participant has had a Severance from Employment.

**Section 9.02. Form of Distribution.** A Participant may elect to receive his or her Vested Accounts under any payment option available under the Funding Vehicles. Subject to the terms of the Funding Vehicles, these include, but are not necessarily limited to, a single lump sum, annuity payments, and installment payments. All forms of payment shall be subject to the limitations of the applicable Funding Vehicles.

**Section 9.03. Death Benefit.** If a Participant dies before the entire distribution of his or her Account has been made, his or her remaining Account Balance shall be distributed to his or her Beneficiary(ies) as soon as administratively feasible after the Participant's death, unless the Beneficiary elects a later payment date on the Applicable Form, subject to Code Section



401(a)(9). A Beneficiary may elect to receive the deceased Participant's Account under any distribution option available under the Funding Vehicle(s), subject to Code Section 401(a)(9).

**Section 9.04. Hardship Distributions.** Hardship distributions are not permitted under the Plan.

**Section 9.05. Required Distribution Rules.** The provisions of this Section 9.05 take precedence over any inconsistent provisions of the Plan or of any Funding Vehicle. All distributions under this Plan shall be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G), and shall comply with the following rules.

(a) Distributions may only be made over one of the following periods (or a combination thereof):

- (1) The life of the Participant;
- (2) The life of the Participant and a designated Beneficiary;
- (3) A period certain not extending beyond the life expectancy of the Participant; or
- (4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary.

(b) A Participant's Accounts shall be distributed to the Participant beginning no later than April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70½) or, if later, April 1 of the calendar year following the calendar year that the Participant has a Severance from Employment.

(c) Notwithstanding anything to the contrary in this Section 9.05, if the Vendor(s) separately accounts for University Contributions made prior to January 1, 1987, then distribution of such University Contributions (but not any interest accumulated with respect thereto) need not commence until April 1 of the calendar year following the calendar year in which the Participant attains age seventy-five (75).

(d) Upon the death of the Participant, the following distribution provisions shall take effect:

- (1) If the Participant dies after distribution of his or her Account(s) begins, any remaining portion of the Account(s) shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.
- (2) If the Participant dies before distributions of his or her Account(s) begins and the Participant has no designated Beneficiary(ies), the Participant's Account(s) under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death.

(3) If the Participant dies before distributions of his or her Account(s) begins and any portion of his or her Account(s) are payable to a designated Beneficiary, the designated Beneficiary may elect for the Participant's Account(s) to be distributed (i) by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary. If the designated Beneficiary is the surviving Spouse, the Beneficiary may elect to delay payment under subparagraph (ii) until December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70½). If the designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with subparagraph (i).

(4) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this Section 9.05(d).

(e) Each Vendor shall be separately and solely responsible for complying with the provisions of this Section 9.05 with respect to its Funding Vehicles under the Plan. The Vendor(s) shall calculate the amounts required to be distributed to a Participant under this Section and notify such Participant of such distributions at least sixty (60) days prior to the date distributions must begin.

(f) For 2009, unless otherwise provided in the Funding Vehicles, the minimum required distribution requirements set forth in Section 9.05 shall be satisfied as provided below, as determined by the Vendor responsible for the Participant's required minimum distribution and in accordance with the Funding Vehicles:

(1) Notwithstanding any other provisions of this Section 9.05, 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.

(2) 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 9.06. Additional Tax on Early Withdrawals.**

(a) Generally, and except as described in paragraph (b), if a Participant receives any amount under the Plan, his or her tax for the taxable year in which such amount is received is increased by an amount equal to ten percent (10%) of the portion of such amount which is includible in gross income. Such amount shall be included in gross income to the extent allocable to income on the Funding Vehicle and shall not be included in gross income to the extent allocable to the investment in the Funding Vehicle as provided in Code Section 72(e)(2)(b).

(b) The penalty described in paragraph (a) generally does not apply to any distribution (i) made on or after the date on which the Participant attains age fifty-nine and one half (59½), (ii) made on or after the death of the Participant, (iii) attributable to the Participant becoming disabled, (iv) which is part of a series of substantially equal periodic payments made (not less frequently than annually) for the life or life expectancy of the Participant or the joint lives (or joint life expectancies) of such Participant and his or her designated Beneficiary, (v) made to a Participant after Severance from Employment following the attainment of age fifty-five (55), (vi) which is a qualified reservist distribution within the meaning of Code Section 72(t)(2)(G)(iii), or (vii) any other circumstance permitted by the Code or the Internal Revenue Service.

**ARTICLE X**

**LOANS**

Loans are not permitted from the Plan.

**ARTICLE XI**

**VESTING**

**Section 11.01. Participants Prior to September 1, 2010.** An Eligible Employee who is a Participant in the Plan prior to September 1, 2010, is one hundred percent (100%) Vested in his or her Accounts at all times.

