**MODEL SEPARATION AGREEMENT LANGUAGE**

**DEFINED CONTRIBUTION PLANS**

**Disclaimer:** The model separation agreements provided on this website are designed for educational purposes. The goal is to provide family law practitioners with language that includes industry best practices for their consideration when drafting property settlement agreements.

Keep in mind that the model agreements do not consider the facts of a particular case. For example, if the Alternate Payee (AP) is not in good health, language that adjusts benefit to the Alternate Payee’s life may be a poor choice. We are glad to discuss the specifics of your case with you as you seek to craft an effective and safe settlement agreement.

While this language was drafted by an ERISA attorney, the offering of it on this website does not constitute legal advice, nor should it be understood to create an attorney-client relationship. After all, QDRO Group is not a law firm.

**I acknowledge that I have read and understood this disclaimer.**

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**Division of Retirement Benefits in the [*official plan name*].**

The [*Defendant/Plaintiff*] is a Participant in the [*official plan name*] (“Plan”). For purposes of dividing marital property, the [*Defendant/Plaintiff*] is an Alternate Payee who is granted a portion of the Participant’s Plan benefits as described below.

**CHOOSE ONE OF THE FOLLOWING FOR SECTION 1:**

**1. Amount of Benefits Assigned:** The Alternate Payee is assigned \_\_\_\_\_ percent (\_\_\_\_ %) of the Participant’s total account balance in the Plan, determined as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the Assignment Date). The Participant’s total account balance shall include all amounts allocated to the Participant’s account after the Assignment Date that are attributable to periods prior to such date. The Participant’s total account balance shall not include any outstanding Plan loans. In other words, the Alternate Payee's assigned share of the benefits will be calculated after the loan amount is first subtracted from the Participant's total account balance.

**OR**

**1. Amount of Benefits Assigned:** The Alternate Payee is assigned \_\_\_\_\_ dollars ($\_\_\_\_) of the Participant’s total account balance in the Plan, determined as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the Assignment Date). The Participant’s total account balance shall include all amounts allocated to the Participant’s account after the Assignment Date that are attributable to periods prior to such date. If there are not sufficient assets in the Participant's accounts to satisfy the award of benefits to the Alternate Payee, then the Alternate Payee will be assigned One Hundred Percent (100%) of the Participant's total account balance as of the Assignment Date.

**2. Separate Account and Investment Gains/Losses:** The benefits assigned to the Alternate Payee shall be taken pro rata from the Participant’s subaccounts and investments (not including any Plan loans) and maintained in a separate Plan account. The Alternate Payee’s account shall be credited with investment gains and losses beginning on the Assignment Date.

**3. Alternate Payee’s Death:** If the Alternate Payee dies prior to distribution of his/her entire account balance, all remaining benefits shall be paid to the Alternate Payee’s beneficiary(ies). In the absence of a beneficiary form, the Alternate Payee’s benefits will be paid to her estate or will be distributed in accordance with the Plan’s terms.

**4. Participant’s Death:** The Participant’s death shall not affect the Alternate Payee’s right to the Plan benefits assigned in this Agreement, and the Alternate Payee shall be treated as the Participant’s surviving spouse for purposes of any death benefits to the extent necessary to protect the Alternate Payee’s assigned benefits.

**5. QDRO Preparation:** The [*Defendant/Plaintiff*] shall prepare a qualified domestic relations order (“QDRO”), as defined in Section 206 of the Employee Retirement Income Security Act of 1974, that is consistent with this Agreement. The parties agree to fully cooperate and provide any plan documents or authorization necessary to complete the QDRO process. The parties shall submit the QDRO to the Plan’s administrator for review and approval, and shall share equally any fees for the Plan or its representative to review the QDRO.

**6. Continued Jurisdiction:** The court shall retain jurisdiction to amend the provisions of this Agreement, to amend the QDRO, and to issue new orders to enforce the parties’ intent regarding the Participant’s Plan benefits that are assigned to the Alternate Payee.

**7. Participant’s Actions:** The Participant shall not act, or refuse to act, in any manner that could diminish the Alternate Payee’s right to the Plan benefits assigned in this Agreement and in the related QDRO. If the Participant does take such action/inaction, the Participant shall make payments directly to the Alternate Payee to the extent necessary to restore the Alternate Payee to the position he/she would otherwise have been in without the Participant’s action/inaction.