

ST. JOHN'S UNIVERSITY

HEALTH REIMBURSEMENT ACCOUNT

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ARTICLE I: INTRODUCTION

1.1 *Self-insured Health Reimbursement Account Status.* This Plan is intended to qualify as a "self-insured health reimbursement account" as defined at Section 105(h) of the Internal Revenue Code. This document restates and amends, as of the Effective Date, the self-insured health reimbursement account heretofore maintained by the Employer.

1.2 *Purpose of Plan.* The purpose of this Plan is to reimburse Employees for certain medical care expenses.

ARTICLE II: DEFINITIONS

Whenever used herein, the following terms have the following meanings unless a different meaning clearly is required by the context:

2.1 **"Administrator"** means the Employer or such other person or committee as may be appointed from time to time by the Employer to supervise the administration of the Plan.

2.2 **"Code"** means the Internal Revenue Code of 1986, as amended from time to time. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation that amends, supplements or replaces such section or subsection.

2.3 **"Dependent"** means a Dependent is defined as in Code §152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof. Any child to whom Code §152(e) applies (regarding a child of divorced parents, etc., where one or both parents have custody of the child for more than half of the calendar year and where the parents together provide more than half of the child's support for the calendar year) shall be treated as a Dependent of both parents. For purposes of this Plan, "Dependent" also includes any child of a Participant who, as of the end of the current calendar year, will not have attained age twenty-seven.

2.4 **"Effective Date"** means January 1, 2016.

2.5 **"Eligible Employee"** means an Employee who is of the type, category or classification that is eligible to make an election of benefits under the Plan upon satisfying the Minimum Service Requirement, if any, and the Minimum Age Requirement, if any, under the Plan. The Employees who are Eligible Employees are all Employees who are enrolled in the Oxford Freedom Core Oxford Freedom Core plan of the Employer (the "Oxford Freedom Core Plan").

2.6 **"Eligible Expense"** means an expense that qualifies for reimbursement under this Plan, as described in Article IV.

2.7 **"Employee"** means an individual that the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include any leased employee (including, but not limited to those individuals defined in Code Section 414(n)), or an individual classified by the Employer as a contract worker, independent contractor, temporary employee, seasonal employee or casual employee, whether or not any such persons are on the Employer's W-2 payroll, or any individual who performs services for the Employer but is paid by a temporary or other employment agency such as "Kelly," "Manpower," etc.

For purposes of this Plan, the following individuals shall not be considered Employees:

(a) If the Employer is an S Corporation, any "2-percent shareholder" of the Employer, as that term is defined by Code Section 1372(b),

(b) If the Employer is a partnership or is taxed as a partnership under federal tax law, any partner, member or owner in the Employer.

(c) If the Employer is a sole proprietorship, the owner of the Employer.

2.8 **"Employer"** means St. John's University, and any other corporation, partnership, firm or business which, with the permission of St. John's University, adopts the Plan, provided, however, that when the Plan provides that the Employer has a certain power (e.g., the appointment of a Plan Administrator, entering into a contract with a third party insurer, or amendment or termination of the Plan), the term "Employer" shall mean only St. John's University. Other parties that adopt the Plan shall be bound by the Plan as adopted and subsequently amended unless they clearly withdraw from participation therein.

2.9 **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended from time to time. Reference to any section or subsection of ERISA includes references to any comparable or succeeding provisions of any legislation that amends, supplements or replaces such section or subsection.

2.10 **"Minimum Age Requirement"** means the age, if any, that an Eligible Employee must attain as a condition to becoming a Participant. The Plan does not have a Minimum Age Requirement.

2.11 **"Minimum Service Requirement"** means the period of continuous employment with the Employer, if any, that an Eligible Employee must complete after becoming an Eligible Employee as a condition to becoming a Participant. This Plan does not have a Minimum Service Requirement.

2.12 **"Participant"** means any Eligible Employee who has satisfied the Minimum Service Requirement, if any, and the Minimum Age Requirement, if any, and whose Participant Commencement Date has occurred.

2.13 **"Participation Commencement Date"** means the date on which an Eligible Employee becomes a Participant, which is the date on which he or she becomes an Eligible Employee.

2.14 **"Plan"** means the St. John's University Health Reimbursement Account as set forth herein, together with any and all amendments and supplements hereto.

2.15 **"Plan Year"** means the period on which the records of the Plan are based, which is the twelve-month period beginning on January 1 and ending on the following December 31.

2.16 **"Spouse"** means an individual who is treated as a Spouse under the Code.

ARTICLE III: PARTICIPATION

3.1 *Becoming a Participant.* Each Participant may begin to incur Eligible Expenses on his or her Participation Commencement Date.

