

**457(b) DEFERRED
COMPENSATION PLAN OF
SAINT MARY'S COLLEGE
OF CALIFORNIA,
A TAX-EXEMPT ORGANIZATION**



Financial Services

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INTRODUCTION

The purpose of the Plan is to provide deferred compensation for a select group of management or highly compensated employees covered under the Plan. The Plan document and the Adoption Agreement are designated as constituting parts of a plan intended to satisfy the requirements of a top hat plan under Sections 201(2), 301(a)(3), and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended, and an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, the regulations issued thereunder, and other applicable law.

ARTICLE I – DEFINITIONS

- 1.1 **Annual Deferral** means the annual amount of Compensation that a Participant elects to defer pursuant to a properly executed Deferred Compensation Agreement.
- 1.2 **Adoption Agreement** means the separate agreement that is executed by the Employer which sets forth the elective and certain non-elective provisions of the Plan. The Adoption Agreement and this Plan document collectively constitute the Plan.
- 1.3 **Beneficiary** means the individual, trustee, estate, or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant's death.
- 1.4 **Code** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections, as they may from time to time be amended or renumbered, to the Treasury regulations issued thereunder or to any applicable guidance issued by the IRS.
- 1.5 **Compensation** means, unless otherwise set forth in the Adoption Agreement, all cash remuneration for services rendered to the Employer, including salary, wages, fees, commissions, bonuses, overtime pay (collectively referred to as "regular pay") and that is includible in the Participant's gross income for the calendar year plus amounts that would be cash remuneration for services to the Employer and includible in the Participant's gross income for the calendar year but for an election under Section 457(b), 403(b), 401(k), 125, 132(f)(4), 401(k), 403(b) or 457(b) of the Code (including an election to defer Compensation under Article III) or such other meaning as provided by Section 415(c)(3) of the Code. Such term also includes regular pay received after Severance from Employment if it is received within the later of two and one-half (2 ½) months following Severance from Employment or the end of the limitation year that includes the date of Severance from Employment. To the extent elected in the Adoption Agreement, such term shall also include unused accrued bona fide sick, vacation, and/or other leave payments provided the Participant would have been entitled to use such leave had employment continued and such amounts are received by the Plan within the later of two and one-half (2 ½) months after Severance from Employment or the end of the limitation year that includes the date of Severance from Employment. Effective January 1, 2009, the term Compensation includes Differential Wage Payments.

- 1.6 Deferred Compensation Agreement** means the agreement between a Participant and the Employer to defer receipt by the Participant of Compensation not yet paid or otherwise made available. Such agreement shall state the Annual Deferral amount to be withheld from a Participant's Compensation and shall become effective no earlier than the first day of the month following execution of such agreement. Once executed and received by the Plan Administrator, or its designee, the Deferred Compensation Agreement shall be legally binding and irrevocable with regard to amounts paid or otherwise made available while the Agreement is in effect.
- 1.7 Differential Wage Payment** means any payment which is made by the Employer to an Employee with respect to any period during which the Employee is performing service in the uniformed services (as defined in chapter 43 of title 38 of the Code) while on active duty for a period of more than thirty (30) days, and such payment represents all or a portion of the wages the Employee would have received from the Employer if the Employee were performing service for the Employer.
- 1.8 Disabled or Disability** means the definition of disability in Section 72(m)(7) of the Code as determined by the Employer.
- 1.9 Effective Date** means the date set forth in the Adoption Agreement if this is a new Plan.
- 1.10 Eligible Deferred Compensation Plan or Eligible Plan** means a plan that constitutes an eligible deferred compensation plan within the meaning of Section 457(b) of the Code that is established and maintained by an employer that is a tax-exempt entity and eligible to maintain a 457(b) deferred compensation plan.
- 1.11 Eligible Employee** means any person who performs services for the Employer and who, pursuant to the terms of the Adoption Agreement, is eligible to participate in this Plan. Unless elected in Adoption Agreement, Eligible Employee shall not include any individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole and absolute discretion. If any individual is not classified as an Eligible Employee by the Employer and is subsequently reclassified as an Eligible Employee by any governmental or regulatory authority, such individual shall nevertheless be deemed to have become an Eligible Employee prospectively only, effective as of the date of such reclassification (and not retroactive to the date on which he or she was found to have first become eligible for any other purposes), and then only if he or she otherwise satisfies the requirements of this Plan.
- 1.12 Employee** means any person who performs services for the Employer as a common law employee to whom compensation is paid on a regular basis, any leased employee as defined in Section 414(n) of the Code, and any individual receiving a Differential Wage Payment from the Employer. If elected in the Adoption Agreement, the term Employee shall include any individual classified by the Employer as an independent contractor or trustee of the Employer, in accordance with its general administrative policies.

