

**ST. JOHN'S UNIVERSITY  
DEFINED CONTRIBUTION RETIREMENT PLAN**

**(JANUARY 1, 2016 RESTATEMENT)**

## INTRODUCTION

This document is both the formal document that constitutes the St. John's University Defined Contribution Retirement Plan (the "Plan") and the Summary Plan Description ("SPD") of the Plan. The Plan was established by the Board of Trustees effective as of July 1, 1965. No oral interpretations can change this Plan.

The Plan is a defined contribution retirement program maintained for the exclusive benefit of eligible employees of St. John's University (the "University") and pursuant to Internal Revenue Code Section 403(b) ("Section 403(b)"). The Plan was amended:

- (1) Effective as of January 1, 2009, to comply with the final Section 403(b) Treasury Regulations;
- (2) Effective July 1, 2010, (a) to reduce the matching University Contribution rate to 5% for certain Participants who have not reached the 5th anniversary of the initial date of eligibility for Plan participation; (b) to provide for automatic enrollment (with an opt-out option) at a 5% contribution rate on the first of the month following the date the service eligibility test for University Contributions is met; and (c) to eliminate the minimum age eligibility test for University Contributions for employees whose adjusted service date is after June 30, 2010;
- (3) Effective October 1, 2012, (a) to reduce the matching University Contribution rate to 5% for certain Faculty Participants who have not reached the 5th anniversary of their initial date of eligibility for Plan participation, and (b) to eliminate the minimum age eligibility test for University Contributions for employees whose adjusted service date is after September 30, 2012;
- (4) Effective January 1, 2013, to accept as a rollover contribution an "eligible rollover distribution" from another retirement plan;
- (5) Effective January 1, 2014, (a) to accept Roth Contributions, (b) to recognize the addition of a new investment option (BrokerageLink, available through Fidelity Investments), and (c) to allow the University to make additional employer contributions on a discretionary basis in connection with a Participant's separation from service; and
- (6) Effective January 1, 2016, (a) to permit withdrawals of Participant Contributions by certain faculty members covered by a collective bargaining agreement, (b) to allow a Participant to take an in-service distribution from Voluntary Plan Contributions invested in any TIAA-CREF Funding Vehicle, (c) to limit the amount and number of Plan loans, and (d) to clarify the types of Participant Contributions permitted under the Plan.

The Plan provides retirement benefits for participating Employees based on the contributions made to their accounts and any earnings and gains (or losses) thereon. All benefits under the Plan are fully funded and are provided solely through the Funding Vehicles selected by the Participants; therefore, benefits are not subject to, nor covered by, federal pension plan termination insurance.

The University fully intends to maintain this Plan indefinitely. However, the University reserves the right, at any time and for any reason, subject to applicable collective bargaining agreements and Section 403(b), to amend or modify the Plan or, by resolution of its Board of Trustees, to terminate, suspend or discontinue the Plan. In the event of a material amendment or termination of the Plan or a discontinuance of Plan Contributions, the University will notify all affected Participants of such amendment, termination or discontinuance. No amendment will deprive, take away or alter the accrued right of any Participant insofar as such amendment concerns Plan Contributions previously made under the Plan. This document summarizes the Plan rights and benefits for Participants and is divided into Sections, as described in the Table of Contents.

## **TABLE OF CONTENTS**

### ***SECTION 1 – Eligibility***

Who is eligible to participate.

### ***SECTION 2 – Participation***

Specific rules on eligible employees' participation in the Plan.

### ***SECTION 3 – Contributions***

Details on Participant Contributions and University Contributions.

### ***SECTION 4 – Funding Information***

Where Plan Contributions are invested.

### ***SECTION 5 – Benefits***

How, when and under what circumstances account balances can be distributed.

### ***SECTION 6 – Defined Terms***

Defines those terms that have specific, Plan-related meanings.

### ***SECTION 7 – Non-Alienation of Retirement Rights or Benefits***

Participants' rights to benefits.

### ***SECTION 8 – Amendment and Termination***

Terms governing the amendment or termination of the Plan.

### ***SECTION 9 – Miscellaneous***

Information not covered elsewhere.

### ***SECTION 10 – Administration***

Describes how and by whom the Plan is administered, claims and appeals procedures and ERISA rights.

# 1 ELIGIBILITY

## 1.1 Eligible Classes of Employees

You are eligible to participate if you are an Eligible Employee who meets the requirements indicated below.

### (a) Administrative and Staff Employees

- (1) All full-time Employees; or
- (2) Part-time Employees credited with 1,000 or more Hours of Service (including paid absences) for any 12-consecutive-month period commencing with the date of employment or any anniversary of that date; or
- (3) Administrative Employees who are employed on a full-time salaried basis, but on a reduced schedule of at least 9 months for any 12-consecutive-month period commencing with the date of employment or any anniversary of that date.

### (b) Faculty Employees

All faculty Employees with full-time classroom teaching schedules are eligible to participate in the Plan.

## 1.2 Excluded Classes of Employees

You are not eligible to participate in the Plan if you are an adjunct faculty Employee or if your employment is incidental to your educational program. If you are a faculty Employee whose duties are primarily administrative in nature, you are subject to the eligibility rules that apply to administrative Employees.

If, during any period, you are classified by the University as an independent contractor, a consultant, a leased employee or an employee of any entity (other than a University affiliate, which is then participating in the Plan), you are not eligible to participate in the Plan, even if it is later determined that you were a common-law Employee of the University or any of its participating affiliates for such period.

Any Employee who does not satisfy the requirements stated in **SECTION 1.1** shall be considered as ineligible to participate in the Plan. You must be an Eligible Employee in order to qualify to participate in the Plan.

## **2 PARTICIPATION**

### **2.1 Notification**

The University will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who satisfies the requirements of **SECTION 2.2** and becomes a Participant is entitled to the benefits and is bound by all of the terms, provisions and conditions of this Plan, including any and all amendments which from time to time may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.

### **2.2 Enrollment**

To participate in this Plan, an Eligible Employee must:

- (a) have been automatically enrolled pursuant to **SECTION 3.1(c)**, or
- (b) complete the necessary enrollment form(s) and return them to the Plan Administrator.

An Eligible Employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date, *unless* he or she has been and remains automatically enrolled pursuant to **SECTION 3.1(c)**.

### **2.3 Leave of Absence**

#### **(a) General**

During a paid leave of absence, University Contributions will continue to be made for a Participant on the basis of Regular Salary then being paid by the University, provided that his or her Regular Salary continues to be paid and his or her Participant Contributions are not discontinued.

#### **(b) Return from Military Leave of Absence**

Upon their return from active duty, Participants who were inducted or called to active duty or enlisted in the U.S. Armed Forces will be treated as having been actively employed by the University for their period of military service. Upon his or her return to actual employment and payment of the required Participant Contributions, the University will make those University Contributions, which would have been made if the Participant had been employed by the University for the period of military service. Those Plan Contributions will be based upon the Regular Salary the Participant would have earned had the Participant actually continued employment with the University. Any such Plan Contributions made

for military service will not exceed the amount required under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

## **2.4 Termination of Participation**

A Participant will continue to participate in the Plan until he or she ceases to be an Eligible Employee, or until the Plan is terminated, whichever occurs first. However, if a Participant begins to receive retirement benefits from the Accumulation Account(s) arising from Plan Contributions under this Plan (*i.e.*, excluding cash withdrawals permitted under **SECTION 5.2** before April 1 of the calendar year following the year in which he or she attains age 70½) or retires (whichever is later), he or she will cease to be a Participant and no further Plan Contributions will be made on his or her behalf.

## **2.5 Reemployment**

An Eligible Employee who satisfied the eligibility requirements set forth in **SECTION 1** before terminating employment with the University will again be eligible to participate in the Plan upon reemployment. If the Eligible Employee was entitled to University Contributions at termination, he or she will again be eligible for University Contributions upon reemployment. University Contributions will begin on the first day of the month that next follows the latest of the following dates:

- (a) The Eligible Employee's Date of Reemployment;
- (b) The date the Eligible Employee is automatically enrolled as a Participant pursuant to **SECTION 3.1(c)**; or
- (c) The date the Eligible Employee provides to the Plan Administrator a salary reduction agreement that satisfies the requirements of **SECTION 3.1(b)**.

The amount of a reemployed Eligible Employee's University Contributions will be determined under **SECTION 3.2(b)**.

## **3 CONTRIBUTIONS**

### **3.1 Participant Contributions**

There are three types of Participant Contributions: Salary Deferral Contributions, Voluntary Plan Contributions and Roth Contributions.

Salary Deferral Contributions are Plan Contributions made by Participants on a pre-tax basis (i) pursuant to a salary reduction agreement as provided under **SECTION 3.1(b)**, or (ii) following an Employee's automatic enrollment in the Plan as provided in **SECTION 3.1(c)**. Roth Contributions are Plan Contributions made by Participants on an after-tax basis to an Employee's Roth Account in the Plan, pursuant to a salary reduction agreement under **SECTION 3.1(b)**. Roth Contributions are considered taxable income at the time the contributions are withheld from an Employee's Regular Salary.

Voluntary Plan Contributions are Salary Deferral Contributions and/or Roth Contributions in excess of the minimum 5% contribution amount required for University Contributions as provided in **Section 3.2(b)**.

#### **(a) Starting Date**

An Eligible Employee may begin making contributions on the first day of the month following his or her date of hire. If the date of hire falls on the first day of the month, contributions may begin on that date.

#### **(b) Salary Reduction Agreement**

Except as provided in **SECTION 3.1(c)**, to begin participation in the Plan, a Participant must complete, sign and return to the Plan Administrator a salary reduction agreement which provides that an amount or percentage of the Participant's Regular Salary will be withheld by the University and contributed to the Plan on behalf of the Participant as a Salary Deferral Contribution or a Roth Contribution. If a salary reduction agreement does not specify that a Participant's contribution is a Roth Contribution, the contribution will be treated as a Salary Deferral Contribution. Each Participant should enter into a new salary reduction agreement for each Plan Year. However, his or her most recent salary reduction agreement will continue in effect from year to year, subject to changes in the annual maximum salary reduction contribution amount, until the Participant submits to the Plan Administrator:

- (1) a new salary reduction agreement, or
- (2) a written notice of termination of his or her salary reduction agreement.

A Participant is permitted to submit only one salary reduction agreement during any calendar quarter. Each salary reduction agreement will be subject to the

highest permissible percentage of the Participant's Regular Salary for the applicable Plan Year, as calculated by the applicable Fund Sponsor.

(c) **Automatic Enrollment**

An Eligible Employee who has not begun participation in the Plan in accordance with **SECTION 3.1(b)** shall be automatically enrolled as a Participant who has elected to make Salary Deferral Contributions **at the minimum rate of 5%** of his or her Regular Salary. An Eligible Employee may opt-out of automatic enrollment by completing, signing and returning to the Plan Administrator an "opt-out election form" within 30 days of being notified that he or she has been automatically enrolled in the Plan.