**Section 11.02. Participants on or after September 1, 2010.**

(a) An Eligible Employee who becomes a Participant in the Plan on or after September 1, 2010, shall be one hundred percent (100%) Vested in his or her Accounts upon the earlier of:

- (1) completion of three (3) Years of Vesting Service;

- (2) death;
- (3) disability as defined by Social Security; or
- (4) attainment of age sixty-five (65).

(b) If a Participant has a Severance from Employment prior to becoming fully Vested under paragraph (a), the Participant's Account shall be forfeited upon his or her Severance from Employment. If such Participant is reemployed by the University as an Eligible Employee within six (6) months of his or her Severance from Employment, the Participant's forfeited Account balance will be reinstated as soon as administratively possible. The Participant's Years of Vesting Service prior to his or her Severance from Employment shall count toward the Vesting requirement under paragraph (a) upon reemployment.

**Section 11.03. Forfeitures.** All forfeited University Contributions and earnings shall be forfeited to the Plan and may be used to offset future University Contributions to the Plan.

## **ARTICLE XII**

### **ROLLOVERS FROM THIS PLAN**

**Section 12.01. Definitions for this Article.** For purposes of this Article, the following definitions shall apply.

(a) "Direct Rollover" means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee.

(b) "Distributee" means a Participant, the Spouse of the Participant, or the Participant's former Spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p), and a Participant's non-Spouse Beneficiary, any of whom is eligible to receive a distribution from the Plan.

(c) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means:

- (1) an individual retirement account described in Code Section 408(a);
- (2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b);
- (3) any annuity plan described in Code Section 403(a);
- (4) a plan described in Code Section 403(b);
- (5) a qualified plan described in Code Section 401(a);
- (6) a Code Section 457(b) eligible deferred compensation plan which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and

(7) a Roth individual retirement account described in Code Section 408A(e) provided the Distributee's adjusted gross income does not exceed any limit applicable under federal law for the tax year in which the distribution occurs.

In the case of a distribution to a Participant's non-Spouse Beneficiary, an Eligible Retirement Plan means the plans described in subparagraphs (1) and (2) only, to the extent consistent with the provisions of Code Section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

(d) "Eligible Rollover Distribution" as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under this Plan, excluding the following:

(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 (10) years or more;

(2) any distribution to the extent to which such distribution is required under Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; however, a portion of a distribution will 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, although such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified retirement plan described in Code Section 401(a) 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;

(4) any distribution which is made upon the financial hardship of the Participant; and

(5) other items designated by regulations, or by the Commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

**Section 12.02. Direct Transfer of Eligible Rollover Distribution.** A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner prescribed by the Vendor. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Section 402, 403, or 408.

**Section 12.03. Mandatory Withholding of Eligible Rollover Distributions.**

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be subject to a mandatory twenty percent (20%) federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e).

(b) If a Distributee elects to have an Eligible Rollover Distribution paid to the Distributee, the distribution may be excluded from gross income of the Distributee provided that said distribution is contributed to an Eligible Retirement Plan no later than the sixtieth (60<sup>th</sup>) day following the day on which the Distributee received the distribution.

(c) If the Plan distribution is not an Eligible Rollover Distribution, said distribution shall be subject to the elective withholding provisions of Code Section 3405(a) and (b).

**Section 12.04. Explanation of Plan Distribution and Withholding Requirements.** Not fewer than thirty (30) days nor more than one hundred eighty (180) days before an Eligible Rollover Distribution, the Vendor shall provide each Distributee a written explanation as required under Code Section 402(f), which explains the rules:

(a) under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan;

(b) that require the withholding of tax on an Eligible Rollover Distribution if it is not paid in a Direct Rollover to an Eligible Retirement Plan;

(c) that provide that a distribution shall not be subject to tax if the distribution is rolled over to an Eligible Retirement Plan within sixty (60) days after the date the Distributee receives the distribution; and

(d) if applicable, certain special rules regarding taxation of the distribution as described in Code Sections 402(d) and (e).

Notwithstanding the above, a distribution may begin fewer than thirty (30) days after the notice discussed in the preceding sentence is given, provided that the Vendor clearly informs the Participant that he or she has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution and the Participant, after receiving a notice, affirmatively elects a distribution.

**ARTICLE XIII**

**ADMINISTRATION OF THE PLAN**

**Section 13.01. Authority of the Administrator.** The Administrator is responsible for enrolling Participants in the Plan, sending University Contributions for each Participant to the

selected Vendor(s), and performing the duties required for operation of the Plan. The Administrator shall have all power necessary or convenient to enable it to exercise its authority under the Plan. In connection therewith, the Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may from time to time amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan.