- 1.13 Employer** means the entity that has adopted this Plan and is named in the Adoption Agreement.
- 1.14 Includible Compensation** means with respect to a taxable year, the Participant's compensation as defined in Section 415(c)(3) of the Code and the Treasury regulations issued thereunder for services performed for the Employer. The amount of Includible Compensation is determined without regard to any community property laws. Such term shall include any amount that would be cash remuneration for services to the Employer and includible in the Participant's gross income for the calendar year but for an election under Section 457(b), 403(b), 401(k), 125, 132(f)(4), 401(k), 403(b) or 457(b) of the Code (including an election to defer Compensation under Article III). Effective January 1, 2009, Includible Compensation will include Differential Wage Payments made by the Employer to a Participant.
- 1.15 Investment Options** means the annuity contracts, custodial accounts, and other investment options offered by TIAA-CREF and selected by the Employer or its designee as investment options to be offered to Participants and Beneficiaries under the Plan. Investment Options shall also include any other investment alternatives made available by any other Investment Sponsor and designated by the Employer pursuant to the terms of this Plan document and the Adoption Agreement as being available for the purpose of allocating contributions and transfers, if any, and measuring investment experience attributable to book entry accounts established under this Plan.
- 1.16 Investment Sponsors** means TIAA-CREF, any other insurance company, regulated investment company, or other entity providing Investment Options under the Plan.
- 1.17 Normal Retirement Age** means age 65 unless otherwise provided in the Adoption Agreement.
- 1.18 Participant** means an Eligible Employee who becomes a Participant in the Plan in accordance with Article II hereof. An individual shall cease to become a Participant at such time as he or she no longer has any interest in contracts or accounts under the Plan. An "Active Participant" means a Participant who is currently an Employee.
- 1.19 Plan** means the 457(b) Deferred Compensation Plan set forth herein and in the Adoption Agreement, as amended from time to time.
- 1.20 Plan Administrator** means the individual(s) or committee appointed by the Employer to administer the Plan. If the Employer fails to make such appointment, the Employer shall be the Plan Administrator.
- 1.21 Plan Year** means the twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.
- 1.22 Restated Effective Date** means the date set forth in the Adoption Agreement if the Plan is a restated plan.

- 1.23 Severance from Employment** means the date the Participant dies, retires, or otherwise severs employment with the Employer as determined by the Plan Administrator or its designee (and taking into account guidance issued under the Code). To the extent elected in the Adoption Agreement, such term shall also include a deemed Severance from Employment during any period the Participant is performing services in the uniformed services for a period of more than thirty (30) days.
- 1.24 TIAA-CREF** means Teachers Insurance and Annuity Association and College Retirement Equities Fund.

ARTICLE II – PARTICIPATION IN THE PLAN

2.1 Eligibility.

- (a) **Eligible Employees.** If this is a new plan, any Employee who is classified as an Eligible Employee under the terms of the Adoption Agreement as of the Effective Date shall be eligible to participate in the Plan on the Effective Date. If this is a restated plan, each present Participant shall continue to be a Participant in the Plan. Any other Employee who is classified as an Eligible Employee under the terms of the Adoption Agreement as of the Restated Effective Date shall be eligible to participate in the Plan on the Restated Effective Date.
- (b) **Non-Eligible Employees.** If this is a new plan, any Employee who is not eligible to participate in the Plan as of the Effective Date pursuant to paragraph (a) above, shall be eligible to participate in the Plan upon classification as an Eligible Employee. If this is a restated plan, any Employee who is not eligible to participate in the Plan as of the Restated Effective Date pursuant to paragraph (a) above, shall be eligible to participate in the Plan upon classification as an Eligible Employee.

- 2.2 Enrollment in the Plan.** To participate in the Plan, each Eligible Employee shall complete and remit the applicable enrollment forms, including a Deferred Compensation Agreement, to the Plan Administrator or its designee. Enrollment shall be effective on or after the first day of the month following the date the properly completed enrollment forms are remitted to and accepted by the Plan Administrator or its designee. A newly hired Eligible Employee may defer Compensation payable in the calendar month in which he or she becomes an Employee if a Deferred Compensation Agreement is entered into on or before the first day on which the Eligible Employee performs services for the Employer.

- 2.3 Information Provided by the Participant.** Each Eligible Employee enrolling in the Plan should provide to the Investment Sponsor or the Plan Administrator, as required, at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Investment Sponsor or the Administrator, as appropriate, to administer the Plan, including, without limitation, whether the Eligible Employee is a participant in any other Eligible Plan.

- 2.4 Contributions Made Promptly.** Annual Deferrals under the Plan shall be transferred to the applicable Investment Option within a period that is not longer than is reasonable for the proper administration of the Plan. In no event, shall any Annual Deferrals be transferred to the applicable Investment Option later than fifteen (15) days following the end of the month in which the amount would otherwise have been paid to the Participant.
- 2.5 Leave of Absence.** Unless a Deferred Compensation Agreement is otherwise revised, if a Participant is absent from work by paid leave of absence, Annual Deferrals under the Plan shall continue to the extent Compensation continues.
- 2.6 Disability.** A Disabled Participant may elect to make Annual Deferrals during any portion of the period of his or her Disability to the extent that he or she has actual Compensation (not imputed compensation and not disability benefits) from which to make deferrals to the Plan and has not had a Severance from Employment.

ARTICLE III – DEFERRAL OF COMPENSATION

- 3.1 Annual Deferrals.** If elected pursuant of the terms of the Adoption Agreement, an Eligible Employee may elect to make Annual Deferrals to the Plan pursuant to a Deferred Compensation Agreement with the Employer. Annual Deferrals may be made up to the applicable annual limits under the Code or, or if less, the amount set forth in the Adoption Agreement. Subject to the rules of the applicable Investment Sponsor, the Plan Administrator may establish a minimum Annual Deferral amount and may change such amount from time to time. The Deferred Compensation Agreement may also include a designation of Investment Options and a designation of a Beneficiary. Any such election shall remain in effect until a new election is filed.
- 3.2 Modifications to Amount Deferred.** A Participant may elect to change the amount of his or her Annual Deferral with respect to future Compensation by submitting a new and properly executed Deferred Compensation Agreement to the Plan Administrator or its designee. Pursuant to the rules of the Investment Sponsor, if any, unless the new Deferred Compensation Agreement specifies a later effective date, a change in the amount of Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable thereafter.
- 3.3 Deferral of Special Pay.** If elected in the Adoption Agreement, a Participant may elect to defer accumulated bona fide sick, vacation, and/or other leave pay. These amounts may be deferred for any calendar month only if an agreement providing for the Annual Deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available.
- 3.4 Termination of Deferral.** A Participant may terminate his or her participation election by so notifying the Plan Administrator or its designee in using the administrative practices specified by the Plan Administrator or its designee. Such administrative practices may

include electronic notice, if made available to Participants. Notwithstanding the provisions in Section 3.2 above, any such termination shall take effect as soon as administratively practicable following receipt by the Plan Administrator or its designee of satisfactory notice of such revocation.