### **3.2 University Contributions**

(a) **Starting Date**

The University will begin making University Contributions on the first day of the month that follows the date the Participant has both:

- (1) Completed a 12-consecutive-month period which constitutes one Year of Service at the University or at any other accredited college or university; and
- (2) For any Participant whose adjusted service date is *prior to* July 1, 2010, attained age 26.

A Participant is not eligible to receive University Contributions with respect to Regular Salary (or any other form of remuneration) earned before the Participant has satisfied the requirements of paragraph (1) and (if applicable) paragraph (2) above.

If a Participant (i) is hired on the first day of a month, and (ii) meets the criteria specified in paragraph (1) and (if applicable) paragraph (2) above, then the Participant becomes eligible to receive University Contributions on the first of that month.

A Participant who (i) was an employee of Saint Vincent's Catholic Medical Centers of New York, and (ii) became an employee of the University in connection with the University's purchase of assets of Saint Vincent's Catholic Medical Centers of New York in August 2006, is not required to satisfy the service requirement described in paragraph (1) above to be eligible for University Contributions.

A Participant who was an employee of Saint Vincent's Catholic Medical Centers of New York in August 2006 becomes eligible to receive University Contributions on the first day of the month that occurs on or after the date he or

she has both (i) attained age 26 and (ii) met the service requirement described paragraph (1) above.

To receive credit for service at another accredited college or university, a Participant must submit sufficient evidence of his or her prior employment at such other accredited college or university. If (i) a Participant is otherwise eligible to receive University Contributions, and (ii) he or she submits such evidence within 90 days of his or her first day of employment, the University will make a University Contribution retroactive to the first day of the month that follows the Participant's first day of employment with the University. If the Participant provides such evidence more than 90 days following his or her first day of employment by the University, University Contributions will not be made with respect to any period of employment prior the first day of the month that follows the date such evidence is received by the University.

The University will notify a Participant when he or she has satisfied the requirements for eligibility for University Contributions. The University will make all determinations about such eligibility and will base its determinations on its records and the official Plan documents.

(b) **University Contribution Amount**

University Contributions will be made to a Participant's Accumulation Account if his or her Salary Deferral Contributions and/or Roth Contributions for the Plan Year are equal to **at least 5%** of his or her Regular Salary for the Plan Year. If a Participant's Salary Deferral Contributions and/or Roth Contributions are **less than 5%** of his or her Regular Salary for a Plan Year, no University Contributions will be made to the Participant's Accumulation Account for that Plan Year. University Contributions will equal either 5% or 10% of a Participant's Regular Salary, determined as follows:

- (1) University Contributions **will equal 5%** of a Participant's Regular Salary if the Participant *has not* reached his or her 5 year anniversary of eligible service (as measured from the first day of the month coincident with or next following his or her adjusted service date).
- (2) University Contributions **will equal 10%** of a Participant's Regular Salary if the Participant *has* reached his or her 5 year anniversary of eligible service (as measured from the first day of the month coincident with or next following his or her adjusted service date), *provided* that if such anniversary falls within a Plan Year, the University Contribution will be prorated so that it is equal to 5% of the Participant's Regular Salary from the first day of the Plan Year through the day before the anniversary date, and 10% of the Participant's Regular Salary from the anniversary date through the last day of the Plan Year.

- (3) Notwithstanding paragraphs (1) and (2), above, University Contributions *will equal 10%* of a Participant's Regular Salary if the Participant is:
  - (i) A Faculty Employee (as described in **SECTION 1.1(b)**) whose adjusted service date is *prior to* October 1, 2012; or
  - (ii) An Administrator or Staff Employee whose adjusted service date is *prior to* July 1, 2010.

The Participant's minimum Participant Contribution of 5% of Regular Salary (required to receive University Contributions) must be invested in:

- (1) a TIAA-CREF Retirement Annuity;
- (2) a TIAA-CREF Retirement Choice Annuity; or
- (3) Fidelity Investments.

***No University Contributions will be made based on any Participant Contributions allocated to a TIAA-CREF Group/Supplemental Retirement Annuity.***

(c) **Adjustment for Partial Year Eligibility**

Only the Regular Salary earned by a Participant while eligible for University Contributions is taken into account for purposes of **SECTION 3.2(b)**, above.

***Example:*** A Participant who becomes eligible for University Contributions on November 1 must only contribute 5% of the Regular Pay he or she earns from November 1 through December 31 (the last day of the Plan Year) to qualify for a University Contribution, and the University Contribution for the Plan Year is equal to a percentage of the Participant's Regular Salary for the months of November and December only.

(d) **Discretionary University Contributions**

University Contributions in addition to those described in **SECTION 3.2(b)**, above, may be made to a Participant's Accumulation Account pursuant to an agreement between the Participant and the University concerning the Participant's voluntary separation from service with the University. The amount of such additional University Contributions, if any, will be determined by the University in its sole discretion, subject only to the limitations described in **SECTION 3.3**.

(e) **Adjusted Service Date**

For purposes of this **SECTION 3.2**, the term "adjusted service date" means the adjusted service date assigned to an Employee by the University.

### 3.3 Maximum Plan Contributions

#### (a) General Limitations

Notwithstanding any contrary Plan provision, the total Annual Additions made on behalf of the Participant for any Plan Year will not exceed the limits imposed by Code Section 415 and the final Treasury Regulations issued on April 5, 2007 thereunder (collectively, “Code Section 415”), as may be adjusted from time to time. The limits of Code Section 415 are incorporated herein by reference. For purposes of this **SECTION 3.3(a)** and the limitations on Annual Additions imposed by Code Section 415, “compensation” means compensation as described in Treasury Regulation Sections 1.415(c)-2(d)(4). Compensation shall also include compensation paid after severance from employment to the extent permitted by Treasury Regulation Sections 1.403(b)-4(d)(1) and 1.415(c)-2(e)(3).

For Plan Years prior to January 1, 2009, if the Annual Additions exceed the limitations of Code Section 415 (treating Participant Contributions in excess of 5% of a Participant’s Regular Salary as exceeding the limitations before other Participant Contributions or University Contributions), the excess amounts will be distributed to the Participant no later than April 15 of the following Plan Year. However, if and to the extent distribution is not permitted under the limitations imposed by Code Section 415, a suspense account will be established to hold the unallocated excess amounts. Funds in this account will be applied to reduce future University Contributions to the Participant’s Accumulation Account.

For Plan Years on or after January 1, 2009, if the Annual Additions exceed the limitations of Code Section 415, then any excess amounts shall be corrected in accordance with the correction methods specified in applicable provisions of Revenue Procedure 2013-12 or its successor.

In applying these rules, this Plan and any other plan required to be aggregated with this Plan under Treasury Regulation Section 1.415(f)-1 shall be treated as one plan.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for purposes of Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which contributions under any other plans will be reduced, will be determined by the University in such a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is made under this Plan, the University will advise affected Participants of any additional limitation on their annual contributions required by this paragraph. **NOTE:** This paragraph is not expected to apply to any Participant, except in rare and unusual circumstances.

#### (b) Plan is Subject to Code Section 401(m)

To the extent that Plan Contributions made by or on behalf of Highly Compensated Employees are subject to the limitations of Code Section 401(m) and the Plan Contributions exceed these limitations, they are Excess Aggregate Contributions. Notwithstanding any contrary Plan provision, to the extent necessary to meet the limitations of Code Section 401(m), the University may:

- (1) Distribute Excess Aggregate Contributions, adjusted to reflect investment experience, to the Participant no later than 12 months following the end of the Plan Year after the year in which the Excess Aggregate Contributions arose. If Excess Aggregate Contributions are distributed more than 2½ months after the last day of the Plan Year in which such excess amounts arose, a 10% excise tax will be imposed on the University with respect to those amounts. Excess Aggregate Contributions shall be treated as Annual Additions under the Plan.
- (2) Make Qualified Nonelective Contributions on behalf of non-Highly Compensated Employees and include Qualified Nonelective Contributions under this Plan in computing the contribution percentage under Code Section 401(m)(3).
- (3) Discontinue or reduce Plan Contributions for Highly Compensated Employees, if it is determined that continuation of contributions in accordance with the provisions of this Plan will cause the Plan to exceed the limitations of Code Section 401(m).

**(c) Limitations on Elective Deferrals**

Except as provided in paragraphs (c)(1) and (c)(2) below, the amount of Elective Deferrals for any calendar year under this Plan and all other plans, contracts or arrangements of the University shall not exceed the dollar limit in effect under Code Section 402(g) at the beginning of that year (\$18,000 in 2016). In the event that a Participant's Elective Deferrals for any calendar year under this Plan and all other plans, contracts or arrangements of the University, when combined with his or her Elective Deferrals under a plan, contract or arrangement of another employer, exceed the dollar limit in effect under Code Section 402(g) at the beginning of that year, he or she may designate Elective Deferrals made during that year to this Plan as Excess Elective Deferrals by notifying the Plan Administrator on or before February 15 of the amount of the Excess Elective Deferrals. Notwithstanding any contrary Plan provision, Excess Elective Deferrals for any calendar year, adjusted to reflect any credited investment experience up to the date of distribution, will be distributed no later than April 15 of the following Plan Year to any Participant who designates Elective Deferrals as Excess Elective Deferrals for that year. In addition, if the amount of an Employee's Participant Contributions for any calendar year exceeds limitations imposed by Code Sections 402(g) and 415 (but not Code Section 403(b)), the excess amount will be distributed to the Participant, if and to the extent permitted under the limitations imposed by Code Sections 402(g), 403(b) and 415.

(1) *Age 50 Catch-up Contributions*

A Participant who will attained age 50 by the end of a Plan Year may elect (or revoke a previous election), at the time and in the manner prescribed by the Plan Administrator, to make Age Catch-up Contributions for that Plan Year by entering into a salary reduction agreement providing for such contributions. Age 50 Catch-up Contributions are Participant Contributions that exceed the limitations imposed by Code Sections 402(g) and 415 and, if applicable, the limit on 15-Year Catch-up Contributions described in paragraph (c)(2) below. Age 50 Catch-up Contributions may not exceed the catch-up contribution limit under Code Section 414(v)(2) (\$6,000 for 2016).