**Section 13.02. Powers of the Administrator.** The Administrator shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Administrator may deem expedient and, subject to the Plan's claims procedures, the Administrator should be the sole and final judge of such expediency. Benefits under the Plan shall be paid only if the Administrator decides in its discretion that the Participant or Beneficiary is entitled to them.

**Section 13.03. Delegation by Administrator.** The Administrator may, through action of the Board, delegate to an individual, committee, or organization to carry out its fiduciary duties or other responsibilities under the Plan. Any such individual, committee or organization delegated fiduciary duties shall be a fiduciary until the Administrator revokes such delegation. A delegation of the Administrator duties or responsibilities may be revoked without cause or advance notice. Such individual, committee, or organization shall have the same power and authority with respect to such delegated fiduciary or other responsibilities as the Administrator has under the Plan.

**Section 13.04. Employment of Consultants.** The Administrator may employ one (1) or more persons to render advice with regard to its responsibilities under the Plan.

## **ARTICLE XIV**

### **REQUESTS FOR INFORMATION AND OTHER CLAIMS PROCEDURES**

**Section 14.01. Requests for Information Concerning Eligibility, Participation and Contributions.** Requests for information concerning eligibility, participation, University Contributions, or any other aspects of the operation of the Plan, and service of legal process, should be in writing and directed to the University Human Resources Retirement Program Services.

**Section 14.02. Requests for Information Concerning Funding Vehicles.** Requests for information concerning the Funding Vehicles and their terms, conditions, and interpretations thereof, claims thereunder, and any requests for review of such claims, should be in writing and directed to the Vendor(s).

### **Section 14.03. Processing of Claims.**

(a) The Administrator or Vendor, as applicable, shall within a reasonable period of time after receipt of the claim, notify the claimant of its decision on the claim. If a Participant's

claim is denied, in whole or in part, the Administrator or Vendor, as applicable, shall provide notice to the Participant, written in a manner calculated to be understood by the Participant, which shall include (i) the specific reasons for denial, (ii) specific reference to the provisions of the Plan and/or Funding Vehicle on which the denial is based, and (iii) how to apply for a review of the denied claim, including the time limits for requesting a review. Where appropriate, the written denial shall also include a description of any information or material which is needed to complete or perfect a claim and why such information or material is necessary.

(b) Within sixty (60) days after the Participant receives notification of a denial, the Participant or the Participant's duly authorized representative may request in writing that the Administrator or Vendor, as applicable, review a denied claim. The Participant or the Participant's duly authorized representative may review pertinent documents and submit issues and comments in writing to the University or the Vendor, as applicable. The Administrator or Vendor, as applicable, shall provide a written decision to the Participant on his or her appeal within in a reasonable period of time following receipt of the Participant's written request for review.

## **ARTICLE XV**

### **AMENDMENT AND TERMINATION**

**Section 15.01. Amendment and Termination.** While it is expected that the Plan shall continue indefinitely, the University reserves the right to amend, freeze, or terminate the Plan, or to discontinue any further University Contributions to the Plan at any time, by action of the Board. The University has delegated to the Senior Vice President and Chief Financial Officer the authority to amend the Plan at any time in his or her sole and absolute discretion to the extent the Plan is required to be amended to comply with applicable federal law.

**Section 15.02. Adverse Effects.** Any amendment or termination of the Plan cannot adversely affect the benefits accrued by Participants prior to the date of amendment or termination. The Plan may not be amended in a manner that violates any provision of the Code.

**Section 15.03. Distribution Upon Termination of the Plan.** The Board may provide that, in connection with a termination of the Plan, all Accounts shall be distributed, provided that the University on the date of the termination does not make contributions to an alternative Code Section 403(b) plan that is not part of the Plan during the period beginning on the date of Plan termination and ending twelve (12) months after the distribution of all assets from the Plan, except as permitted by the regulations. For purposes of distributing all accumulated benefits under the Plan in the event of Plan termination, delivery of a fully paid individual insurance annuity contract shall be treated as a distribution.



## ARTICLE XVI

### MISCELLANEOUS

#### Section 16.01. Non-Alienation.

(a) A Participant's Account under the Plan shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor transferable by operation of law.

(b) Notwithstanding paragraph (a), the Plan shall comply with any judgment, decree or order ("domestic relations order") which establishes the right of an alternate payee within the meaning of Code Section 414(p)(8) to all or a portion of a Participant's benefit under the Plan to the extent that it is a "qualified domestic relations order" ("QDRO") under Code Section 414(p). The Administrator or the Vendor shall establish reasonable written procedures to determine whether a domestic relations order is a QDRO and to administer the distribution of benefits with respect to such orders, which procedures may be amended from time to time, and which shall be provided to Participants upon request. Notwithstanding any other provisions in the Plan, the Plan may make an immediate distribution to the alternate payee pursuant to a QDRO.