3.2 *Loss of Eligibility.* Subject to the exceptions stated below, a Participant shall become a "Former Participant" and thereby lose the right to incur further Eligible Expenses on the date that he or she ceases

to be an Eligible Employee. A Former Participant who subsequently becomes an Eligible Employee shall be treated as a new Employee for eligibility purposes.

3.3 *Limited Participation Rights of Former Participant.* A Former Participant may submit claims for Eligible Expenses that were incurred at any time during that portion of the Plan Year within which he or she became a Former Participant that began on the first day of that Plan Year and ended on the date on which he or she became a Former Participant. Any such claims must be submitted by March 31st of the following Plan Year.

3.4 *Claims Incurred.* For purposes of this Plan, an expense is "incurred" when the services relating to such expense are rendered.

3.5 *Impact of Leave under the Family Medical Leave Act.* The participation of a Participant who takes a leave of absence from the Employer pursuant to the Family Medical Leave Act ("FMLA") shall continue until the last day of such leave or until the Participant notifies the Employer of his or her intention not to return from the leave, whichever is earlier.

3.6 *Continuation Coverage under the Consolidated Omnibus Reconciliation Act of 1985 ("COBRA").* The Plan will comply with the requirements of COBRA or any other applicable federal or state law granting continuation benefits upon termination of coverage to the extent applicable. *Notwithstanding any other provision herein to the contrary, no individual may receive continuation coverage under this Plan for any period unless he or she also is receiving continuation coverage under the Oxford Freedom Core Plan for that same period.*

3.7 *Right to Opt-Out.* A Participant (or Former Participant who otherwise remains eligible for reimbursement pursuant to Section 3.3) may elect to permanently opt out of and waive all of his or her rights to future reimbursement from the Plan. An opt-out of benefits hereunder may be communicated to the Plan Administrator during the last month of any Plan Year or at the time of the individual's termination of employment with the Employer.

ARTICLE IV: BENEFITS

4.1 *Eligible Expenses.* Subject to the limitations set forth below, the Plan shall reimburse a Participant for Eligible Expenses incurred by the Participant or by a Spouse or Dependent of the Participant, if any. "Eligible Expense" shall mean an expense incurred for medical care as defined in Section 213(d) of the Internal Revenue Code with respect to which neither the Participant nor another person incurring the expense is reimbursed or entitled to reimbursement from any other health plan or arrangement excluding, however, an expense for "dental care" within the meaning of Section 223(c)(1)(B)(ii) of the Code. In addition, individual major medical insurance premiums and group accident or health insurance premiums that may be paid on a pre-tax basis through a cafeteria plan of the Employer and the cost of drugs or medications, other than insulin, obtained without a prescription also shall not be eligible for reimbursement.

4.2 *Maximum Reimbursement Amount.* The maximum amount of reimbursement to which a Participant shall be entitled for Eligible Expenses incurred during the same Plan Year shall be determined by the Employer on an annual basis within its sole discretion. For the Plan Year commencing on the Effective Date and unless and until changed by the Employer, the applicable amount shall be as follows:

(a) if, on a particular date, the Participant has single Oxford Freedom Core Plan coverage, \$200 reduced by the aggregate amount of claims previously reimbursed to him or her for Eligible Expenses incurred within the same Plan Year; or

(b) if, on a particular date, the Participant has family Oxford Freedom Core Plan coverage, \$400 reduced by the aggregate amount of claims previously reimbursed to him or her for Eligible Expenses incurred within the same Plan Year.

4.3 *Coordination of Benefits.* Notwithstanding any other provision herein to the contrary, should a Participant incur an eligible expense for purposes of both this Plan and any cafeteria plan, he or she shall be obligated to first submit a claim for reimbursement of that expense by this Plan and may only submit the expense for payment by the cafeteria plan if this Plan fails to fully reimburse him or her for the expense.

ARTICLE V: ADMINISTRATION OF PLAN

5.1 *Plan Administrator.* The Plan Administrator shall administer the Plan in accordance with its terms without discriminating among the Participants. The Plan Administrator shall have full power to administer the Plan in all of its details, subject to applicable requirements of law. For this purpose, the Plan Administrator's powers shall include, but shall not be limited to, the following authority, in addition to all other powers provided by this Plan:

(a) To make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of the Plan;

(b) To interpret the Plan, its interpretation thereof in good faith to be final and conclusive on all persons claiming benefits under the Plan;

(c) To decide all questions concerning the Plan and the eligibility of any persons to participate in the Plan;

(d) To appoint such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan; and

(e) To allocate and delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan, any such allocation, delegation or designation to be in writing.

5.2 *Examination of Records.* The Plan Administrator shall make available to each Participant such of his or her records under the Plan as pertain to the Participant, for examination at reasonable times during normal business hours.