(2) *15-Year Catch-up Contributions*

A Participant will have completed at least 15 Years of Service (including fractions thereof) with the University by the end of a Plan Year and whose Participant Contributions for the Plan Year exceed the limitations imposed by Code Sections 402(g) and 415 may elect (or revoke a previous election), at the time and in the manner prescribed by the Plan Administrator, to make 15-Year Catch-up Contributions for that Plan Year by entering into a salary reduction agreement providing for such contributions. A Participant's 15-Year Catch-up Contribution for a Plan Year shall not exceed the lesser of:

- (i) \$3,000;
- (ii) The excess of (x) \$15,000 over (y) the total of all 15-Year Catch-up Contributions made by the Participant in all prior Plan Years; or
- (iii) The excess of (i) \$5,000 multiplied by the Participant's Years of Service (including fractions thereof) with the University over (ii) the total Participant Contributions made by the Participant during all prior Plan Years.

For purposes of this paragraph (c)(2), for each Plan Year in which a Participant does not complete a Year of Service, the Participant will be credited with a partial Year of Service equal to 1/1000 of a Year of Service for each Hour of Service the Participant completes during the Plan Year.

(3) *Ordering Rule for Catch-up Contributions*

If a Participant who is eligible to contribute 15-Year Catch-up Contributions is also eligible to contribute Age 50 Catch-up Contributions for the Plan Year, the Participant's catch-up contributions will be treated as 15-Year Catch-up Contributions to the extent permitted by paragraph (c)(2). Any catch-up contributions that exceed the limits imposed by

paragraph (c)(2) will be treated as Age 50 Catch-up Contributions to the extent permitted by paragraph (c)(1).

(d) **Tax-Deferred Annuity Program**

Under the Tax Deferred Annuity Program, which forms a part of this Plan, the University permits almost all of its Employees to make periodic premium payments (“TDA Payments”) pursuant to a salary reduction agreement to TIAA-CREF Funding Vehicles. An Employee is not permitted to make TDA Payments under the Tax-Deferred Annuity Program if the Employee’s employment is incidental to his or her educational program or he or she customarily works less than 20 hours a week. The limits imposed by the Code (see paragraphs (a) through (c) above) govern the maximum amount that a Participant can contribute by salary reduction under any portion of this Plan (including the Tax-Deferred Annuity Program).

(e) **Special Limitations Applicable to Highly Compensated Employees**

The amount of Plan Contributions will also be subject to the limitations of Code Sections 401(m), 402(g) and 403(b), if and to the extent applicable. If a Participant’s Plan Contributions are limited to an amount which is less than 5% of his or her full Regular Salary (before applying Code Section 401(a)(17)) solely by reason of the limitations imposed by Code Section 401(a)(17) or (taking into account only Elective Deferrals under this Plan) Code Section 402(g), the University’s Plan Contribution shall be 10% of the Participant’s Regular Salary (after applying Code Section 401(a)(17)). In addition, a specific written agreement between the University and a Participant who is a Highly Compensated Employee may provide for a rate of University Contributions, which is less than 10%. In the case of a non-Highly Compensated Employee, the University Contributions will equal 10% of his or her Regular Salary for a Plan Year even if his or her Participant Contributions for the Plan Year have been limited by Code Section 402(g), 403(b) or 415 to less than 5% of his or her Regular Salary for the Plan Year.

### **3.4 When Contributions are Made**

Plan Contributions will begin each Plan Year after the University has determined that the Participant has met or will meet the age and service eligibility rules described in **SECTION 1**. Unless otherwise provided by **SECTION 3.1**, a Participant must complete a salary reduction agreement before any Plan Contributions can be made, as described in **SECTIONS 3.1(a)** and **3.2(a)**. Any part of the Plan Contributions for a Plan Year not contributed prior to this determination will be included in contributions made for that Plan Year after the determination is made. Plan Contributions will be forwarded to the Funding Vehicles in accordance with the procedures established by the University.

University Contributions will be forwarded to the Funding Vehicles at least annually. Participant Contributions will be forwarded to the Funding Vehicles as soon as it is

administratively feasible for the University to segregate contributions, but in no event later than the 15th business day of the month that next follows the month in which such Contributions would otherwise have been payable to the Participants (rather than withheld from Regular Salary).

### **3.5 Allocation of Contributions**

A Participant may allocate Plan Contributions made on his or her behalf to Funding Vehicles in such manner and subject to such restrictions as may be specified by the University. A Participant may change his or her allocation of future Plan Contributions to the Funding Vehicles at such times and in such manner as the University may specify.

### **3.6 Limitations**

Notwithstanding any contrary Plan provision, the obligation of the University to make Plan Contributions is subject to the provisions relating to the amendment and termination of the Plan; provided that no amendment or termination will affect any obligation of the University to make Plan Contributions with respect to Regular Salary earned by the Participant prior to the date the University acts to amend or terminate the Plan.

### **3.7 No Reversion**

Under no circumstances or conditions will any Plan Contributions of the University revert to, be paid to, or inure to the benefit of, directly or indirectly, the University. However, in the event that Plan Contributions are made by the University by mistake of fact, these amounts, reduced by any losses attributable thereto, may be returned to the University within one year of the date that they were made.

### **3.8 Vesting**

Each Participant is fully and immediately 100% vested and has a nonforfeitable right in amounts attributable to Plan Contributions when such Plan Contributions are made and credited to his or her Accumulation Account, subject to Plan provisions that specifically permit the reduction or distribution of Plan Contributions to satisfy applicable limitations imposed by the Code or the reversion of Plan Contributions made by mistake of fact.

### **3.9 Differential Pay During Military Service**

If the University makes differential wage payments (as defined in Code Section 3401(h)(2)) to a Participant with respect to any period during while he or she is performing service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) while on active duty for a period of more than 30 days, then for all Plan purposes such payments shall be treated as wages (*i.e.*, "Compensation" as defined in **SECTION 6**) paid by the University to the Participant.

### **3.10 Rollover Contributions**

An Employee who is entitled to an “eligible rollover distribution” (as defined by **SECTION 5.5(a)**) from another “eligible retirement plan” (as defined by **SECTION 5.5(b)**) may elect to contribute all or any portion of such distribution to the Plan in a direct rollover from the eligible retirement plan, or within 60 days following the date the Employee receives the distribution. The University may refuse to accept such a rollover contribution, so long as the decision to refuse to accept such contribution is made in a reasonable and nondiscriminatory manner.

If a rollover contribution is accepted by the University, the University will establish a rollover contribution account for the Employee and the rollover contribution will be credited to that account. The rollover contribution account will at all times be fully vested in, and nonforfeitable by, the Employee.

The University may establish administrative procedures and request information from Employees to ensure that amounts rolled over under this **SECTION 3.10** satisfy the requirements for tax-free rollovers under Code Section 402(c).

If the University determines that a rollover contribution does not satisfy the requirements of this **SECTION 3.10** or of the Code or Treasury Regulations, the Plan Administrator will distribute the rollover contribution to the Employee, adjusted for earnings (or losses) from the date of the contribution to the date of the distribution.

## **4 FUNDING INFORMATION**

### **4.1 Fund Sponsors/Funding Vehicles**

Plan Contributions are invested in one or more of the Funding Vehicles available to Participants under this Plan. The Fund Sponsors are as follows:

- (a) **Teachers Insurance and Annuity Association (TIAA);**
- (b) **College Retirement Equities Fund (CREF); and**
- (c) **Fidelity Investments (including BrokerageLink).**

Metropolitan Life Insurance Company (“MetLife”) was a Fund Sponsor prior to January 1, 2013. Effective as of that date, no further Plan Contributions may be allocated to any funding vehicle sponsored by MetLife. Plan Contributions invested through MetLife prior to January 1, 2013 may be transferred, at the Participant’s election, to any Funding Vehicle offered by a current Fund Sponsor, but such Plan Contributions may not be transferred from such a Fund Vehicle to a funding vehicle sponsored by MetLife.

To obtain information about the Funding Vehicles available to you, please contact the Employee Benefits Department at 1-718-990-6587.

#### **(d) Changes**

The University’s current selection of Fund Sponsors and Funding Vehicles is not intended to limit future additions or deletions of Fund Sponsors and Funding Vehicles. The University will notify Eligible Employees of any such additions or deletions.

### **4.2 Fund Transfers**

At any time, subject to a Funding Vehicle’s rules for transfers and in accordance with Section 403(b) and the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan’s approved Funding Vehicles, in accordance with the terms, provisions and conditions of each Funding Vehicle, if the following conditions are met:

- (a) The Participant must have an Accumulation Account balance immediately after the transfer that is at least equal to his or her Accumulation Account balance immediately before the transfer (taking into account the account balance of the Participant under both Section 403(b) Funding Vehicles immediately before the transfer).
- (b) The receiving Funding Vehicle is subject to distribution restrictions with respect to the Participant that are not less stringent than those imposed on the transferring Funding Vehicle.

- (c) The University enters into an agreement with the receiving Funding Vehicle under which the University and the Funding Vehicle will from time to time in the future provide each other with certain information, including information necessary to satisfy Section 403(b), and employment and other necessary plan information (such as severance from employment or satisfaction of the hardship distribution rules), and other tax requirements (such as compliance with the loan provisions).

### **4.3 Responsibilities for Participant Investment Decisions**

Each Participant is solely responsible for the initial selection of his or her Funding Vehicle(s) and for making any changes to his or her initial selection(s). The Plan is intended to comply with ERISA Section 404(c) and, consequently, neither the Plan, nor its fiduciaries, nor its advisors are liable for any investment losses the Participant may incur. No Plan fiduciaries, including University representatives, are empowered to advise a participant on how to invest his or her Accumulation Account. The fact that a given Funding Vehicle or investment option is offered does not imply that the Funding Vehicle or investment option is recommended.

A Participant has the right to request and receive the following related information:

- A description of the annual operating expenses of each Funding Vehicle and the aggregate amount of such expenses expressed as a percentage of average net assets of the Funding Vehicle.
- Copies of any prospectuses, summaries, financial statements and/or reports and any other materials relating to the Funding Vehicle, to the extent such information is provided to the Plan.
- A list of the assets comprising the portfolio of each Funding Vehicle that constitutes an asset of the Plan (within the meaning of ERISA) and the value of each such asset.
- Information concerning the value of shares or units in each Funding Vehicle, as well as the past and current investment performance of each Funding Vehicle, determined net of expenses, on a reasonable and consistent basis.
- Information concerning the value of shares or units in each Funding Vehicle held in the Accumulation Account of the participant or beneficiary.

Although the University is the named fiduciary responsible for providing this information, a Participant will be able to secure most of this information from the Fund Sponsors.

## **5 BENEFITS**

### **5.1 Retirement Benefits**

#### **(a) General Rules**

Although retirement benefit payments usually begin at age 65, the Participant may begin to receive retirement benefits at any time after he or she severs from employment with the University, which may be either earlier or later than age 65. Retirement benefits must normally begin no later than the required beginning date, which is April 1 of the calendar year following the year in which the Participant either attains age 70½ or retires (whichever is later). Failure to begin retirement benefit payments by the required beginning date may subject the Participant to a substantial federal tax penalty.

