

## APPENDIX G

# NON-LIABILITY AND INDEMNIFICATION

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### NON-LIABILITY

A trustee, officer, employee or agent of the University is not liable on the University's debts or obligations and a trustee, officer, employee or agent is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of duty of loyalty to the University, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

If this limitation of liability is too broad, then the above provisions shall be enforced to the fullest extent as provided by law.

If Iowa law is hereafter changed to permit further elimination or limitation of the liability of trustees, officers, employees or agents for monetary damages to the University, then the liability of such governor, trustee, officer, employee of the University shall be eliminated or limited to the full extent then permitted. The trustees, officers, employees or agents of the University have agreed to serve in their respective capacities in reliance upon the provisions of this Article.

### INDEMNIFICATION

**Section 1.** Any person who is or was a trustee, officer, employee or agent of Drake University shall in accordance with the provisions of this article hereinafter set forth be indemnified by the University against expenses (including attorney's fees) judgments, fines, and amounts paid in settlements actually and reasonably incurred by him or her in connection with any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the University), to which he or she was or is a party, or is threatened to be made a party, by reason of being or having been a trustee, officer, employee or agent of the University. The trustee, officer, employee or agent shall be entitled to such indemnification if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the University, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, in itself create a presumption that the person did not meet the standards of conduct set forth therein. In the case of any action or suit by or in the right of the University to procure a judgment in its favor, such trustee, officer, employee or agent shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action if such a person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to the best interests of the University, and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the University unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the

case, such person is fairly and reasonably entitled to such expenses which the Court shall deem proper.

**Section 2.** To the extent that a governor, trustee, officer, employee or agent of the University has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in the preceding paragraph, or in defense of any claim, issue, or matter therein, such person shall be entitled, as of right, to indemnification as provided in this Article. Any indemnification under this Article (unless ordered by a court) shall be made by the University as authorized in the specific case upon a determination that indemnification of the trustee, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 1 of this Article. Such determination shall be made (1) by the board of trustees by a majority vote of a quorum consisting of trustees who were not parties to such action, suit, or proceeding; or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested trustees so directs, by independent counsel (who shall not be regular counsel of the University and shall have generally recognized competence to advise upon this matter) in a written opinion.

**Section 3.** Expenses incurred in defending a civil or criminal action, suit, or proceeding of the character described in this Article shall be paid by the University in advance of the final disposition thereof upon this request of and receipt of an undertaking by or on behalf of the trustee, officer, employee or agent to repay such amount if it shall be ultimately determined that such person is not entitled to indemnification under this Article.

**Section 4.** The rights of indemnification and advancement of expense provided in or granted pursuant to this Article shall be in addition to any other rights to which any trustee, officer, employee or agent may be entitled as a matter of law, under any contract, bylaw, agreement, vote of disinterested trustees or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and in the event of such person's death, such rights shall extend to his or her heirs and legal representatives. The foregoing rights shall be available whether or not such person continues to be a trustee, officer, employee or agent at the time of incurring or becoming subject to such liability, or expenses and whether or not the claim asserted against him or her is based on matters which antedate the adoption of this Article.

**Section 5.** The University shall have power to purchase and maintain insurance on behalf of any person who is or was a governor, trustee, officer, employee or agent of the University, or was serving at the request of the University as a trustee, officer, employee or agent of any other entity. In matters where Drake purchased and maintained insurance are involved, the insurance company shall have the right to select legal counsel if the insurance policy so provides.

**Section 6.** In cases where private or chartered aircraft are used in violation of Drake rules and/or directives, persons in violation of such rules or directives, shall not be entitled to indemnification.