5.3 *Reliance on Tables, etc.* In administering the Plan, the Plan Administrator shall be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports which are furnished by, or in accordance with the instructions of, accountants, counsel or other experts employed or engaged by the Plan Administrator.

5.4 *Indemnification of Plan Administrator.* The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Plan Administrator or as a member of a committee designated as Plan Administrator (including any Employee or former Employee who formerly served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by an act or omission to act in connection with the Plan, if such act or omission is in good faith and was not the product of gross negligence.

5.5 *Named Fiduciary.* The Plan Administrator will be the "named Fiduciary" for purposes of Section 402(a)(1) of ERISA with the authority to control and manage the operation and administration of the Plan and will be responsible for complying with all of the reporting and disclosure requirements of Part I of

Subtitle B of Title I of ERISA; provided, however, the Operations Manager of P&A Administrative Services, Inc. shall be the named Fiduciary with respect to the appeal of denied claims.

ARTICLE VI: CLAIMS

6.1 *Filing of Claims.* The Plan Administrator has retained P&A Administrative Services, Inc. of Buffalo, New York (the "Claims Administrator") to process all claims. A Participant seeking reimbursement for an incurred expense shall submit to the Claims Administrator a completed claim form and, except in the case of a vision care expense or a prescription drug expense, an Explanation of Benefits prepared by his or her group health insurance company related to the expense. The Claims Administrator shall determine the extent to which the expense is eligible for reimbursement and make any reimbursement due the Participant.

A claim must be submitted by March 31st of the Plan Year following the Plan Year within which the subject expense was incurred.

If a Participant submits a claim that is incurred while he or she is covered by the Plan pursuant to a continuation coverage provision described in Article III, his or her premium payments for that coverage must be current (subject to any applicable grace period for late payment) to receive reimbursement for that claim.

6.2 *Appeals Procedure.* If a claim for reimbursement is denied in whole or in part, the appeals procedures (including the legally-mandated external review process) described in the Summary Plan Description or Plan Summary, as the case may be, for this Plan shall apply.

6.3 *Scope of Claims Review under this Plan.* Any claim for benefits under any health plan of the Employer shall be governed by the claims procedures that are included in the plan documents pursuant to which that plan is maintained. The claims procedures in this Article shall apply only to (i) any partial or total denial of benefits under this Plan, and (ii) any denial of benefits due to an issue germane to the claimant's eligibility under the Plan (e.g., whether an individual is an Eligible Employee within the meaning of Section 2.5).

6.4 *Use of Electronic Payment Card System.* If approved and implemented by the Administrator, Participants may use electronic payment cards to obtain payment of benefits to which they are entitled under the Plan. Any use of electronic payment cards in connection with this Plan shall comply with all pertinent laws, regulations and then current guidance from the Internal Revenue Service.

ARTICLE VII: AMENDMENT AND TERMINATION OF PLAN

The Employer reserves the right to amend or terminate the Plan at any time.

ARTICLE VIII: MISCELLANEOUS PROVISIONS

8.1 *Information to be Furnished.* Participants shall provide the Plan Administrator or the Claims Administrator, as the case may be, with such information and evidence, and shall sign such documents, as may reasonably be requested from time to time for the purpose of administration of the Plan.

8.2 *Limitation of Rights.* Neither the establishment of the Plan nor any amendment thereof, nor the payment of any benefits, will be construed as giving to any Participant or other person any legal or equitable right against the Employer or Plan Administrator, except as provided herein.

8.3 *Benefits Solely From General Assets.* Except as may otherwise be required by law:

(a) Nothing herein will be construed to require any fund or segregated amount to be maintained for the benefit of any Participant; and

(b) No Participant or other person shall have any claim against, right to or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

8.4 *Use and Disclosure of Protected Health Information.*

(a) Members of the Employer's workforce have access to the individually identifiable health information of Participants for Plan administrative functions. When this information is provided by the Plan to the Employer, it is "protected health information" ("PHI"). The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations restrict the Employer's ability to use and disclose PHI. The following definition of PHI applies for purposes of this Section 8.4:

Protected Health Information. Protected health information means information that is created or received by the Plan and relates to the past, present or future physical or mental health or condition of a participant; the provision of health care to a participant; or the past, present or future payment for the provision of health care to a participant; and that identifies the participant or for which there is a reasonable basis to believe the information can be used to identify the participant. Protected health information includes information of persons living or deceased.

The Employer shall have access to PHI from the Plan only as permitted under this Section or as otherwise required or permitted under HIPAA. HIPAA and the implementing regulations were modified by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), the statutory provisions of which are incorporated herein by reference.

(b) The Plan may disclose to the Employer whether a particular individual is a Participant.