If the Participant dies before the payment of benefits has begun, the Participant's entire interest under the Plan must normally be distributed by December 31st of the year which contains the 5th anniversary of the Participant's death. Under a special rule, death benefits may be payable over the life or life expectancy of the Participant's designated beneficiary if the payment of benefits begins not later than December 31st of the year following the year in which the Participant died. If a Participant's spouse is his or her designated beneficiary, the commencement of benefits may be deferred until December 31st of the year in which the Participant would have attained age 70½ had he or she continued to live.

It is extremely important that payment of benefits be made according to the above rules. Federal tax law imposes a 50% excise tax on the difference between the amount of benefits required by law to be paid in any year and the amount actually distributed if it is less than the required minimum amount.

The Fund Sponsor will normally contact the Participant several months before the date he or she scheduled benefits to begin in his or her application. The Participant may decide, however, to begin receiving retirement benefit payments sooner, in which case he or she should notify the Fund Sponsor several months in advance of that date. Usually, the later the Participant begins to receive payments, the larger each payment will be.

#### **(b) Optional Forms of Benefits – General**

Optional forms of benefit are the benefit forms offered by the Funding Vehicles available under this Plan. These optional forms are equally available to all Participants choosing the Funding Vehicle.

The Participant may choose from among several types of benefit payment options when he or she retires. If the Participant is married at the time he or she begins retirement benefit payments, the right to choose a benefit payment option will be

subject to his or her spouse's right (under federal pension law) to survivor benefits, unless this right is waived in writing by the spouse.

(c) **Optional Forms of Benefits – TIAA-CREF**

The optional forms of benefit available through TIAA-CREF under this Plan are described below.

- (1) **Single Life Annuity.** This option provides a Participant an income for as long as he or she lives. This option provides a larger monthly income to Participant than other options, but all payments cease at the Participant's death. This option is also available with a lesser amount payable over a 10, 15 or 20 year guaranteed payment period (but not exceeding the Participant's life expectancy at the time that Participant benefit payments begin). If the Participant dies during the guaranteed period, payments in the same amount that Participant would have received continue to his or her beneficiary for the remainder of the guaranteed period.
- (2) **Joint and Survivor Annuity.** This option provides a lifetime income to the Participant and a lifetime income to a Second Annuitant upon the Participant's death. The monthly income payable to the Participant under a Joint and Survivor Annuity is less than under the Single Life Annuity option because benefits are potentially payable over two lifetimes. The amount continuing to the Second Annuitant depends on which of the following four options the Participant chooses:
  - (i) **Two-Thirds Benefit to Second Annuitant.** At the death of either the Participant or the Second Annuitant, the payments to be continued to the survivor are reduced to two-thirds of the amount that would have been paid if both had lived;
  - (ii) **Full Benefit to Survivor.** The full income continues as long as either the Participant or Second Annuitant is living;
  - (iii) **Half Benefit to Second Annuitant.** The Participant receives full monthly income for life. If the Second Annuitant survives the Participant, the Second Annuitant receives one-half the amount the Participant would have received if the Participant had lived. If the Second Annuitant dies first, the Participant continues to receive the full monthly income for life.
  - (iv) **Three-Quarters Benefit to Second Annuitant.** The participant receives full monthly income for life. If the second annuitant survives the Participant, the second annuitant receives 75% of the amount the Participant would have received if the Participant had lived. If the Second Annuitant dies first, the Participant continues to receive the full monthly income for life.

*These options are also available with a 10, 15 or 20 year guaranteed period, but not exceeding the joint life expectancies of the Participant and Second Annuitant. Federal tax law may limit the payment period.*

- (3) **Minimum Required Distribution Option.** The minimum required distribution option enables Participants automatically to comply with federal tax law minimum distribution requirements. With the minimum required distribution option, the Participant will receive the minimum distribution that is required by federal tax law while preserving as much of his or her benefits as possible. This option generally is available in the year the Participant reaches age 70½ or retires (whichever is later).
- (4) Cash withdrawals, subject to the limitations set forth in **SECTION 5.2**, and fixed period annuities (to the extent that cash withdrawals are permitted) as provided under the Funding Vehicle's contract.
- (5) The Retirement Transition Benefit described in **SECTION 5.4(b)**.
- (6) Systematic Withdrawals (see **SECTION 5.4(b)**).
- (7) Such other annuity and withdrawal options as provided under the Funding Vehicle contract.

(d) **Optional Forms of Benefits – Fidelity Investments**

There are a number of options for receiving retirement income, including lump sum payments, periodic installments, annuity payments or a combination of these options. Some of these options are described below.

- (1) **Single Life Annuity.** This option provides a Participant an income for as long as he or she lives. This option provides a larger monthly income to the Participant than other options, but all payments cease at the Participant's death. This option is also available with a lesser amount payable over a 5, 10, 15, 20 or 30 year guaranteed payment period (but not exceeding the joint life expectancy of the Participant and the beneficiary at the time that the Participant's benefit payments begin). If the Participant dies during the guaranteed period, payments in the same amount that Participant would have received continue to his or her beneficiary for the remainder of the guaranteed period.
- (2) **Joint and Survivor Annuity.** This option provides a lifetime income to the Participant and a lifetime income to a Second Annuitant upon the Participant's death. The monthly income payable to the Participant under a Joint and Survivor Annuity is less than under the Single Life Annuity option because benefits are potentially payable over two lifetimes. The

amount continuing to the Second Annuitant depends on which of the following three options the Participant chooses:

- (i) **Two-Thirds Benefit to Second Annuitant.** At the death of either the Participant or the Second Annuitant, the payments to be continued to the survivor are reduced to two-thirds of the amount that would have been paid if both had lived.
- (ii) **Full Benefit to Survivor.** The full income continues as long as either the Participant or Second Annuitant is living.
- (iii) **Half Benefit to Second Annuitant.** The Participant receives full monthly income for life. If the Second Annuitant survives the Participant, the Second Annuitant receives one-half the monthly income the Participant would have received if the Participant had lived. If the Second Annuitant dies first, the Participant receives full monthly income for life.

*These options are also available with a 5, 10, 15, 20 or 30 year guaranteed period, but not exceeding the joint life expectancies of the Participant and Second Annuitant at the time that Participant payments begin. Federal tax law may limit the payment period.*

*Participants may purchase a Fidelity income annuity and choose income to be fixed, variable or a blend of the two. If the Participant chooses a variable or blended income annuity option, he or she will be allocating at least a portion of the purchase to professionally managed investment portfolios. Fidelity offers a broad array of 100 investment choices managed by Fidelity and many non-Fidelity investment management firms.*

*Participants may choose the frequency of annuity income payments: monthly, quarterly, semi-annually or annually.*

- (3) **Systematic Withdrawals.** This option provides income payments for a fixed period of time or dollar amount. Once the Participant is required to receive minimum required distributions, the period of time may not be longer than the joint life expectancy of the Participant and his or her beneficiary at the time the Participant begins to receive minimum required distributions. If the Participant chooses a fixed period and he or she dies before the end of the fixed period, the payments continue to his or her beneficiary for the remainder of the fixed period. The payments under this option may have to be adjusted from time to time to comply with the federal tax law minimum distribution requirements.
- (4) **Minimum Required Distribution Option.** The minimum required distribution option enables Participants to automatically comply with federal tax law minimum distribution requirements. With the minimum

required distribution option, the Participant will receive the minimum distribution that is required by federal tax law while preserving as much of his or her benefits as possible. This option generally is available in the year the Participant reaches age 70½ or retires (whichever is later).

For more information, Participants may call a Fidelity Retirement Specialist at 1-800-343-0860 or refer to the Fidelity Investments *Distribution Kit*, Fidelity Investments Systematic Withdrawal Plan for Minimum Required Distribution.

(e) **Optional Forms of Benefits – MetLife Resources**

Participants may choose from a number of available options, which provide income payments guaranteed for life on a monthly, quarterly, semiannual or annual basis. Payments may also be guaranteed for at least 5 years, but not beyond the Participant’s life expectancy or joint life expectancy of all payees. Other income plans are available to the extent permitted by federal income tax rules. The amount of each payment under an income plan must be at least \$50. Participants may receive payment in a lump sum distribution. Participants may discuss these options further by calling the customer service number at 1-800-560-5001.

## 5.2 Cash Withdrawals

After termination of employment with the University, a Participant may receive a cash withdrawal as permitted by the Funding Vehicle’s contract. Except as described in **paragraph (a)** below, no amounts attributable to Plan Contributions, whether invested through TIAA-CREF, Fidelity Investments or MetLife, may be withdrawn in cash before the Participant severs from employment with the University.

(a) **Amounts Available for Withdrawal – Before Severance From Employment**

Subject to the rules set forth in this **SECTION 5.2**:

- (1) A Participant who is not a Phased Retirement Participant may withdraw in cash, before the Participant’s severance from employment with the University, the amounts specified in (i), (ii) and/or (iii) below and any earnings accrued thereon:
  - (i) Effective January 1, 2016, Voluntary Plan Contributions invested in any TIAA-CREF Funding Vehicles ,
  - (ii) Voluntary Plan Contributions invested through Fidelity Investments, and
  - (iii) Voluntary Plan Contributions invested through MetLife with a minimum of \$500 per withdrawal or account balance if less.

Such cash withdrawals may be made subject to the terms, provisions and conditions of the respective Funding Vehicles.

- (2) A Phased Retirement Participant may withdraw in cash, before his or her severance from employment with the University, all Participant Contributions and University Contributions made to his or her Accumulation Account and any earnings accrued thereon, as described in **paragraph (g)** below.
- (3) Effective January 1, 2016, a faculty member who is subject to the Collective Bargaining Agreement by and between University and the American Association of University Professors – Faculty Association at St. John’s University (the “AAUP-FA”), effective as of July 1, 2014 who is not a participant in the Voluntary Phased Retirement Plan described in **paragraph (g)**, below, and who has attained age 59½, may withdraw from his or her Accumulation Account up to \$30,000 in Participant Contributions (including accrued earnings thereon) each Plan Year. Employer Contributions are not eligible for withdrawal under this **paragraph (a)(3)**. Such withdrawals may be made only if and to the extent not prohibited by the Fund Sponsor or the Funding Vehicle from which withdrawal is to be made. This provision expires on June 29, 2017 in accordance with the Collective Bargaining Agreement.

(b) **General Rules – Withdrawals of Voluntary Plan Contributions**

Before the Participant separates from service with the University, a Participant’s Voluntary Plan Contributions may be withdrawn in cash:

- (1) At any time after the Participant attains age 59½, dies or becomes disabled (as defined under **paragraph (f)** below); or
- (2) If the Participant encounters a financial hardship, provided that no portion of any earnings accrued on the Participant’s Voluntary Plan Contributions shall be available for cash withdrawal until he or she separates from service.

