

SEPARATION AGREEMENT
Concerning

**RESIGNATION AND RELEASE
OF EMPLOYMENT AND OTHER RIGHTS**

Bloomington, Indiana
DATE

THIS SEPARATION AGREEMENT CONCERNING RESIGNATION AND RELEASE OF EMPLOYMENT AND OTHER RIGHTS ("Agreement") is between NAME ("Employee") and The Trustees of Indiana University, a body politic of the State of Indiana created by statute, with its principal office at Room M-19, Indiana Memorial Union, Indiana University, Bloomington, Indiana 47405 ("University").

1. Recitations

- 1.01 Employee is employed by University.
- 1.02 Employee is eligible to participate in the Indiana University Early Retirement Incentive Plan ("Plan"), a one-time separation window the terms of which are fully set forth in the Plan Document, and Employee desires to participate in the Plan.
- 1.03 University is the legal entity which has the legal responsibility to own, manage, and control Indiana University, the state university of Indiana.
- 1.04 University and Employee have evaluated their respective needs, and the Employee has elected to voluntarily separate under the Plan upon condition that Employee be compensated for the release of the right to continued employment and in exchange for Employee's promises set forth in this Agreement, in accordance with the terms and conditions of the Plan.

2. Intentions of the Parties

- 2.01 Employee intends and understands that this Agreement will accomplish a complete and permanent severance of all rights that stem from Employee's employment with University except with respect to the payment and benefits expressly provided for by this Agreement.
- 2.02 University and Employee intend and expect that Employee shall surrender and renounce all privileges and rights that derive from employment by University, except with respect to the payment and benefits expressly provided for by this Agreement as set forth in Section 4.01.

3. Agreements of Employee

- 3.01 Employee hereby agrees to and does resign her/his employment with University and to retire from University, effective DATE.
- 3.02 Employee agrees that the payment and benefits specified in Section 4.01 shall be the only payment or benefits stemming from employment with University to which Employee shall be entitled following retirement, except that Employee shall receive any regular paycheck to which Employee might be entitled for employment up to and including DATE. The fulfillment of this Agreement shall be in lieu of, and shall replace, any and all other payment(s) or benefit(s) that might otherwise be due from University stemming from employment.
- 3.03 Employee agrees that in consideration of University's agreements contained in this Agreement, Employee does hereby irrevocably and unconditionally release, acquit and forever discharge University, its successors, divisions, affiliates, current and former trustees, officers, employees, agents, representatives, attorneys, insurers, its employee benefit plans (and any fiduciary of such plans), from any and all complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of actions, suits, grievances, rights, demands, costs, losses, debts and expenses (including, but not limited to, attorneys' fees and costs actually

incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, which Employee has against University to the date of resignation specified in this Agreement arising directly or indirectly out of Employee's employment with University, including, but not limited to, rights arising out of alleged violations of any contract, express or implied, or any covenant of good faith and fair dealing, express or implied, or any tort, or any federal, state, or other government constitution, statute, regulation, or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, as amended, The Civil Rights Act of 1991, The Civil Rights Act of 1866, The Equal Pay Act, The Family Medical Leave Act, the Age Discrimination in Employment Act of 1967 (ADEA), the Older Workers Benefit Protection Act (OWBPA), The Indiana Civil Rights Law, all as amended, and any and all claims of whatever nature relating to Employee's employment that Employee now has or heretofore had or claimed to have against University. This release does not include any claims that cannot by law be released through this Agreement, but the parties intend that it be construed as broadly as lawfully possible. In addition, the parties acknowledge that this Agreement is not intended to (a) prevent Employee from filing a charge or complaint including a challenge to the validity of this Agreement, with the Equal Employment Opportunity Commission (EEOC); (b) prevent Employee from participating in any investigation or proceeding conducted by the EEOC; or (c) establish a condition precedent or other barrier to exercising these rights. While Employee has the right to participate in an investigation, he/she understands that he/she is waiving his/her right to any monetary recovery arising from any investigation or pursuit of claim on his/her behalf. Furthermore, Employee acknowledges that he/she has the right to file a charge alleging a violation of the ADEA with any administrative agency and/or to challenge the validity of the waiver and release of any claim that he/she might have under the ADEA without either: (a) repaying the amounts paid by the University to him/her or on his/her behalf under this Agreement; or (b) paying to any entity any other monetary amounts (such as attorney's fees and/or damages).

- 3.04 Exclusively as this Agreement pertains to Employee's release of claims under the Age Discrimination in Employment Act (ADEA), Employee, pursuant to and in compliance with rights afforded him/her under the Older Workers Benefit Protection Act (OWBPA): (i) is advised to consult with his/her attorney prior to executing this Agreement; (ii) is afforded a period of forty five (45) days within which to consider this Agreement; and (iii) is afforded, for a period of seven (7) days following execution of the Agreement, the right to revoke the waiver of claims under the ADEA, provided that if he/she exercises that right, University shall have seven (7) days to revoke the remainder of this Agreement. To the extent Employee executes this Agreement prior to the expiration of the forty five (45) calendar day period in (ii) above, Employee acknowledges and agrees that he/she was afforded the opportunity to have a period of at least forty five (45) calendar days to consider it before executing it and that his/her execution of this Agreement prior to the expiration was a free and voluntary act.
- 3.05 Employee's knowing and voluntary execution of this Agreement is an express acknowledgement and agreement that he/she had the opportunity to review this Agreement with his/her attorney and that he/she agrees this Agreement is written in a manner that enables him/her to fully understand its content and meaning.
- 3.06 This Agreement, as it pertains to a release of claims under the ADEA, shall become effective and enforceable seven (7) days after its execution. All other provisions of this Agreement or parts thereof shall become effective and enforceable upon execution. ANY REVOCATION MUST BE SENT VIA CERTIFIED U.S. MAIL, ADDRESSED TO:

MaryFrances McCourt, Treasurer
Indiana University
Bryan Hall 114
Bloomington, Indiana 47405

WITH COPY TO: Daniel Rives
Associate Vice President, University Human Resource Services
Indiana University
Poplars 165
Bloomington, Indiana 47405

AND POST-MARKED NO LATER THAN ON THE 8TH DAY FOLLOWING THE DATE OF
EMPLOYEE'S EXECUTION OF THIS AGREEMENT.

- 3.07 Employee agrees that University may deduct and withhold from payment(s) to be made to Employee under this

Agreement amounts required to be withheld by state and federal law for income taxes, social security, and other payroll taxes, as determined in good faith by University.

- 3.08 Employee may bring a complaint or legal action against University for the sole purpose of enforcing rights under this Agreement.
- 3.09 Employee acknowledges that, as required by the ADEA and the OWBPA, University has provided him/her with adequate notice of (accessible through the website hr.iu.edu/erip or copy upon request from the University Human Resources office):
- (i) the eligibility criteria for participation in the Plan, the categories of employees covered by the Plan, and the time limits applicable for electing to participate in the Plan;
 - (ii) the job title and age of all employees eligible for the Plan; and
 - (iii) the job title and age of all full-time employees who are not eligible for the Plan, who are in the same job title as eligible employees.

4. Agreements of University

- 4.01 In consideration of Employee's resignation and surrender of all rights and in consideration of Employee's other promises set forth in this Agreement, University will pay Employee a lump sum payment and other benefits in accordance with the terms of the Plan.
- 4.02 Accompanying the check for the lump sum payment and any other taxable payments remitted under Section 4.01 will be an appropriate notation showing all amounts withheld for taxes and other deductions as required by law.

5. Agreements of Both Parties

- 5.01 If either party experiences any unforeseen difficulties or questions concerning this Agreement, such party shall seek to resolve such issues expeditiously and informally, if reasonably possible. If notice to University is required, it shall be given to:

Daniel Rives
Associate Vice President, University Human Resource Services
Indiana University
Poplars 165
Bloomington, Indiana 47405

with copy to: MaryFrances McCourt, Treasurer
Indiana University
Bryan Hall 114
Bloomington, Indiana 47405

If notice to Employee is required, it shall be given to Employee at the address set forth below.

- 5.02 This Agreement is the entire and only agreement on this subject between Employee and University and all prior letters, oral statements, and other communications are merged into and replaced by this Agreement.
- 5.03 This Agreement is between University and Employee only and not for the benefit of any other party, except the executor or other legal representative of Employee may enforce this Agreement in the event of death or legal disability of Employee.
- 5.04 This Agreement may be executed in several counterparts, including fax and pdf counterparts, each of which and all together shall be but one Agreement.
- 5.05 If the University fails to make the payment or provide the benefit to Employee on the due date(s) as set forth in the Plan and such failure is the fault of University and continues for thirty (30) days after written notice of default is served on the University by Employee, the University will pay all of Employee's reasonable

attorney's fees, costs and necessary disbursements in addition to all other available relief related to the enforcement of this Agreement. Furthermore, if any legal action or other proceeding is brought to enforce this Agreement, the non-breaching party will be entitled to recover from the breaching party its reasonable attorneys' fees, costs and necessary disbursements incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled. In addition, in the event Employee violates this Agreement by suing any person or entity released herein for any claim released herein (other than one under the ADEA or the OWBPA), Employee will promptly reimburse University all amounts paid by it to him/her and on his/her behalf under this Agreement (less One Dollar (\$1.00)), plus legal interest, and University shall be entitled to collect same through legal process or otherwise from Employee and it shall be relieved of any obligation to Employee under this Agreement. As to any actions, claims, or charges that would not be released because of the revocation, invalidity, or unenforceability of this Agreement (other than one under the ADEA or the OWBPA), Employee understands that the return of the amounts paid to him/her and on his/her behalf under this Agreement (less One Dollar (\$1.00)), with legal interest, is a prerequisite to asserting or bringing any such claims, charges, or actions.

- 5.06 The person who signs on behalf of University represents and warrants that he/she has been duly empowered to execute and deliver this Agreement as the act of University.
- 5.07 The provisions of this Agreement are severable and, if any part is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable.
- 5.08 This Agreement shall be governed by, and constructed pursuant to, the laws of the State of Indiana, and any litigation arising out of this Agreement shall be venued in Monroe County, Indiana.

IN WITNESS WHEREOF, the parties have entered this Agreement and executed their signatures intending each to be bound thereby,

THE TRUSTEES OF
INDIANA UNIVERSITY

EMPLOYEE

By: _____
MaryFrances McCourt, Treasurer

Date: _____

NAME

Date: _____

Address: _____