- 3.5 Employer Non-Elective Contributions.** If elected in the Adoption Agreement, the Employer shall make non-elective contributions (other than Employer matching contributions, if any, made pursuant to Section 3.6, below) to the Plan on behalf of Active Participants. No Participant shall have the right to elect to receive any amount contributed pursuant to this Section 3.5 as cash in lieu of a contribution. All such non-elective contributions shall be made at the rate or in the amount set forth in the Adoption Agreement. Any non-elective contribution will reduce, dollar for dollar, the annual amount the Participant can defer to the Plan and in no event shall the combined total of Participant and Employer contributions exceed the maximum amount permitted by law.
- 3.6 Employer Matching Contributions.** If elected in the Adoption Agreement, the Employer shall make matching contributions (other than Employer non-elective contributions, if any, made pursuant to Section 3.5, above) to the Plan on behalf of Active Participants who make Annual Deferrals to the Plan pursuant to a Deferred Compensation Agreement. No Participant shall have the right to elect to receive any amount contributed pursuant to this Section 3.6 as cash in lieu of a contribution. All such matching contributions shall be made at the rate or in the amount set forth in the Adoption Agreement and shall be based on the amount of Annual Deferrals made by an Active Participant to the Plan during the year. Any matching contribution will reduce, dollar for dollar, the annual amount the Participant can defer to the Plan and in no event shall the combined total of Participant and Employer contributions exceed the maximum amount permitted by law.
- 3.7 Maximum Deferral.**
- (a) **Primary Limitation.** The maximum amount that may be contributed to the Plan pursuant to Sections 3.1, 3.5, and 3.6 hereof on behalf of any Participant, other than by means of a plan-to-plan transfer, shall not exceed the lesser of: (1) the annual applicable dollar amount, as set forth in Section 457(e)(15) of the Code, or (2) 100% of the Participant's Includible Compensation for the taxable year.
- (b) **Special Section 457 Catch-Up Limitation.** If elected in the Adoption Agreement, for one (1) or more of the last three (3) taxable years ending before the calendar year of a Participant's attainment of Normal Retirement Age ("NRA"), the Participant may utilize the catch-up provision under Section 457(b)(3) of the Code. When special Section 457 catch-up is utilized, the maximum amount that may be contributed to the Plan pursuant to Sections 3.1, 3.5, and 3.6 hereof on behalf of a Participant, other than by means of a plan-to-plan transfer, shall be the lesser of X or Y. X shall be, for any taxable year beginning on or after January 1, 2002, twice (2 times) the applicable dollar amount in effect under Section 457(b)(2)(A) of the Code for such year. Y shall be the sum of (i) the primary limitation amount determined under Section 3.7(a), above, for the year, and (ii) underutilized amounts, which is that portion of the primary limitation amount determined under

Section 3.7(a), above, that is not utilized by the Participant in prior taxable years in which the Participant was eligible to participate in the Plan. The special Section 457 catch-up limitation is available to a Participant during one (1) three (3)-year period only. If the Participant uses the special Section 457 catch-up limitation and then postpones retirement or returns to work after retirement, the Participant cannot utilize special Section 457 catch-up again, even if he or she has underutilized amounts in the Plan or only utilized special Section 457 catch-up in less than all of the three (3) years prior to the year the Participant attained his or her NRA.

- (c) **Coordination with Other Code Section 457(b) Plans.** If a Participant participates in more than one (1) Code Section 457(b) plan, all Code Section 457(b) plans are aggregated and the maximum deferral under all such plans shall not exceed the applicable limit described in Section 3.7(a), above, or if the special Section 457 is utilized, the applicable limitation described in Section 3.7(b), above).
- (d) **Distribution of Excess Deferrals.** To the extent that any amount deferred under the Plan for any taxable year exceeds the limitations of this Section 3.7, any excess deferrals will be distributed pursuant to the applicable provisions of the Code, regulations, or other IRS guidance issued thereunder.

3.8 Vesting. A Participant shall be fully vested at all times in his or her accrued benefits under this Plan. Such accrued benefits shall be non-forfeitable at all times.

3.9 Plan-to-Plan Transfers to the Plan. To the extent provided in the Adoption Agreement and pursuant to the rules of each Investment Sponsor, a Participant, but not a Beneficiary, may elect to make contributions that are transferred directly from the Participant's prior employer's Eligible Deferred Compensation Plan under Section 457(b) of the Code. Notwithstanding the foregoing, transfers shall be permitted only to the extent (i) the transferor plan provides for such direct transfers, (ii) the receiving plan provides for the receipt of plan-to-plan transfers, and (iii) the Participant will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant immediately before the transfer, and (iv) the Participant gives written direction to the Employer or its designee in a satisfactory form to make such transfer. The Plan Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code and Section 1.457-10(b) of the Treasury regulations and to confirm that the other plan is an eligible plan as defined in Section 1.457-2(f) of the Treasury regulations.

The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral limit under Section 3.7. Such funds and the accumulation generated from them shall be fully vested and nonforfeitable at all times.