Financial hardship withdrawals may be made under (2) above only if approved by the Plan Administrator based on its determination that the Participant has an immediate and heavy financial need (*see* **paragraph (c)** below) and the withdrawal is necessary to satisfy the need (*see* **paragraph (d)** below), including any amount necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the withdrawal. Only such portion of the Participant’s Voluntary Plan Contributions as is necessary to prevent or alleviate the hardship shall be available for withdrawal.

(c) **Immediate and Heavy Financial Needs**

The following shall be deemed to be immediate and heavy financial needs of the Participant:

- (1) Medical expenses for (or necessary to obtain) medical care (within the meaning of Code Section 213(d)) incurred by the Participant, his or her spouse or his or her dependents (within the meaning of Code Section 152, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B)), or his or her primary Beneficiary (determined without regard to whether the expenses exceed 7.5% of Employee's adjusted gross income);
- (2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) Payment of tuition, related educational fees and room and board for up to the next 12 months of post-secondary education for the Participant, his or her spouse, his or her children or his or her dependents (within the meaning of Code Section 152, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B)), or his or her primary Beneficiary;
- (4) Payment of amounts necessary to prevent the Participant's eviction from his or her principal residence or the foreclosure on the mortgage of or deed of trust on his or her principal residence;
- (5) Payments for burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents (as defined in Code Section 152, without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)), or his or her primary Beneficiary;
- (6) Payment of expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of the Employee's adjusted gross income);
- (7) Payment of expenses arising from Hurricane Sandy, if (i) the principal residence or place of employment of the Participant or the Participant's child, grandchild, parent or grandparent was located in a Hurricane Sandy disaster area as of October 26, 2012, and (ii) the withdrawal occurs on or after October 26, 2012, and no later than February 1, 2013; or
- (8) Such other expenses as may be specified pursuant to Treasury Regulation Section 1.401(k)-1(d)(3)(v) or as described in a revenue ruling, notice or other document of general application.

(d) **Necessary to Satisfy the Financial Need**

Hardship withdrawals shall be deemed to be necessary to satisfy an immediate and heavy financial need of the Participant if all of the following are satisfied:

- (1) The distribution does not exceed the amount of the applicable need under **paragraph (c)** above, together with any amount necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the withdrawal;
- (2) The Participant has obtained all distributions and withdrawals, other than hardship withdrawals, and all nontaxable loans currently available under the Plan and any other deferred compensation plan maintained by the University;
- (3) Unless the withdrawal is for expenses described in **paragraph (c)(7)** above, both the Employee's Participant Contributions and his or her salary reduction contributions under the University's Tax-Deferred Annuity Program are suspended for 6 months after receipt of the hardship withdrawal; and
- (4) Such additional or alternative requirements as may be prescribed pursuant to Treasury Regulation Section 1.401(k)-1(d)(3)(v).

(e) **Exceptions**

Notwithstanding **paragraph (d)** above, a hardship withdrawal will be treated as necessary to satisfy a financial need if the Participant reasonably represents that the need cannot be relieved:

- (1) Through reimbursement or compensation by insurance or otherwise;
- (2) By reasonable liquidation of his or her assets (or assets of his or her spouse or child which are available to him or her), to the extent that such liquidation would not cause hardship;
- (3) By cessation of his or her salary reduction contributions; or
- (4) By other withdrawals or distributions or nontaxable loans from this Plan, the Tax-Deferred Annuity Program or any other deferred compensation plan of the University (if any) or another employer or by borrowing from commercial sources on reasonable terms.

(f) **“Disability” Defined**

For purposes of applying **paragraph (b)** above, a Participant will be considered disabled if he or she has been determined by the Social Security Administration to be disabled pursuant to Code Section 72(m)(7).

(g) **Voluntary Phased Retirement Plan**

For purposes of applying **paragraph (a)** above, the Voluntary Phased Retirement Plan shall be administered in accordance with the description in this **paragraph**

(g), subject to the rules set forth under Section 17 of the Collective Bargaining Agreement by and between University and the AAUP-FA, effective as of July 1, 2007.

- (1) **Effective Date.** The Voluntary Phased Retirement Plan is effective as of June 1, 2008.
- (2) **Eligibility.** A full-time faculty member is eligible to participate in the Voluntary Phased Retirement Plan if, as of the Commencement Date, he or she is actively serving in a faculty position and is at least 62 years of age with 10 or more years of service to the University. Tenured faculty members who are not actively serving in a faculty position as of the Commencement Date (*e.g.*, faculty members who serve in an administrative position or as a department chairperson, unless he or she steps down from the chair position) will not be eligible to participate in the Voluntary Phased Retirement Plan.
- (3) **Retirement Benefits.** A Phased Retirement Participant shall remain eligible for benefits under the University benefit plans, including University Contributions of up to 10% of his or her Regular Salary (if applicable under **SECTION 3.2(b)** above), to the extent provided by the terms of those plans and to the extent that the Phased Retirement Participant continues to make any applicable contributions for such benefits. When the Agreement for Phased Retirement and General Release become irrevocable, the Phased Retirement Participant may elect to receive distributions from his or her Accumulation Account during the phased retirement period. Phased Retirement Participants should contact the investment vendors directly for appropriate distribution forms and related materials.
- (4) **Procedure.** Phased Retirement Participants shall be required to sign and return an Agreement for Phased Retirement and General Release. If, after due deliberation and consultation, an eligible faculty member decides to become a Phased Retirement Participant, the two documents must be notarized and returned to the Director of Benefits, Human Resources.

Eligible faculty members must make an election to participate in the Voluntary Phased Retirement Plan by June 30 preceding the fall semester when the phased retirement commences, or September 30 if the phased retirement will commence in the spring semester. However, in order to assist department planning, faculty interested in becoming Phased Retirement Participants are encouraged to file the applicable agreement as early as possible.

Faculty members will have 7 days following their execution of the General Release in which to revoke their Agreement for Phased Retirement and General Release. Such General Release will not become

effective or enforceable until the expiration of the 7 day period. Upon expiration of such period, a faculty member may revoke neither the Agreement for Phased Retirement nor the General Release.

- (5) **Highly Compensated Employees.** In the isolated situations where a Participant who is a Highly Compensated Employee is ineligible for the Voluntary Phased Retirement Plan because of applicable nondiscrimination rules that preclude offering the benefit to a part-time Highly Compensated Employee, such Participant shall (a) be notified by the University Human Resources Office of the fact prior to participating in the Voluntary Phased Retirement Plan; (b) be informed of options that might be available with respect to restructuring the proposed phased retirement arrangement in order to avoid such ineligibility; and (c) if such restructuring is either not possible or is not desired by Participant, be provided with a cash payment equal to the amount the University would have contributed for such a benefit during the applicable years of phased retirement.

(h) **Spousal Consent Required.**

A married Participant shall make no withdrawal under **SECTION 5.2** unless a qualified election to waive the qualified joint and survivor annuity form of benefit is made within the 180-day period ending on the withdrawal date.

(i) **Possible Penalty Taxes.**

Any cash withdrawals made prior to a Participant's attainment of age 59½, death or disability may be subject to early withdrawal penalty taxes under Code Section 72(t) and applicable state income tax law.

### **5.3 Plan Loans**

Before the commencement of benefit payments, loans are available to Participants from Funding Vehicles provided by those Fund Sponsors, which permit loans from amounts invested by Participants in such Funding Vehicles, subject to the terms governing such loans as specified by those Fund Sponsors. The administration of any loan to a Participant, including determinations regarding the term, applicable interest rate, repayment schedule, amount of collateral and cure upon default, will be performed by the Fund Sponsors providing the loans and not by the University; *provided, however*, that the provision of loans under this Plan through certain Fund Sponsors is subject to the requirements of ERISA Section 408 and the regulations promulgated thereunder, as well as Code Section 72(p) and the regulations promulgated thereunder and all other pertinent requirements of federal law.

Effective for loans distributed from the Plan on or after January 1, 2016, a Participant may borrow up to 45% (TIAA-CREF), 45% (MetLife), or 45% (Fidelity) of his or her

total Accumulation Account. A Participant who is married at the time of the loan request must have the written and notarized consent of his or her spouse.

Generally, the minimum loan amount is \$1,000 and the maximum loan amount is \$50,000. The actual maximum loan amount will depend on three factors:

- (1) the value of the Plan benefits with the particular Fund Sponsor,
- (2) whether the Participant ever had any loans from any of the Plan's Fund Sponsors or from any other University plans, and
- (3) the rules of the particular Fund Sponsor.

Loans must be repaid within 5 years, with one exception. Loans used solely to purchase a primary residence may be repaid within 10 years. Loans can be fully repaid at any time, even during the first year, with no penalties.

Notwithstanding the foregoing, effective for loan distributed from the Plan on or after January 1, 2016, a Participant may only have a total of 5 outstanding Plan loans at a time, provided that upon the occurrence of a loan default, a Participant shall not be permitted to take any additional loan(s) from the Plan (up to the 5 loan maximum) until he or she repays the total amount of the loan default in accordance with Code Section 72(p).

A Participant wishing to apply for a loan or to obtain further information on loans may call:

- (1) TIAA-CREF Telephone Counseling Center at 1-800-842-2776,
- (2) Fidelity Retirement Specialist at 1-800-343-0860; or
- (3) MetLife Resources Customer Service at 1-800-560-5001.

## **5.4 Distributions Upon Severance From Employment**

### **(a) General**

A Participant's total benefit accumulation remains in force after the Participant severs from employment with the University. Hence, a Participant who severs from employment with the University does not forfeit any of the benefits that have already been set aside for him or her. A Participant shall be treated as having been severed from employment with the University during any period he or she is performing service in the uniformed services while on active duty for a period of more than 30 days.

### **(b) TIAA-CREF**

A terminated Participant's Accumulation Accounts in TIAA will continue to be credited with interest and dividends.

The CREF accounts and/or mutual funds will continue to participate in the investment experience of the accounts/funds in which his or her Accumulation Account(s) is or are invested. After severance from employment and before beginning annuity income, the individual will continue to have the flexibility to transfer funds as described by **SECTION 4.2**.

Alternatively, under certain circumstances, the Participant may receive, in a single sum, through “repurchase” his or her entire Accumulation Account invested in TIAA Traditional Retirement Annuities, if certain conditions are met.

Specifically, if a Participant severs from employment with the University and requests that TIAA-CREF repurchase his or her TIAA Traditional Retirement Annuities, the University will approve such repurchase if, at the time of the request:

- (1) The total accumulation in all TIAA Traditional Retirement Annuities owned by the Participant is not over \$2,000, or
- (2) The Participant does not have a TIAA Transfer Payout Annuity (TPA) in effect.