(c) The Plan may disclose Summary Health Information to the Employer, provided that the Employer requests it for the purpose of modifying, amending or terminating the Plan. For this purpose, "Summary Health Information" means information (a) that summarizes the claims history, claims expenses or type of claims experienced by individuals for whom for whom a plan sponsor had provided health benefits under a health plan, and (b) from which the information described in 42 CFR section 164.514(b)(2)(i) has been deleted, except that the geographic information described in 42 CFR section 164.514(b)(2)(i)(B) need only be aggregated to the level of a five-digit zip code.

(d) Unless otherwise permitted by law, and subject to the conditions of disclosure described in (e) below, and obtaining written certification in accordance with (g) below, the Plan may disclose PHI to the Employer, provided that the Employer uses or discloses It only for Plan administration purposes. "Plan administration purposes" means administrative functions performed by the Employer on behalf of the Plan, such as quality assurance, claims processing, auditing and monitoring. The term does not include functions performed by the Employer in connection with any other benefit plan or any employment-related functions.

Notwithstanding any provision of this Plan to the contrary, in no event shall the Employer be permitted to use or disclose PHI in a manner that is inconsistent with 45 CFR section 164.504(f).

(e) The Employer agrees that with respect to any PHI disclosed to it by the Plan (other than enrollment/disenrollment information and Summary Health Information, which are not subject to these restrictions), the Employer shall:

- (1) not use or further disclose the PHI other than as permitted or required by the Plan or as required by law;
- (2) ensure that any agent, including a subcontractor, to whom the Employer provides PHI received from the Plan agrees to the same restrictions and conditions that apply to the Employer with respect to PHI;
- (3) not use or disclose the PHI for employment-related actions and decisions or in connection with any other employee benefit plan of the Employer;
- (4) report to the Plan any unauthorized use or disclosure of PHI that it becomes aware of;
- (5) make PHI available to comply with HIPAA's rights to access in accordance with 45 CFR section 164.524;
- (6) make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 CFR section 164.526;
- (7) make available the information required to provide an accounting of disclosures in accordance with 45 CFR section 164.528;
- (8) make its internal practices, books and records relating to the use and disclosure of HRA received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with HIPAA's privacy requirements;
- (9) If feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form, and retain no copies of that PHI when no longer needed for the purpose for which it disclosure was made, except that, if return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction infeasible; and
- (10) ensure that the adequate separation between the Plan and the Employer (the "firewall") required by 45 CFR section 504(f)(2)(iii) is maintained.

The Employer further agrees that if it creates, receives, maintains or transmits any electronic PHI (other than enrollment/disrollment information and Summary Health Information, which are not subject to these restrictions) on behalf of the Plan, it will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agree to implement reasonable and appropriate security measures to protect the information. The Employer will report to the Plan any security incident of which it becomes aware.

(f) The Employer shall allow the following persons access to PHI: its Associate Director for Employee Benefits, and any other Employee who needs access to PHI to perform Plan administration functions that the Employer performs for the Plan (such as quality assurance, claims processing, auditing, monitoring, payroll and appeals). No other persons shall have access to PHI. These specified employees shall only have access to and use PHI to the extent necessary to perform the plan administration functions that the Employer performs for the Plan. In the event that any of these specified employees does not

comply with the provisions of this Section, that employee shall be subject to disciplinary action by the Employer for non-compliance pursuant to the Employer's disciplinary and termination procedures.

The Employer shall ensure that the provisions of this (f) are supported by reasonable and appropriate security measures.

(g) The Plan shall disclose PHI to the Employer only upon the receipt of a certification by the Employer that the Plan incorporates the provisions of 45 CFR section 504(f)(2)(ii) and that the Employer agrees to the conditions of disclosure set forth in (e) above.

8.5 *Governing Law.* This Plan shall be construed, administered and enforced according to the laws of the State wherein the principal office or place of business of the Employer is located, except to the extent preempted by ERISA.

8.6 *Complete Document.* This document contains all of the operative provisions of this Plan. Any conflict between the provisions of this document and any other Employer document purporting to explain the rights, benefits, or obligations of the parties hereunder shall be resolved in favor of this Plan document. In the event that a tribunal of competent jurisdiction shall determine in a final judgment or decree that one or more of the provisions of this Plan is invalid due to the provisions of applicable law, this Plan shall be interpreted as if the offending language had been stricken from its provisions, and the remainder of the Plan document shall continue in full force and effect.

IN WITNESS WHEREOF, the Employer has adopted this Plan as of the Effective Date. In signing below, the Employer hereby certifies that the Plan incorporates the provisions of 45 CFR section 164.504(f)(2)(ii) as set forth in Section 8.4(e) above and agrees to the limitations on the disclosure of PHI described therein.

ST. JOHN'S UNIVERSITY

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