3.10 Qualified Military Service.

- (a) Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.
- (b) A Participant whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) of the Code may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Participant during the period of the interruption or leave. This right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

ARTICLE IV – DISTRIBUTIONS

4.1 Eligibility for Payment.

- (a) Subject to the terms of the Investment Options, distribution of benefits from the Plan shall be made no earlier than: (i) when the Participant has a Severance from Employment (other than due to death), (ii) Plan termination, and, if elected in the Adoption Agreement: (iii) the calendar year in which the Participant attains age 70-1/2, (iv) in the event of an approved financial hardship due to an Unforeseeable Emergency, or (v) the Participant is eligible for an in-service distribution of his or her small Account Balance.
- (b) Notwithstanding the foregoing, if elected in the Adoption Agreement, with respect to amounts payable to a Participant who is classified as an independent contractor, as determined by the Plan Administrator in its sole and absolute discretion, no amount will be paid to the Participant before a date at least twelve (12) months after the day on which the contract expires under which services are performed for the Employer (or, in the case of more than one contract, all such contracts expire); and no amount payable to the Participant on that date will be paid to the Participant if, after expiration of the contract (or contracts) and before that date, the Participant performs services for the Employer as an independent contractor or an Employee.
- (c) "Severance from Employment" means the termination of a Participant's employment with the Employer for any reason including the Participant's death or retirement.

- (1) A Participant will be deemed to have incurred a Severance from Employment without regard to whether such Participant continues in the same job for a different employer following liquidation, merger, consolidation, or other similar transaction.
 - (2) Pursuant to an election in the Adoption Agreement, "Severance from Employment" for a Participant classified as an independent contractor shall mean the cessation of services upon expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the Employer provided the expiration constitutes a good-faith and complete termination of the contractual relationship. Expiration will not constitute a good-faith and complete termination of the contractual relationship if the Employer anticipates a renewal of the contractual relationship or the independent contractor becoming an Employee. For this purpose, an Employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to contract again for the services provided under the expired contract, and neither the Employer nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an Employer is considered to intend to contract again for the services provided under an expired contract if the Employer's doing so is conditioned only upon incurring a need for the services, the availability of funds, or both.
- (d) Special Considerations Relating to Military Service.
- (1) If elected in the Adoption Agreement, a Participant who dies (or becomes Disabled) on or after January 1, 2007, while performing qualified military service will be treated as if he/she had resumed employment with the Employer on the date preceding death (or Disability) and terminated employment on the actual date of death (or Disability).
 - (2) If elected in the Adoption Agreement and notwithstanding anything herein to the contrary, a Participant shall be deemed as have had a Severance from Employment during any period the individual is performing service, for thirty (30) or more days, in the uniformed services described in Section 3401(h)(2)(A) of the Code, thereby enabling the Participant to take a distribution, but if the Participant elects such a distribution, the Participant may not make any Annual Deferrals to the Plan for a six-month period beginning on the date of distribution.

4.2 Distribution Due to Unforeseeable Emergency.

- (a) If elected in the Adoption Agreement, a Participant, but not a Beneficiary after the Participant's death, may request a distribution due to an "Unforeseeable Emergency", as defined by Section 1.457-6(c)(2) of the Treasury regulations, by

submitting a written request to the Plan Administrator or its designee, accompanied by evidence to demonstrate that the circumstances being experienced qualify as an Unforeseeable Emergency. The Plan Administrator or its designee shall have the authority to require such evidence, as it deems necessary to determine if a distribution shall be warranted. If an application for a distribution due to an Unforeseeable Emergency is approved, the distribution shall be limited to an amount sufficient to meet the Unforeseeable Emergency.

- (b) Unless defined otherwise by the Code or regulations, "Unforeseeable Emergency" generally means a severe financial hardship to the Participant resulting from an illness or accident of the Participant, the Participant's spouse, the Participant's dependent (as defined in Section 152 of the Code without regard to Section 152(b)(1), (b)(2), and (d)(1)(B)) or the Participant's primary beneficiary, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

The circumstances that will constitute an Unforeseeable Emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such emergency is or may be relieved:

- (1) through reimbursement or compensation by insurance or otherwise;
- (2) by liquidation of the Participant's assets, to the extent that liquidation of such assets would not itself cause severe financial hardship; or
- (3) by cessation of deferrals under the Plan.

The purchase of a home and the payment of college tuition are not considered to be an Unforeseeable Emergency. Imminent foreclosure of or eviction from the Participant's primary residence, the need to pay for medical expenses, including prescription drug medication, or the need to pay the funeral expenses of the Participant's spouse, the Participant's dependent, or the Participant's primary Beneficiary may constitute an Unforeseeable Emergency.

4.3 Small Balance In-service Distributions. Subject to the terms of the Investment Options and if elected in the Adoption Agreement, a Participant may elect to receive an in-service distribution of the Participant's benefit under the Plan if the following requirements are met:

- (a) the total amount of the Participant's benefit under the Plan does not exceed \$5,000 (or the dollar limit under Section 411(a)(11) of the Code),
- (b) the Participant has not previously received a distribution under this provision of the Plan, and

- (c) no amounts have been deferred under the Plan with respect to the Participant during the two (2)-year period ending on the date of the in-service distribution.

4.4 Commencement of Distributions.

- (a) Subject to the terms of the Investment Options, upon Severance from Employment (other than due to death), a Participant may commence distribution of benefits at any time following sixty (60) days after the date of the Participant's Severance from Employment by submitting a request to the Investment Sponsor. Distribution of benefits shall commence on the date selected by the Participant on or within the sixty (60)-day election period (the "initial election period") following Severance from Employment. If the Participant elects to defer commencement of benefits during the initial election period, the Participant may subsequently make one additional irrevocable written election in accordance with Section 457(e)(9)(B) of the Code to defer commencement of benefits to a later specified date which is not later than the date distributions are required to begin under Section 401(a)(9) of the Code, provided the election is received by the Plan Administrator or its designee at least thirty (30) days prior to the commencement of benefits under the initial election period.