Upon repurchase, the Participant’s entire Accumulation Account invested in TIAA Traditional Retirement Annuities will be payable by TIAA to the Participant in a lump sum and will be in full satisfaction of the Participant’s and his or her spouse’s rights to retirement or survivor benefits.

Additionally, the Participant may elect to receive a lump sum payment of the total value of his or her interest in the Plan invested with CREF or in a variable annuity under the TIAA Real Estate Account or any mutual funds offered through TIAA-CREF under the Plan when he or she severs from employment from the University. The Participant may also elect to receive a cash withdrawal of the portion of his or her Accumulation Account(s) invested with CREF and/or the TIAA Real Estate Account through a series of systematic payments using TIAA-CREF’s Systematic Withdrawal Service. Currently, the initial amount must be at least \$100 per account. Once payments begin, they will continue for the period specified by the Participant. The Participant can change the amount and frequency of payments, as well as stop and restart payments, as his or her needs dictate. There is no charge for using TIAA-CREF’s Systematic Withdrawal Service.

Lastly, the Retirement Transition Benefit permits a Participant to receive a one-time lump sum payment of up to 10% of his or her Accumulation Account(s) in TIAA and/or the CREF Account(s) at the time annuity income begins; provided that the lump sum payment from TIAA and/or CREF Account(s) does not exceed 10% of the respective Accumulation Account(s) then being converted to retirement income.

(c) **Fidelity Investments**

If a Participant severs from employment before retirement, he or she may:

- (1) Leave the total accumulated account value in the Fidelity 403(b) retirement account and allow it to grow on a tax-deferred basis.
- (2) Roll over the total accumulated account value to an individual retirement account or individual retirement annuity (“IRA”) with Fidelity or another financial institution.
- (3) Roll over the total accumulated account value to another Section 403(b) plan.
- (4) Receive a direct distribution (*e.g.*, partial or full cash withdrawals or systematic withdrawal).
- (5) Choose an Income Annuity with Fidelity or an insurance company.

Participants wishing more information may call a Fidelity Retirement Specialist at 1-800-343-0860.

(d) **MetLife Resources**

Participants have a number of available options. For example, Participants may receive income payments guaranteed for life on a monthly, quarterly, semiannual or annual basis. These payments may also be guaranteed for at least 5 years, but not beyond the Participant’s life expectancy or joint life expectancy of all payees. Other income plans are available to the extent permitted by federal income tax rules. The amount of each payment under an income plan must be at least \$50. Participants may receive a lump sum distribution. Participants may also transfer or roll over the account into an IRA without any current tax consequences. Participants wishing more information may contact customer service at 1-800-560-5001.

## 5.5 Direct Rollover of Eligible Rollover Distributions

Notwithstanding any contrary Plan provision that would otherwise limit a Distributee’s election under this **SECTION 5**, a Distributee may elect, at the time and in the manner prescribed by the University, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

For purposes of this **SECTION 5**, the following definitions apply:

- (a) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, which is not one of a series of substantially equal periodic payments (not less frequently than annually) made over (1) the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and his

or her designated beneficiary, or (2) a specified period of 10 years or more, to the extent it constitutes an eligible rollover distribution (within the meaning of Code Section 401(a)(31)(D)) and is not subject to the exclusion for hardship distributions.

- (b) **Eligible Retirement Plan.** An Eligible Retirement Plan is a qualified plan described in Code Section 401(a) or 403(a), an individual retirement account or annuity described in Code Section 408(a) or (b), or effective for Distributions made after December 31, 2007, a Roth IRA described in Code Section 408A, an annuity contract described in Code Section 403(b), or an eligible plan under Code Section 457(b) 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. In the case of an Eligible Rollover Distribution made after December 31, 2007, which is payable to a Beneficiary (other than an estate) who is not the Employee's or former Employee's surviving spouse, the term "Eligible Retirement Plan" includes only an individual retirement account or annuity described in Code Section 408(a) or 408(b) which is established for the purpose of receiving the Eligible Rollover Distribution on behalf of the Beneficiary and agrees to be treated as an inherited individual retirement account or annuity within the meaning of Code Section 408(d)(3)(C).
- (c) **Distributee.** Effective with respect to Distributions made after December 31, 2007, a Distributee means a Participant or former Participant, a Beneficiary (other than an estate), or a spouse or former spouse who is the alternate payee under a "qualified domestic relations order" (as defined in Code Section 414(p)).
- (d) **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

## 5.6 Survivor Benefits

If the Participant dies prior to the commencement of retirement benefit payments, the full current value of his or her Accumulation Account(s) is payable to the Beneficiary or Beneficiaries named by the Participant, under the options offered under the relevant Funding Vehicle contract (*see* SECTION 5). A lump sum payment is also available. The amount payable to the Beneficiary or Beneficiaries is subject to the spouse's rights described in SECTION 5.9. Distribution of survivor benefits is subject to the minimum distribution requirements set forth in Code Section 401(a)(9).

## 5.7 Application for Benefits

Procedures for receipt of benefits are initiated by writing directly to the relevant Fund Sponsor(s). Benefits provided under TIAA and CREF Retirement Annuities to which Plan Contributions have been applied will be payable by TIAA-CREF upon receipt of a satisfactorily completed application for benefits and supporting documents, including waiver of spousal rights to retirement benefits and death benefits, if necessary. The

relevant Fund Sponsor(s) will provide the necessary forms to the Participant, the surviving spouse or the Beneficiary on request.

## **5.8 Minimum Distribution Requirements**

All distributions under this Plan will be made in accordance with the regulations under Code Section 401(a)(9), including Treasury Regulation Sections 1.401(a)(9)-2 through 1.401(a)(9)-9. The provisions of this **SECTION 5.8** override any Plan provisions and distribution options offered by the relevant Fund Sponsor to the extent that such Plan provision or distribution option is inconsistent with Code Section 401(a)(9).

In the case of a Participant who attains age 70½, his or her entire interest under the Plan must be distributed, beginning no later than the April 1 following the later of the calendar year in which the Participant attained age 70½, or the calendar year in which the Participant severs from employment with the University, no less rapidly than over the life of the Participant or over the lives of the Participant and a designated Beneficiary.

If the Participant dies prior to the time benefit payments begin, any portion of his or her interest payable to (or for the benefit of) a designated Beneficiary will be paid by December 31st of the year which contains the 5th anniversary of the Participant's death or will be paid, beginning no later than December 31st of the year following the year 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, payment may be delayed until December 31st of the year in which the Participant would have attained age 70½.

If the Participant dies after distribution has begun, the remaining interest will be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

Notwithstanding the foregoing provisions of this **SECTION 5.8**, distributions with respect to 2009 that would otherwise be mandatory under this **SECTION 5.8** or Code Section 401(a)(9) shall instead be voluntary.

## **5.9 Spouse's Rights**

Notwithstanding any contrary Plan provision, benefits may be paid for a married Participant in this Plan only as described below. The married Participant and the spouse may waive the spousal entitlement to receive benefits only if a written waiver of the benefit, signed by the Participant and the spouse and witnessed by a notary public (unless the spouse cannot be located), is filed with the relevant Fund Sponsor(s) in a form acceptable to it.

### **(a) Pre-Retirement Spousal Entitlement**

If the Participant dies prior to the start of retirement benefit payments and a waiver of spousal entitlement to receive benefits is not on file with the relevant

Fund Sponsor(s), the surviving spouse will receive a benefit that is at least 50% of the full current value of the Participant's Accumulation Account, payable under one of the payment methods offered by the relevant Fund Sponsor(s).

The period during which the Participant and his or her spouse may elect to waive the pre-retirement survivor benefit begins on the first day of the Plan Year in which the Participant attains age 35 and continues until the earlier of the Participant's death or the date the Participant starts receiving retirement benefit payments. If the Participant severs from employment before age 35, the waiver provisions are available. In the event that a Participant dies before the Participant has had the option to make a waiver (*i.e.*, before attaining age 35 or severance from employment), at least 50% of the full current value of any Accumulation Account is payable automatically to the surviving spouse in a single sum or under one of the payment methods offered by the relevant Fund Sponsor(s) in accordance with the minimum distribution rules of Code Section 401(a)(9).

(b) **Notification of Pre-Retirement Spousal Entitlement**

In the case of a pre-retirement survivor benefit, the University shall provide each Participant, within the applicable period for such Participant, a written explanation of the terms and conditions of the spouse's right to a pre-retirement survivor benefit and the Participant's right to waive these benefits with the written consent of the spouse.

The applicable period for a Participant is whichever of the following periods ends last:

- (1) The period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35;
- (2) A reasonable period after an Eligible Employee becomes a Participant; or
- (3) A reasonable period ending after **SECTION 5.9** first applies to the Participant.

Notwithstanding the foregoing, notice must be provided within a reasonable period ending after severance of employment in the case of a Participant who separates from service before attaining age 35.

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events in subparagraphs (1), (2) and (3) above is the end of the two-year period beginning one year prior to the date the applicable event occurs, and ending one year after that date. In the case of a Participant who severs from employment before the Plan Year in which age 35 is attained, notice should be provided within the two-year period beginning one year prior to separation and ending one year after severance. If such a Participant thereafter

returns to employment with the University, the applicable period for such Participant shall be redetermined.

(c) **Post-Retirement Spousal Entitlement**

If the Participant dies after the start of retirement benefit payments, at the Participant's death, the surviving spouse will receive retirement benefits of at least 50% of the retirement benefits payable during the joint lives of the Participant and his or her spouse and which are the actuarial equivalents of a single life annuity for the life of the Participant. A waiver of this post-retirement survivor benefit (joint and survivor annuity) may be made by the Participant and his or her spouse only during the 180 days prior to commencement of retirement benefit payments. The waiver may also be revoked by the Participant during the same period. However, it may not be revoked after retirement benefits begin.

(d) **Notification of Post-Retirement Spousal Entitlement**

The University will provide to the Participant, no less than 30 days and no more than 180 days prior to the date retirement benefit payments commence, a written explanation of the terms and conditions of the spouse's rights to post-retirement survivor benefits and the Participant's right to waive these benefits with the written consent of the spouse; *provided, however*, that the Participant may waive the 180-day notice period, but in no event may retirement benefit payments commence to the Participant earlier than the expiration of the seven-day period that begins after the written explanation is provided.

## **6 DEFINED TERMS**

The following terms have special meanings when used in this Plan document.

### **6.1 Accumulation Account**

“Accumulation Account” means the separate account(s) established for each Participant. The current value of a Participant’s Accumulation Account includes all University and Participant Contributions, less expense charges, and reflects credited investment experience.

