**MODEL SEPARATION AGREEMENT LANGUAGE**

**DEFINED BENEFIT 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.

**1. Amount of Benefits Assigned:** The Alternate Payee is assigned the actuarial equivalent of fifty percent (50%) of the Marital Portion of the Participant’s Accrued Benefit in the Plan, utilizing a traditional coverture fraction. The numerator of the fraction is the number of months of credited service earned during the marriage (from \_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_), and the denominator is the Participant’s total number of months of credited service earned at the earlier of the Participant’s benefit commencement or the Alternate Payee’s commencement.

**2. Early Retirement Subsidies/Supplements and COLAs:** The Alternate Payee is assigned a pro rata share (determined in the same manner as in Item 1 above) of any early retirement subsidies or supplements, cost-of-living adjustments or other post-retirement benefit increases, or any interim or temporary benefits that the Participant receives from the Plan. This includes a recalculation should the Participant retire after the Alternate Payee has already commenced benefits.

**3. Participant’s Death After Retirement:** If the Plan does not permit the Alternate Payee to elect a form of payment based on his/her life expectancy, the Participant shall elect a joint and survivor annuity to the extent necessary to protect the Alternate Payee’s assigned benefit in the event the Participant dies before the Alternate Payee.

**4. Participant’s Death Before Retirement:** The Participant shall designate the Alternate Payee as his/her surviving spouse for purposes of any preretirement survivor annuity, but only to the extent necessary to protect the Alternate Payee’s assigned benefit in the event the Participant dies prior to his/her benefit commencement date.

**5. Alternate Payee’s Death:** If the Alternate Payee dies prior to his/her benefit commencement date, the Plan shall distribute the Alternate Payee’s assigned benefit to his/her beneficiary(ies) or, if the Plan does not permit such distribution, the assigned benefit shall revert to the Participant. If the Alternate Payee dies after commencement of his/her benefit, the Plan will pay any remaining benefits in accordance with the form of benefit the Alternate Payee elected.

**6. 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.

**7. 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.

**8. 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 or 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.