In the event a Participant fails to make an election during the initial election period, the Participant shall receive a lump sum distribution following the expiration of the initial election period and within ninety (90) days following Severance from Employment, unless an alternate default distribution date and/or distribution option is available and elected in the Adoption Agreement.

- (b) Notwithstanding the provisions of Section 4.4(a) above, in no event shall distribution of benefits commence with respect to any Participant later than the April 1st of the calendar year following the calendar year in which the Participant attains age 70½, or if later, the April 1st of the calendar year following the calendar year in which the Participant incurs a Severance from Employment.

ARTICLE V – FORM OF PAYMENT

5.1 Form of Payment.

- (a) To the extent permitted by the Investment Options, distributions to Participants will be made in a single lump sum unless other distribution options are made available by any Investment Sponsor and selected for use under the Plan. These alternative distribution options may include:
 - (1) Single Life Annuity. An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
 - (2) Joint Life Annuity. An annuity payable in equal installments for the joint lives of the Participant and his or her Beneficiary.

- (3) Fixed Period Payments. Payments for a fixed period subject to the terms or limitations of the applicable Investment Sponsor or Investment Options.
- (4) Any other annuity or withdrawal options as provided under the Investment Options available under this Plan.

All forms of payments shall be subject to the limitations of the applicable Investment Sponsor and its Investment Options.

- (b) Limits on Income Options Under an Annuity Contract. Distributions from an annuity contract, if not made in a single lump sum, shall be made over a period that does not exceed:
 - (1) the life of the Participant;
 - (2) the lives of the Participant and his or her designated Beneficiary;
 - (3) a period certain not extending beyond the life expectancy of the Participant; or
 - (4) a period certain not extending beyond the life expectancies of the Participant and his or her designated Beneficiary.
- (c) Small Balance Distribution. Notwithstanding any other contrary provision in this Section, if the total amount of benefits due any Participant is \$5,000 or less, the total amount will be distributed to the Participant in the form of a lump sum payment after Severance from Employment.

5.2 Plan-to-Plan Transfers from the Plan.

- (a) If elected in the Adoption Agreement and subject to the terms of the Investment Option, any Participant (or Beneficiary upon the Participant's death) can elect to have his or her Account Balance transferred to another Eligible Deferred Compensation Plan (the "receiving plan") and the transfer satisfies the applicable requirements of Section 1.457-10(b) of the Treasury regulations.
- (b) Upon the transfer of assets under this Section 5.2, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Plan Administrator or its designee may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 5.2 (for example, to confirm that the receiving plan is an eligible plan under paragraph (a) of this Section 5.2, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer.

5.3 Minimum Distribution Requirements During Participant's Lifetime.

- (a) **Minimum Amounts to be Distributed.** If a Participant's retirement payments are to be distributed in a form other than a single lump sum, the amount to be distributed each year, and the times those amounts are paid, shall satisfy the requirements specified in Section 401(a)(9) of the Code and the regulations issued thereunder.
- (b) **Requirements of Code and Related Regulations Incorporated.** All distributions required under this Section 5.3 will be determined and made in accordance with Section 401(a)(9) of the Code and the regulations issued thereunder.
- (c) **Time and Manner of Distribution.**
 - (1) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the April 1st of the calendar year following the calendar year in which the Participant attains age 70½, or if later, the April 1st of the calendar year following the calendar year in which the Participant incurs a Severance from Employment.
 - (2) **Amount of Required Minimum Distribution for Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year will be determined under the applicable provisions of Section 401(a)(9) of the Code and the Treasury regulations issued thereunder.
 - (3) **Lifetime Required Minimum Distributions Continue through the Year of Participant's Death.** Required minimum distributions will be determined under this Section 5.3 beginning with the first (1st) distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death. Any amount due but untaken in the year of death, must be received by the Beneficiary, even if the Beneficiary elects to delay payments.

5.4 Election. Subject to the rules of the Investment Sponsor and the form(s) of distribution available under the Plan, a Participant or Beneficiary may elect the form of distribution of his or her benefits and may revoke that election at any time at least thirty (30) days before his or her benefits begin, or such other time as permitted by the Plan Administrator or its designee, by notifying the Investment Sponsor in writing of his or her new election. Unless otherwise set forth in the Adoption Agreement, all distributions of benefits paid pursuant to the terms of this Plan shall be paid directly by the applicable Investment Sponsor to the Participant or Beneficiary.

5.5 Failure to Make Election. If a Participant or Beneficiary fails to elect a form of payment in a timely manner, to the extent permitted by the Investment Option, benefits shall be

paid in a single lump sum unless an alternate default form of payment is elected in the Adoption Agreement.

ARTICLE VI – DEATH BENEFITS

6.1 Commencement of Distributions to Beneficiaries.

- (a) A Beneficiary may commence distribution of benefits at any time following sixty (60) days after the date of the Participant's death by submitting a request to the Investment Sponsor. Distribution of benefits shall commence on the date selected by the Beneficiary on or within the sixty (60)-day election period (the "initial election period") following the Participant's date of death.
- (b) If permitted under the Adoption Agreement elections and the Beneficiary makes an election to defer commencement of benefits during the initial election period, the Beneficiary may subsequently make one additional irrevocable written election in accordance with Section 1.457-7(c)(2)(iii) of the Treasury regulations to defer commencement of benefits to a later specified date that is not later than the date distributions are required to begin under Section 401(a)(9) of the Code provided the election is received by the Plan Administrator at least thirty (30) days prior to the commencement of benefits under the initial deferral election.
- (c) In the event a Beneficiary fails to make an election during the initial election period following the date of the Participant's death, the Beneficiary shall receive a distribution following the expiration of the initial election period, within ninety (90) days following the date of the Participant's death, unless an alternate default distribution date and/or payment option is elected in the Adoption Agreement.