### **6.2 Annual Additions**

“Annual Additions” means the sum of (i) University Contributions, (ii) Participant Contributions, and (iii) any other contributions required to be included in Annual Additions by Treasury Regulation Section 1.415(c)-1(b), credited to a Participant’s Accumulation Account for a calendar year. Annual Additions also includes any contributions described in Treasury Regulations Section 1.415(c)-1(b) credited to the Participant’s account under any other plan required to be aggregated with this Plan under Treasury Regulation Section 1.415(f)-1. Annual Additions shall not include amounts required to be excluded from Annual Additions by Treasury Regulation Section 1.415(c)-1(b).

### **6.3 Beneficiary**

“Beneficiary” means the individual, institution, trustee or estate designated by the Participant to receive the Participant’s benefits at his or her death.

### **6.4 Board or Board of Trustees**

“Board” or “Board of Trustees” means St. John’s University Board of Trustees.

### **6.5 Code**

“Code” means the Internal Revenue Code of 1986, as amended.

### **6.6 Commencement Date**

“Commencement Date” means the date on which a Phased Retirement Participant would commence phased retirement under the Voluntary Phased Retirement Plan.

### **6.7 Compensation**

“Compensation” means the amount of compensation received by a Participant, which is includible in gross income for the most recent period (ending not later than the close of the calendar year) that may be counted as a year of service under Code Section 403(b)(4). In no event will the Compensation taken into account under the Plan exceed the limits of Code Section 401(a)(17).

## **6.8 Date of Employment or Reemployment**

“Date of Employment or Reemployment” means the first day upon which an employee completes an Hour of Service for performance of duties during the employee’s most recent period of service with the University.

## **6.9 Elective Deferrals**

“Elective Deferrals” means any employer contributions within the meaning of Code Section 402(g)(3) made at the election of an employee, instead of cash compensation, and which includes any Participant Contributions made on behalf of a Participant to this Plan under Code Section 403(b) pursuant to a salary reduction agreement.

## **6.10 Eligible Employee**

“Eligible Employee” means any Employee who is employed by the University, subject to the following rules.

- (1) An administrative Employee or a faculty Employee whose duties are primarily administrative in nature and who is customarily employed on a part-time, temporary or irregular basis for less than 1,000 hours a year is an Eligible Employee only if he or she is credited with 1,000 or more Hours of Service (including paid absences) for any 12 consecutive month period commencing with his or her Date of Employment or any Plan Year beginning after his or her Date of Employment.
- (2) A faculty Employee who is employed with a part-time classroom teaching schedule (*i.e.*, customarily works less than 20 hours a week or 1,000 hours a year) is not an Eligible Employee. A full-time faculty Employee who is assigned a part-time classroom teaching schedule will cease to be an Eligible Employee at the end of the payroll period in which his or her part-time teaching schedule begins.
- (3) An adjunct faculty Employee or an Employee whose employment is incidental to his or her educational program is not an Eligible Employee.
- (4) An Employee who is a non-resident alien with respect to the United States (within the meaning of Code Section 7701(b)(1)(B)) and receives no earned income (within the meaning of Code Section 911(d)(2)) from the University which constitutes income from sources within the United States (within the meaning of Code Section 861(a)(3)) is not an Eligible Employee.
- (5) An individual who, as to any period of time, is classified or treated by the University as an independent contractor, a consultant, a leased employee (as provided in Code Section 414(n) or (o)), or an employee of an employment agency or any entity other than the University, is not an Eligible Employee even if such individual is subsequently determined to have been a common-law Employee of the University during such period.

## **6.11 Eligible Employer**

“Eligible Employer” means any other accredited college or university.

## **6.12 Employee**

“Employee” means any individual who is classified by the University as an employee for federal income tax purposes.

## **6.13 Employer Identification Number**

“Employer Identification Number” means the taxpayer identification number assigned to the University by the Internal Revenue Service (*i.e.*, 11-1630830).

## **6.14 ERISA**

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

## **6.15 Excess Aggregate Contributions**

“Excess Aggregate Contributions” means the amount described in Code Section 401(m)(6)(B).

## **6.16 Excess Elective Deferrals**

“Excess Elective Deferrals” means those Elective Deferrals which are includible in a Participant’s gross income under Code Section 402(g) to the extent the Participant’s Elective Deferrals for a taxable year exceed the dollar limitation under Code Section 402(g).

## **6.17 Fund Sponsor**

“Fund Sponsor” means an insurance company, variable annuity company or registered investment company that provides Funding Vehicles available to Participants under this Plan.

## **6.18 Funding Vehicles**

“Funding Vehicles” means the financial instruments issued for the purpose of funding accrued benefits under this Plan and specifically approved by the University for use under this Plan in accordance with **SECTION 4**.

## 6.19 Highly Compensated Employee

“Highly Compensated Employee” means an employee described in Code Section 414(q).

## 6.20 Hours of Service

“Hours of Service” means:

- (1) Each hour (i) for which an Employee is paid, or entitled to payment, for the performance of duties for the University; (ii) not more than 501 hours for any single, continuous period during which the Employee performs no duties but is directly or indirectly paid or entitled to payment by the University (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or paid leave of absence; *provided, however*, that any period for which a payment is made or due under a plan maintained solely for the purpose of complying with workers’ compensation or unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically related expenses, is excluded; and *provided, further*, that an Employee is “directly or indirectly paid, or entitled to payment by the University” regardless of whether payment is made by or due from the University directly or made indirectly through a trust fund, insurer or other entity to which the University contributes or pays premiums; and (iii) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the University, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in clause (ii) above.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the University is a member, and any other entity required to be aggregated with the University pursuant to Code Section 414(o) and the regulations thereunder.

Hours of Service will also be credited for any individual considered a leased employee for purposes of this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.

- (2) Special Rule for determining Hours of Service for reasons other than the performance of duties:
  - (a) For Employees whose Compensation is based upon an hourly rate:
    - (i) If the payment for a period of time not involving performance of duties is made for a specific unit of time, the number of hours credited will be the number of hours regularly scheduled for performance of duties for such unit of time, and if a specific number of hours is not regularly scheduled for specific units of time for an employee, the determination will be based upon 40 hours per week; or

- (ii) If the payment for a period of time not involving performance of duties is determined on a basis other than a specific unit of time, Hours of Service will be determined by dividing the payment by the Employee's most recent hourly rate of Compensation.
- (b) For Employees whose Compensation is based on a rate for units of time other than an hour:
  - (i) If the payment for a period of time not involving performance of duties is made for a specific unit of time, the number of hours credited will be the number of hours regularly scheduled for performance of duties for such unit of time, and if a specific number of hours is not regularly scheduled for specific units of time for an Employee, the determination will be based upon 40 hours per week as applied to such unit of time; or
  - (ii) If the payment for a period of time not involving performance of duties is determined on a basis other than a specific unit of time, Hours of Service will be determined by dividing the payment by the Employee's hourly rate determined in the following manner. If the Employee has a regularly scheduled number of hours for the unit of time upon which Compensation is based, Hours of Service will be determined by dividing the Employee's most recent rate of Compensation for such unit of time by the number of hours so scheduled. If the Employee has no regularly scheduled number of hours, Hours of Service will be determined by dividing on the basis of 40 hours per week.
- (c) For Employees whose Compensation is not based upon a rate per unit of time:
  - (i) If the payment for a period of time not involving performance of duties is made for a specific unit of time, Hours of Service will be credited by determining a number of hours for that unit of time on the basis of 8 hours per day and 40 hours per week; or
  - (ii) If the payment for a period of time not involving performance of duties is determined on a basis other than a specific unit of time, Hours of Service will be determined by dividing the payment by the lowest hourly rate of Compensation paid to Employees in the same employment classification as the employee or, if no such hourly rate applies, by the minimum wage established under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (d) For faculty members, performance of duties shall mean all classroom hours, office hours and hours weekly per credit hour for class preparation.

## **6.21 Participant**

“Participant” means any Eligible Employee of the University participating in this Plan in the manner provided in **SECTION 2**.

## **6.22 Participant Contributions**

“Participant Contributions” means Salary Deferral Contributions, Roth Contributions and Voluntary Plan Contributions made by a Participant under this Plan pursuant to a salary reduction agreement as described in **SECTION 3.1**.

## **6.23 Phased Retirement Participant**

“Phased Retirement Participant” means an individual who is eligible for the Voluntary Phased Retirement Plan under **SECTION 5.2(g)** and who elects to participate in the Voluntary Phased Retirement Plan.

## **6.24 Plan**

“Plan” means the St. John’s University Defined Contribution Retirement Plan.

## **6.25 Plan Administrator**

“Plan Administrator” means the Executive Director, Compensation and Employee Benefits, St. John’s University, 8000 Utopia Parkway, Jamaica, New York 11439. To contact the Plan Administrator, please call the University’s Benefits Office at 1-718-990-6587. The Plan Administrator is authorized to act for the University to the extent specified in this Plan document or such authority has otherwise been delegated to the Plan Administrator by the University.

## **6.26 Plan Contributions**

“Plan Contributions” means contributions by the University or Participant or both, as described in **SECTION 3**.

## **6.27 Plan Entry Date**

“Plan Entry Date” means the first day of each month.

## **6.28 Plan Number**

“Plan Number” means the plan identification number assigned to this Plan by the University (*i.e.*, 003).

## **6.29 Plan Year**

“Plan Year” means the calendar year.

### **6.30 Qualified Nonelective Contributions**

“Qualified Nonelective Contributions” means contributions that are so defined in Code Section 401(m)(4)(C).

### **6.31 Regular Salary**

“Regular Salary” means the salary paid pursuant to the academic year contract for faculty. For all other employees, Regular Salary means base salary exclusive of benefits and overtime. In no event will the Regular Salary taken into account under the Plan exceed the limits of Code Section 401(a)(17).

### **6.32 Section**

“Section” means a Section of this Plan document unless otherwise specified (*e.g.*, Code Section means a provision of the Code).

### **6.33 University**

“University” means St. John’s University and any other employer whose employees participate in this Plan pursuant to a written agreement with the University.

### **6.34 University Contributions**

“University Contributions” means contributions made by the University under this Plan as described in **SECTION 3**.

### **6.35 Voluntary Phased Retirement Plan**

“Voluntary Phased Retirement Plan” means the voluntary program providing tenured faculty at the University with a gradual transition to a date certain work retirement as described in **SECTION 5.2(g)**. For further details, please see Section 17 of the Collective Bargaining Agreement by and between the University and the American Association of University Professors – Faculty Association at St. John’s University (the “AAUP-FA”), effective as of July 1, 2007.

### **6.36 Voluntary Plan Contributions**

“Voluntary Plan Contributions” means those Participant Contributions in excess of the 5% required for the University Contribution.

### **6.37 Year of Service**

“Year of Service” means a 12-consecutive-month period starting with an Eligible Employee’s Date of Employment (or any Plan Year beginning after his or her Date of Employment) for which the Eligible Employee is credited with 1,000 or more Hours of Service. A faculty Employee will be credited with a Year of Service for each academic year of his or her

employment with a full-time classroom teaching schedule. Year(s) of Service with an Eligible Employer prior to the Eligible Employee's Date of Employment with the University will be counted for purposes of meeting the participation requirements of **SECTION 3.2(a)**.

