

PBGC Model Separate Interest QDRO

*(You may use this model when a defined benefit pension plan has terminated, PBGC has become trustee of the plan, and the parties want PBGC to divide the value of the participant's benefit between the participant and the alternate payee in designated amounts. **You may use this model only if the participant's benefit payments have not started when the order is submitted to PBGC for qualification. Please read instructions for important information.**)*

IN THE _____ COURT OF _____
DIVISION _____ COUNTY _____

-----X
IN RE MARRIAGE/SUPPORT OF :
 :
 :

PETITIONER, :
 :
V. : CASE NO. _____
 :
 :

PARTICIPANT, RESPONDENT. :
 :
 :
-----X

QUALIFIED DOMESTIC RELATIONS ORDER

This Order is intended to be a qualified domestic relations order ("QDRO"), as that term is defined in section 206(d) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and section 414(p) of the Internal Revenue Code of 1986, as amended ("Code"). This Order is granted in accordance with [applicable state domestic relations law citations], which relate to marital property rights, child support, and/or spousal support between spouses or between a spouse and a former spouse in matrimonial actions. The Participant is not currently receiving benefit payments from PBGC with respect to the plan identified below.

SECTION 1. IDENTIFICATION OF PLAN

This Order applies to benefits under the [formal name of plan] ("Plan"). The Pension Benefit Guaranty Corporation ("PBGC") is trustee of the Plan.

SECTION 2. IDENTIFICATION OF PARTICIPANT AND ALTERNATE PAYEE

a. [Name of the Participant] is eligible to receive a benefit from the Plan and is hereafter referred to as the "Participant."

The Participant's mailing address is [address]. The Participant's Social Security Number is [Social Security Number].

b. [Name of the Alternate Payee] is hereafter referred to as the "Alternate Payee." The Alternate Payee's mailing address is [address]. The Alternate Payee's Social Security Number is [Social Security Number]. The Alternate Payee is the [spouse/former spouse/child/other dependent] of the Participant.

SECTION 3. AMOUNT OF BENEFIT TO BE PAID TO ALTERNATE PAYEE

Starting at the time specified in section 5, PBGC shall pay to the Alternate Payee as a separate interest an amount actuarially equivalent to [\$x per month/x%] of the Participant's benefit under the Plan. The Participant's benefit shall be determined as of [date of separation/date of divorce/date of plan termination/the date the Alternate Payee elects to begin receiving benefits from the plan/some other date]. The Alternate Payee's separate interest shall be determined as a benefit payable over the lifetime of the Alternate Payee.

SECTION 4. PBGC BENEFIT ADJUSTMENTS

If PBGC adjusts the Participant's benefit from the benefit payable under the plan, any reduction shall be applied by decreasing [pro rata the value of the Participant's and the Alternate Payee's benefits/the value of the Participant's remaining benefit first/the value of the Alternate Payee's separate interest first], and any increase shall be applied by increasing [pro rata the value of the Participant's and the Alternate Payee's benefits/the value of the Participant's remaining accrued benefit/the value of the Alternate Payee's separate interest].

SECTION 5. BENEFITS START

Payments to the Alternate Payee shall be payable as of [such future date as the Alternate Payee elects/a future specified date]. (This date must be the first day of a month and cannot be before the Participant's "earliest PBGC retirement date," which is defined in 29 C.F.R. §4022.10.) Payment shall not be made until PBGC qualifies this domestic relations order and receives a PBGC benefit application from the Alternate Payee.

SECTION 6. FORM OF BENEFIT

PBGC shall pay the Alternate Payee's benefit in the form elected by the Alternate Payee on the PBGC benefit application.

SECTION 7. BENEFITS STOP

PBGC shall stop payments of the Alternate Payee's separate interest in accordance with the form of benefit elected by the Alternate Payee.

SECTION 8. DEATH OF PARTICIPANT

The Participant's death shall not affect payments under the Alternate Payee's separate interest.

SECTION 9. DEATH OF ALTERNATE PAYEE

If the Alternate Payee dies before commencing benefits, the separate interest shall **[revert to the Participant/be forfeited to PBGC/be paid to the Contingent Alternate Payee (see Appendix F for substitute model language if a contingent alternate payee is named)]**. If the Alternate Payee dies after commencing benefits, see Section 7.

SECTION 10. SURVIVING SPOUSE RIGHTS OF ALTERNATE PAYEE

[Note: Section 10 applies only if the Alternate Payee is the spouse or former spouse of the Participant.]

a. PBGC **[shall/shall not]** treat the Alternate Payee as the Participant's spouse for purposes of the Participant's qualified joint-and-survivor annuity resulting from the benefit in which the Participant retains a separate interest. If the word "shall" was selected in the preceding sentence, the qualified joint-and-survivor annuity payable to the Alternate Payee shall be based on **[all/specify another portion (\$x/x%)]** of the benefit in which the Participant retains a separate interest.

b. PBGC **[shall/shall not]** treat the Alternate Payee as the Participant's spouse for purposes of the Participant's qualified preretirement survivor annuity resulting from the benefit in which the Participant retains a separate interest. If the word "shall" was selected in the preceding sentence, the qualified preretirement survivor annuity payable to the Alternate Payee

shall be based on [all/specify another portion (\$x/x%)] of the benefit in which the Participant retains a separate interest.

SECTION 11. OTHER REQUIREMENTS

Nothing in this Order shall require PBGC:

- a. To pay any benefits not permitted under ERISA or the Code;
- b. To provide any type or form of benefit or any option not paid by PBGC with respect to the Plan;
- c. To pay benefits to the Participant and Alternate Payee with a total value that exceeds the value of the benefits the Participant otherwise would receive under Title IV of ERISA;
- d. To pay benefits to the Alternate Payee that are required to be paid to another alternate payee under another QDRO that is in effect prior to this Order;
- e. To pay benefits to the Alternate Payee for any period before PBGC receives this Order;
- f. To pay benefits as a separate interest to the Alternate Payee if the Participant already is receiving benefit payments; or
- g. To change the benefit form if the Participant is already receiving benefit payments.

SECTION 12. RESERVATION OF JURISDICTION

The Court reserves jurisdiction to amend this Order to establish or maintain its status as a QDRO under ERISA and the Code.

IT IS SO ORDERED:

Date: _____

JUDGE