6.2 Form of Payment. Distributions to Beneficiaries will be made in a single lump sum to the designated Beneficiary as soon as administratively feasible following the death of the Participant unless the Beneficiary selects an alternative distribution option that is made available by any other Investment Sponsor and selected for use under the Plan. These alternative distribution options may include:

- (a) **Single Life Annuity.** An annuity payable in equal installments for the life of the Beneficiary that terminates upon the Beneficiary's death.
- (b) **Joint Life Annuity.** An annuity payable in equal installments for the joint lives of the Beneficiary and his or her beneficiary.
- (c) **Fixed Period Payments.** Payments for a fixed period subject to the terms or limitations of the applicable Investment Sponsor or Investment Options.
- (d) Any other annuity or withdrawal options provided under the Investment Options.

All forms of payments shall be subject to the limitations of the applicable Investment Sponsor and its Investment Options.

6.3 Death Distribution Requirements. Notwithstanding any other provisions in this Section, any distribution option selected by a Beneficiary must comply with the following distribution provisions:

- (a) **Death After Distributions Begin.** If the Participant dies after distribution of his or her interest has commenced, the remaining portion of such interest shall continue to be distributed at least as rapidly as the method of distribution being used prior to the Participant's death.
- (b) **Death Before Distributions Begin.** If the Participant dies before distribution of his or her interest has commenced, distribution of the Participant's entire interest shall be completed by the December 31st of the calendar year containing the fifth (5th) anniversary of the Participant's death, except to the extent that the recipient of such benefits elects to receive distributions in accordance with (1) or (2) below:
 - (1) If any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made in substantially equal annual payments over the life of the designated Beneficiary, or over a period certain not extending beyond the life expectancy of the designated Beneficiary, and commencing no later than the December 31st of the calendar year immediately following the calendar year in which the Participant died;
 - (2) If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (1) above shall be the December 31st immediately following the calendar year in which the Participant died or, if later, the December 31st of the calendar year in which the Participant would have attained age 70½.
 - (3) If the Participant has not made an election pursuant to this Section 6.3 by the time of his or her death, the Participant's designated Beneficiary must elect the method of distribution no later than the earlier of (a) the December 31st of the calendar year in which distributions would be required to begin under this Section 6.3, or (b) the December 31st of the calendar year which contains the fifth (5th) anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary, or if the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by the December 31st of the calendar year containing the fifth (5th) anniversary of the Participant's death.
- (c) For purposes of Section 6.3(b), if the surviving spouse dies after the Participant, but before payments to such spouse begins, the provisions of Section 6.3(b) with

the exception of paragraph (2) shall be applied as if the surviving spouse were the Participant.

- (d) For purposes of this Section 6.3, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.
- (e) For the purposes of this Section 6.3, distribution of a Participant's interest is considered to begin on the Participant's required beginning date (or, if applicable, the date distribution is required to begin to the surviving spouse). If distribution in the form of an annuity irrevocably commences to the Participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.
- (f) **Death of Beneficiary Before Benefits Commence.** In the event that a Beneficiary dies after becoming entitled to receive benefits under this Plan but before distributions to the Beneficiary have commenced, the benefits due such Beneficiary shall be paid to the estate of the Beneficiary in a single lump sum payment as soon as administratively feasible following the Beneficiary's death. No other distribution elections shall be permitted.

ARTICLE VII – BENEFICIARY INFORMATION

- 7.1 **Designation.** A Participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time prior to commencement of benefits, in writing and in a form approved by the Plan Administrator, its designee, or the Investment Sponsor. Such Beneficiary designations, amendments, or revocations will be maintained by the Investment Sponsor and shall be effective upon satisfactory receipt by the Investment Sponsor.
- 7.2 **Failure to Designate a Beneficiary.** Absent any procedures set forth by the Investment Sponsor, benefits shall be paid to the Participant's estate if, prior to the date a Participant commences to receive payment of benefits under the Plan, the Participant has not designated a Beneficiary or no designated Beneficiary survives the Participant and benefits are payable following the Participant's death.

ARTICLE VIII – PLAN ADMINISTRATION

- 8.1 **Plan Administration.** The Employer shall be responsible for appointing a Plan Administrator to administer the Plan. The Plan Administrator may authorize a committee comprised (to the extent possible) of not less than three (3) persons, to act collectively with regard to administration of the Plan. The Plan Administrator shall have sole discretionary responsibility for the interpretation of the Plan, enrolling Participants in the Plan, sending contributions on behalf of each Participant to the applicable Investment Sponsor, and for performing other duties required for the operation of the Plan. Any action taken on any matter within the discretion of the Plan Administrator shall be made

in its sole and absolute discretion based on this Plan document and the Adoption Agreement, and shall be final, conclusive, and binding on all parties. In order to discharge its duties hereunder, the Plan Administrator shall have the power and authority to delegate ministerial duties and to employ such outside professionals as may be required for prudent administration of the Plan. The Plan Administrator shall also have authority to enter into agreements on behalf of the Employer necessary to implement this Plan.