## **7 NON-ALIENATION OF RETIREMENT RIGHTS OR BENEFITS**

To the fullest extent permitted by law, no benefit under the Plan may at any time be subject in any manner to alienation, encumbrance, the claims of creditors or legal process and no person will have the power in any manner to transfer, assign, alienate or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect; *provided, however*, that a Participant's benefit may be offset pursuant to the special rules of Code Section 401(a)(13)(C) or to comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that the University determines that it is a "qualified domestic relations order" (as defined in Code Section 414(p)).

A "qualified domestic relations order," or "QDRO," is an order or judgment issued by a state court directing that a Participant's benefit, or a portion thereof, be paid to an Alternate Payee (spouse, former spouse, child or other dependent of the participant) as child support, alimony or part of a division of marital property rights, *provided* that the order meets certain requirements of federal law. A QDRO must also meet the Plan's requirements.

You may obtain a copy of the Plan's QDRO procedures and sample language by contacting the Plan Administrator. There is no charge for this information. If you disagree with the Plan Administrator's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in a federal court.

## 8 AMENDMENT AND TERMINATION

While it is expected that this Plan will continue indefinitely, the University reserves the right, by revising this document, at any time to amend or otherwise modify the Plan or, by resolution of its Board, to terminate the Plan or discontinue any further Plan Contributions under the Plan. In the event of a material amendment or termination of the Plan or a discontinuance of Plan Contributions, the University will notify all Participants of the termination or discontinuance.

Notwithstanding the above provisions, the following conditions and limitations apply:

- (a) No amendment will be made which will operate to recapture for the University any contributions previously made under this Plan; *provided, however*, that any Plan Contributions, reduced by any losses attributable thereto, that were made based on a mistake of fact may be returned to the University within one year of the date on which the contribution was made;
- (b) No amendment will deprive, take away or alter any then accrued right of any Participant insofar as Plan Contributions previously made under the Plan are concerned; and
- (c) Termination of the Plan and the distribution of the Accumulated Account benefits is permitted only if the University (including all entities that are treated as the same employer under Code Section 414(b), (c), (m) or (o) on the date of termination) does not make contributions to any Code Section 403(b) plan that is not part of this Plan during the period beginning on the date of Plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by Code Section 403(b) and the Treasury Regulations.

## **9 MISCELLANEOUS**

### **9.1 Plan Non-Contractual**

Nothing contained in this Plan will be construed as a commitment or agreement on the part of any employee to continue his or her employment with the University, and nothing contained in this Plan will be construed as a commitment or agreement on the part of the University to continue the employment or the rate of Compensation of any employee for any period, and all employees of the University will remain subject to discharge to the same extent as if the Plan had never been put into effect.

### **9.2 Claims of Other Persons**

The provisions of the Plan will in no event be construed as giving any Participant or any other person, firm or corporation any legal or equitable right as against the University, its officers, employees or directors, except such as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

### **9.3 Merger, Consolidation or Transfer of Plan Assets**

The Plan will not be merged or consolidated with any other plan, unless, immediately after a merger or consolidation, each Participant would receive a benefit under the Plan which is at least equal to the benefit he or she would have received immediately prior to a merger or consolidation (assuming in each instance that the Plan had then terminated).

### **9.4 Finality of Determination**

All determinations with respect to the crediting of Years of Service under the Plan will be made on the basis of the records of the University, and all determinations made are final and conclusive upon Employees, former Employees and all other persons claiming a benefit interest under the Plan. There will be no duplication of Years of Service credited to an Employee for any one period of his or her employment.

### **9.5 Contracts – Incorporation by Reference**

The terms of each Funding Vehicle offered to a Participant in accordance with the provisions of **SECTION 4** are a part of the Plan as if fully set forth in this Plan document, and the provisions of each are incorporated by reference into the Plan. The terms of the relevant Funding Vehicle control in any case where there is any inconsistency or ambiguity between the terms of the Plan and the terms of the relevant Funding Vehicle, but only to the extent that compliance with the terms of the Funding Vehicle could not reasonably be expected to result in the disqualification of the related Accumulation Account for the federal income tax exclusion otherwise available under Code Section 403(b).

## **10 ADMINISTRATION**

### **10.1 Plan Administrator**

The Plan Administrator is responsible for enrolling Participants, sending Plan Contributions made on behalf of each Participant to the relevant Fund Sponsor(s) and for performing other duties required for the operation of the Plan.

### **10.2 Authority of the University**

The University, acting through the Plan Administrator or its other duly authorized officers or employees, has all the powers and authority expressly conferred upon it in this Plan and, further, shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the University, the Plan Administrator or other duly authorized officers or employees shall be given deference, in the event it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, such persons will at all times exercise good faith, apply standards of uniform application and refrain from arbitrary action. The University may employ attorneys, agents and accountants as it finds necessary or advisable to assist it in carrying out its duties. The University will be a “named fiduciary” (as defined in ERISA Section 402(a)(2)), for purposes of determining eligibility and computing and making Plan Contributions. The University, by action of the Board, may designate a person or persons (other than the University) to carry out any of its powers, authority or responsibilities. Any such delegation will be set forth in writing.

### **10.3 Action of the University**

Any act authorized, permitted or required to be taken by the University under the Plan, which has not been delegated to another person in accordance with **SECTION 10.2**, may be taken by a majority of the members of the Board, either by vote at a meeting or in writing without a meeting, or by the appropriate University officer or employee. All notices, advice, directions, certifications, approvals and instructions required or authorized to be given by the University under the Plan will be in writing and signed by (i) a majority of the members of the Board, or by any member or members as may be designated by an instrument in writing, signed by a majority of members of the Board, as having authority to execute the documents on its behalf; (ii) the appropriate University officer or employee; or (iii) a person who becomes authorized to act for the University in accordance with the provisions of **SECTION 10.2**. Any action taken by the University which is authorized, permitted or required under the Plan and is in accordance with the relevant Fund Sponsor’s contractual obligations is final and binding upon the University, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the University.

## **10.4 Indemnification**

In addition to whatever rights of indemnification to which the members of the Board, the Plan Administrator any other University officer or employee, or any other person (other than any Fund Sponsor) to whom any power, authority or responsibility of the University is delegated pursuant to **SECTION 10.2** may be entitled under the articles of incorporation (or other organizational instruments), regulations or by-laws of the University, under any provision of law, or under any other agreement, the University will satisfy any liability actually and reasonably incurred by any such member, officer, employee or other person, including expenses, reasonable attorneys' fees, judgments, fines and amounts paid in settlement, in connection with any threatened, pending or completed action, suit or proceeding which is related to the exercise or failure to exercise by such member, officer, employee or other person any of the powers, authority, responsibilities or discretion of the University as provided under the Plan, or reasonably believed by such member, officer, employee or other person to be provided thereunder, or any action taken by such member, officer, employee or other person in connection therewith.

## **10.5 Service of Legal Process**

The Plan's agent for the service of legal process is the University's General Counsel. Service of process on the Plan or the Plan Administrator may be made at the Office of the General Counsel, St. John's University, Newman Hall, Room 228, 8000 Utopia Parkway, Jamaica, New York 11439.

## **10.6 Claims Procedure**

### **(a) Right to Make Claims**

The Plan Administrator is available to assist a Participant (or Beneficiary) in applying for your benefit and exercising your other rights under the Plan. To ensure timely payment, the Participant (or Beneficiary) should file the appropriate forms as soon as possible. The forms must be completely filled out and signed. Under normal circumstances, within 90 days after the Plan Administrator receives your claim for benefits, the Plan Administrator will notify you in writing about its decision on your claim. If special circumstances require longer than 90 days to process the claim, the Plan Administrator will send you a written notice of the need for an extension before the end of the first 90-day period. The notice will include the reason for the extension and the date by which a final decision is expected to be made.

### **(b) Process for Denying a Claim**

Should your application for benefits be denied in whole or part, the Plan Administrator will give you a written notice and an explanation of the denial. You have the right to have your claim reviewed and reconsidered by supplying additional information regarding your claim to the Plan Administrator within 60

days from the time you receive the written reason for denial. Your appeal should be sent to the Plan Administrator at St. John's University, located at 8000 Utopia Parkway, Jamaica, New York 11439, and it should specify the reasons why you think your application should have been granted. The Plan Administrator will review your application and make a decision. If the decision is favorable, you will receive your benefit. If the Plan Administrator disagrees with your application and denies your application, it will give you a written explanation of its decision. The Plan Administrator will give its decision in writing within 60 days of receiving the appeal, unless special circumstances require an extension of time. In that case, the Plan Administrator will advise you in writing of the extension within the initial 60-day period, and will give its decision within 60 days after the end of the initial 60-day period. If you have a claim for benefits that is denied or ignored, in whole or in part, you may file suit in a state or federal court. See **SECTION 10.7** titled "Your Rights Under ERISA" for more information.

## **10.7 Your Rights Under ERISA**

As a Participant in the St. John's University Defined Contribution Retirement Plan, you are entitled to certain rights and protections under the Employee Retirement Income Act of 1974 ("ERISA").

### **(a) Receive Information About Your Plan and Benefits**

ERISA provides that all Plan Participants shall be entitled to:

- (1) Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites, all documents governing the Plan, including collective bargaining agreements, and a copy of the latest annual report (IRS Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.
- (2) Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including collective bargaining agreements, and copies of the latest annual report (IRS Form 5500 Series) and an updated version of this Summary Plan Description. The Plan Administrator may make a reasonable charge for the copies.
- (3) Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each Participant with a copy of this summary annual report.
- (4) Obtain a statement telling you whether you have a right to receive a retirement benefit at age 65 (and if so, what your benefits would be at age 65 if you stop working under the Plan now. If you do not have a right to a retirement benefit, the statement will tell you how many more years you

have to work to get a right to a retirement benefit. This statement must be requested in writing and is not required to be given more than once every 12 months. The Plan must provide the statement free of charge.

**(b) Prudent Action by Plan Fiduciaries**

In addition to creating rights for Plan Participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate your Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of you and other Plan Participants and Beneficiaries. No one, including the University, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a retirement benefit or exercising your rights under ERISA.

**(c) Enforce Your Rights**

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If you have a claim for benefits, which is denied or ignored, in whole or in part, you may file suit in a state or federal court. In addition, if you disagree with the Plan’s decision, or lack thereof concerning the qualified status of a domestic relations order, you may file suit in a federal court. If it should happen that Plan fiduciaries misuse the Plan’s money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example if it finds your claim is frivolous.

**(d) Assistance With Your Questions**

If you have any questions about your Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.