(c) Notwithstanding paragraph (a), the Plan shall offset from the benefit otherwise payable to a Participant or his or her spouse such amounts as are permitted to be offset under a court order, civil judgment, or settlement agreement in accordance with Code Section 401(a)(13)(C).

#### Section 16.02. Military Service.

(a) 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, effective January 1, 2009, HEART, Code Section 414(u), and effective January 1, 2007, Code Section 401(a)(37). 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.

(b) 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 Beneficiary 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.

(c) 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

Budgeted Base Salary or Total Salary, as applicable, and Includible Compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(d) If the Eligible Employee resumes employment in accordance with USERRA, the University will 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 the interruption or leave. The University Contributions made under this paragraph must be made no later than ninety (90) days after the date of reemployment or when University Contributions are normally due for the year in which the qualified military service was performed, if later. When determining the University Contributions, an Eligible Employee shall be treated as receiving Budgeted Base Salary or Total Salary, as applicable, from the University during such period of qualified military service equal to: (i) the Budgeted Base Salary or Total Salary, as applicable, the Eligible Employee would have received during such period if the Eligible Employee were not in qualified military service, determined based on the Budgeted Base Salary or Total Salary, as applicable, the Eligible Employee would have received from the University but for the absence during the period of qualified military service; or (ii) if the Budgeted Base Salary or Total Salary, as applicable, the Eligible Employee would have received during such period was not reasonably certain, the Eligible Employee's average Budgeted Base Salary or Total Salary, as applicable, 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).

**Section 16.03. Limitation of Rights and Obligations.** Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor the purchase of any insurance contract, 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 Administrator or University, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

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

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

**Section 16.04. Federal and State Taxes.** It is intended that University Contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries unless otherwise provided under state law. However, the Administrator does not guarantee that any particular federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

**Section 16.05. Erroneous Payments.** If the Administrator or Vendor makes any payment that, according to the terms of the Plan and the benefits provided hereunder, should not

have been made, the Administrator or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Vendor, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator or Vendor may deduct it when making any future payments directly to that Participant.

**Section 16.06. Limitation on Recovery.** Participants may not seek recovery against the Administrator, the University, the Board, or any employee contractor, or agent of the Administrator, for any loss sustained by any Participant due to the nonperformance of their duties, negligence, or any other misconduct of the above-named persons.

**Section 16.07. Benefit Payment Issue Resolution.** The Administrator, or its designee, if in doubt regarding the correctness of its action with respect to a benefit payment, may direct suspension of payment until satisfied as to the correctness of the payment or the person to receive the payment. Alternatively, the Administrator, or its designee, may file, in any state court of competent jurisdiction, a suit, in the form it deems appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator, or its designee, may also bring a suit, or take other action as it deems appropriate, to resolve questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and Participants and the Administrator shall be bound by such an order, insofar as it affects the benefits payable under this Plan, or the method or manner of payment.

**Section 16.08. 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 16.09. Liability.** 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 16.10. Necessary Parties.** The Administrator is the only party necessary to any accounting, litigation, or other proceeding relating to the Plan. The settlement or judgment in any such case in which the Administrator is duly served shall be binding upon all affected Participants in the Plan, their estates, and upon all persons claiming by, through, or under them.

**Section 16.11. Information Provided by the Participant.** Each Participant should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan.

**Section 16.12. Family Medical Leave Act.** Notwithstanding any provisions of this Plan to the contrary, University Contributions and benefits with respect to qualified leave will be provided in accordance with the Family Medical Leave Act of 1993, 29 U.S.C. Section 2601 *et seq.*

**Section 16.13. Indemnification.** The University shall satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the University is delegated pursuant to Section 13.03, except a Vendor or

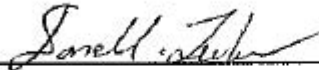
other service provider. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the regulations or by-laws of the University, under any provision of law, or under any other agreement; provided, however, that the University will not satisfy any such liability to the extent that the person did not act in good faith.

**Section 16.14. No Reversion.** Under no circumstances or conditions will any University Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the University, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. However, if University Contributions are made by the University by mistake of fact, these amounts and, if applicable, any interest earned therein, may be returned to the University within one year of the date that they were made.

**Section 16.15. Finality of Determination.** All determinations with respect to crediting of service under the Plan are made on the basis of the records of the University, and all determinations made are final and conclusive upon Eligible Employees, former Eligible Employees, and all other persons claiming a benefit under the Plan.

**Section 16.16. Counterparts.** The Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute but one and the same instrument and shall be evidenced by any one counterpart.

INDIANA UNIVERSITY

By: 

Printed Name: Donald Lukes

Title: University Treasurer

Date: 3/22/16