- 8.2 Accounts and Expenses.** The Employer or the Investment Sponsor shall establish and maintain book entry accounts on behalf of each Participant and Beneficiary after the death of the Participant. Such accounts shall be valued in accordance with the rules of the Investment Option, in which the accounts are invested. Each such book entry account shall reflect the aggregate of his or her Annual Deferrals, Employer non-elective contributions, Employer matching contributions, and plan-to-plan transfers, if any, and shall also reflect investment experience described in Section 8.4 attributable to each such book entry account and expense charges applied to and distributions made from such account.
- 8.3 Mistaken Contribution.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one (1) year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Plan Administrator, to the Employer.
- 8.4 Investment Experience.** Amounts credited to a Participant's book entry account shall reflect the investment experience of the Investment Options selected under the Plan. Unless otherwise set forth in the Adoption Agreement, the Employer authorizes each Participant to select the Investment Options under the Plan that will be used to measure the investment experience of such Participant's account. The Investment Options shall include the Investment Options made available by TIAA-CREF and may, in addition, include Investment Options made available by additional approved Investment Sponsors. The initial allocation request may be made at the time of enrollment in the Plan. Once made, an investment allocation request shall remain in effect for all subsequent contributions until changed by the Employer, or the Participant, as the case may be. Unless otherwise set forth in the Adoption Agreement, a Participant may change any allocation made by such Participant hereunder, or transfer existing accumulations to another Investment Option available under the Plan, pursuant to administrative practices specified by the Plan Administrator, the Investment Sponsors, or an appropriate designee. Such administrative practices may include electronic notice if made available to Participants. Any such changes shall become effective as soon as administratively feasible after the Employer or its designee receives a satisfactory request. Notwithstanding anything herein to the contrary, the Employer retains the right to allocate amounts hereunder without regard to a Participant's request. Subject to the terms of the Investment Options, the Employer or its designee shall credit investment experience to each Participant's book entry account as of the last business day of each calendar

quarter or such other dates selected by the Employer or its designee, in its sole and absolute discretion.

- 8.5 Domestic Relations Orders.** Unless permitted under the Adoption Agreement, the Plan will not honor Qualified Domestic Relations Order. Pursuant to an election under the Adoption Agreement and notwithstanding Sections 11.3 and 11.9, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order" or "DRO"), then the amount of the Participant's Account balance shall be paid in the manner and to the person or persons so directed in the domestic relations order provided such domestic relations order is found to be qualified under the provisions of Section 414(p) of the Code ("QDRO"). Payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Investment Sponsor shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. The Plan Administrator shall establish such procedures, in the absence of any procedures established by the Investment Sponsor. Effective April 6, 2007, a DRO that otherwise satisfies the requirements of a QDRO will not fail to be a QDRO solely because (a) the order is issued after or revises another DRO or QDRO, or (b) at the time the DRO is issued, including issuance after the starting date for the Participant's selected or defaulted form of distribution or the Participant's death. Any such DRO shall be subject to the same requirements and protections as any other QDRO.
- 8.6 IRS Levy.** Notwithstanding Sections 11.3 and 11.9, the Plan Administrator may pay from a Participant's or Beneficiary's book entry account the amount that the Plan Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.
- 8.7 Procedure When Distributee Cannot be Located.** Absent any procedures from the Investment Sponsors, the Plan Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary (the "distributee") entitled to benefits under the Plan. For this purpose a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or Plan Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the distributee has not responded within six (6) months. If the Plan Administrator is unable to locate such person entitled to benefits hereunder, or if there has been no claim has been made for such benefits, the Plan shall continue to hold the benefits due such person.
- 8.8 Payments to Minors and Incompetents.** Absent any procedures from the Investment Sponsors, if a Participant or Beneficiary entitled to receive any benefits hereunder is a

minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Plan Administrator or the Investment Sponsor, the Investment Sponsor shall make the distribution of benefits to the Participant's or Beneficiary's guardian, conservator, custodian, attorney-in-fact, or to any other legal representative adjudged to be appropriate upon receiving satisfactory evidence of such status or a court order to that effect.

8.9 Claims Procedures.

- (a) Unless the Code or regulations provide otherwise, any claim by a Participant or Beneficiary with respect to eligibility, participation, contributions, benefits, or other aspects of the operation of the Plan shall be made in writing to the Plan Administrator or a committee acting on behalf of the Plan Administrator. If the Plan Administrator or the committee acting on its behalf believe that the claim should be denied, it shall notify the claimant in writing of the denial of the claim within ninety (90) days after receipt thereof (this period may be extended an additional ninety (90) days in special circumstances). Such notice shall (a) set forth the specific reason or reasons for the denial, making reference to the pertinent provisions of the Plan or the Plan documents on which the denial is based, (b) describe any additional material or information necessary to perfect the claim, and explain why such material or information, if any, is necessary, and (c) inform the Participant or Beneficiary making the claim of his right pursuant to this Section 8.9 to request a review of the decision. If notice of denial is not given to a claimant within such period of time, the claim will be deemed denied for purposes of seeking review of the claim.
- (b) Any such person may appeal the denial of a claim by submitting a written request for review to the Plan Administrator or the committee acting on its behalf, as the case may be, within sixty (60) days after the date on which such denial is received. Such period may be extended for good cause shown. The person making the request for review or his duly authorized representative may discuss any issues relevant to the claim, may review pertinent documents, and may submit issues and comments in writing. If the Plan Administrator or the committee acting on its behalf deems it appropriate, it may hold a hearing as to a claim. If a hearing is held, the Claimant shall be entitled to be represented by counsel. The Plan Administrator or the committee acting on behalf of the Plan Administrator shall decide whether or not to grant the claim within sixty (60) days after receipt of the request for review, but this period may be extended for up to an additional sixty (60) days in special circumstances (the Participant or Beneficiary shall be notified of the delay); in any event such decision shall be rendered not later than one hundred twenty (120) days after receipt of the request for review. The decision shall be in writing, shall include specific reasons for the decision, and shall refer to pertinent provisions of the Plan or the Plan documents on which the decision is based. Any claim not decided upon in the required time period shall be deemed denied.
- (c) All interpretations, determinations and decisions of the Plan Administrator or the committee acting on behalf of the Plan Administrator, or its designee, with respect

to any claim under the Plan shall be made in its sole and absolute discretion, based on the Plan document and other related documents, and shall be final and conclusive.

- (d) Any claims by a Participant or Beneficiary related to the responsibility or services provided by or delegated to an Investment Sponsor (investment allocations, distributions, etc.) should be submitted directly to the Investment Sponsor and its claim procedures must be followed. Any appeal of claims denied by an Investment Sponsor should be submitted to the Plan Administrator.

ARTICLE IX – AMENDMENT OR TERMINATION OF PLAN

- 9.1 **Amendment of Plan.** While it is expected that this Plan will continue indefinitely, the Employer reserves the right at any time to amend or otherwise modify the Plan without any liability for such action. No amendment shall increase the duties or responsibilities of any Investment Sponsor without its prior consent thereto in writing.
- 9.2 **Termination of Plan.** The Employer shall have the right at any time to terminate the Plan. No termination shall affect the amounts already deferred under the Plan. In order for the Plan to be considered terminated, amounts deferred under the Plan must be distributed to all Plan Participants and Beneficiaries as soon as administratively practicable after termination of the Plan, in accordance with the terms of the Investment Option.

ARTICLE X – UNFUNDED PLAN

Unfunded Status. The Plan is intended to constitute an unfunded plan and all amounts held hereunder shall be allocated to the Employer. Any amount due and payable pursuant to the terms of the Plan shall be paid out of the general assets of the Employer. All assets of the Plan shall be subject to the claims of creditors of the Employer. Participants and Beneficiaries shall not have interest in any specific asset of the Employer or any specific asset held hereunder as a result of participation in this Plan. The Employer shall have no obligation to set aside any funds for the purpose of making any benefit payments under this Plan. Nothing contained herein shall give any Participant any rights that are greater than those of an unsecured creditor of the Employer with respect to any unpaid amount as to which the Participant has a vested interest. No action taken pursuant to the terms of this Plan shall be construed to create a funded arrangement, a plan asset, or fiduciary relationship among the Employer, its designee, any Investment Sponsor, and a Participant or Beneficiary.

ARTICLE XI – MISCELLANEOUS

- 11.1 **Plan Non-Contractual.** Nothing contained in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Employer, and nothing contained in this Plan will be construed as a commitment on the part of the Employer to continue the employment or the rate of compensation of

any person for any period, and all Employees of the Employer will remain subject to discharge to the same extent as if the Plan had never been put into effect.

- 11.2 Claims of Other Persons.** The provisions of the Plan will in no event be construed as giving any Participant or any other person, firm, corporation or other legal entity, any legal or equitable right against the Employer, its officers, employees, directors or trustees, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 11.3 Non-Assignability.** Except as otherwise provided in 8.5 and 8.6, the interest of each Participant or Beneficiary under the Plan is not subject to the claims of the Participant's or Beneficiary's creditors, and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
- 11.4 Contracts.** The terms of each Investment Option offered to Participants as an investment option hereunder, the terms of a custodial agreement, or trust in which an Investment Option may be held, any contract issued on behalf of a Participant, certificate issued to a Participant, and any other written documents or instruments related to any such matters are a part of the Plan as if fully set forth in the Plan document and the provisions of which are hereby incorporated by reference into the Plan. In the case where there is any inconsistency or ambiguity between the terms of the Plan and those of any contract, certificate, custodial agreement, unfunded grantor trust, or other such document or instrument if any, funding the Plan, the terms of the contract, certificate, custodial agreement, unfunded grantor trust, or other such document or instrument will control to the extent not inconsistent with the applicable provisions of the Code and any applicable regulations issued thereunder.
- 11.5 Pronouns.** Whenever used herein, the masculine pronoun is deemed to include the feminine. The singular form, whenever used herein, shall mean or include the plural form where applicable, and vice versa.
- 11.6 Representations.** The Employer does not represent or guarantee that any particular Federal or State income, payroll, personal property, or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Employer does not represent or guarantee investment returns with respect to any Investment Option and shall not be required to restore any loss which may result from such investment or lack of investment.
- 11.7 Tax Reporting.** Each Investment Sponsor will be responsible for all federal and state tax reporting for Participant distributions only if a particular Investment Sponsor is appointed as agent by the Employer. The Employer must complete and file the appropriate IRS form to enable the Investment Sponsor to act as Employer's agent for tax reporting purposes, as required by applicable law. The Employer will be responsible for the tax

reporting of any benefits that are distributed prior to the time the applicable Investment Sponsor receives a letter from the IRS approving the agency relationship.

11.8 Severability. This Plan document is intended to comply with the applicable provisions of the Code, Treasury regulations, other IRS guidance issued thereunder, the Employee Retirement Income Security Act of 1974, as amended, and DOL regulations or other guidance. To the extent not inconsistent with Section 11.4, if any provision in this Plan document is inconsistent therewith, the inconsistent provision shall be struck from the document and replaced with the applicable provision from the Code, Treasury regulation, or any other applicable IRS guidance. In addition, if a court of competent jurisdiction holds any provision of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

11.9 Applicable Law. This Plan shall be construed in accordance with applicable Federal law and, to the extent otherwise applicable, the laws of the State in which the Employer is located.

IN WITNESS WHEREOF, this Plan Document has been executed this 24th day of May, 2019.

SAINT MARY'S COLLEGE OF CALIFORNIA

By: Susan H. Wallace

Printed Name: Susan H. Wallace

Title: VP of Finance and Admin.

