

Sample Separation Agreement Language For Dividing Defined Contribution Plans

Section _____: Retirement Benefits of Defendant under the [Insert actual (official) plan name].

The Defendant is a Participant under the [*Insert actual (official) plan named*] (hereinafter referred to as Plan). For the purposes [*specify spousal support or marital property division*], the Plaintiff is hereby granted a portion of the Defendant's retirement benefits under the Plan as designated below. The Plaintiff's ownership interest in the specified portion of the Defendant's retirement benefits shall become effective on the Assignment Date, which shall be the date [*Insert "this Separation Agreement" or "that the Judgment for Divorce"*] is filed with the court. **[Note to attorney: Do not guess the plan name. You must include the exact plan name in this paragraph, even if you must contact the plan administrator to obtain it.]**

1. Amount of Plaintiff's Benefits: Effective as of such Assignment Date, the Plaintiff shall be assigned a portion of the Defendant's retirement benefits in an amount equal to _____ Percent (____%) of the Defendant's Total Account Balance accumulated under the Plan as of the Assignment Date (or the closest valuation date thereto). Further, such Total Account Balance shall include all amounts maintained under all of the various investment funds, accounts, and/or subaccounts established on behalf of the Defendant. Such Total Account Balance shall also include all amounts (including plan forfeitures, if applicable) contributed to the Plan on behalf of the Defendant after the Assignment Date that are attributable to periods prior to such date.

Plan Loans [Optional]: In the event that the Defendant has any outstanding plan loans as of the effective date of this Agreement, such loan balance shall first be subtracted from the Total Account Balance before calculating the Plaintiff's assigned share of the benefits. [Note: if the participant took a loan against the plan just before the divorce for the purpose of intentionally reducing the account balance, then you should change this language to indicate that the alternate payee's share of the benefits is to be calculated "without regard to any loans taken by the participant."]

2. Establishment of Separate Accounts and Crediting of Interest and Investment Earnings or Losses: The Plaintiff's portion of the benefits described in Item 1 shall be segregated and separately maintained in Account(s) established on his or her behalf and shall additionally be credited with any interest and investment income or losses attributable thereon from the Assignment Date, until the date of total distribution to the Plaintiff. The Plaintiff's accounts shall be initially established in the same ratio (fund mix percentage) as the Defendant maintains his or her accounts.

3. Commencement Date and Form of Payment to Plaintiff: The Plaintiff may elect to commence his or her share of the benefits as soon as administratively feasible following the date that the QDRO is approved by the Plan Administrator, or at the earliest date permitted under the terms of the Plan, if later. Benefits will be payable to the Plaintiff in any form or permissible option otherwise available to Plan Participants and Alternate Payees under the terms of the Plan, including, but not limited to, a single lump –sum cash payment.

4. Plaintiff's Rights and Privileges: On and after the date that the Qualified Domestic Relations Order (QDRO) is deemed qualified, but before the Plaintiff receives his or her total distribution under the Plan, the Plaintiff shall be entitled to all of the rights and election privileges that are afforded to active Participants and Beneficiaries, including, but not limited to, the rules regarding the right to designate a beneficiary for death benefits purposes and the right to direct Plan investments, only to the extent permitted under the provisions of the Plan.

5. Death of Plaintiff: In the event of the Plaintiff's death prior to his or her receiving the full amount of benefits called for under this Agreement and under the benefits option chosen by the Plaintiff, the Plaintiff's beneficiary(ies), as designated on the appropriate form provided by the Plan Administrator (or in the absence of a valid beneficiary election, his or her estate), shall receive the remainder of any unpaid benefits under the terms of the QDRO.

6. Death of Defendant: In the event that the Defendant dies prior to the establishment of separate accounts(s) in the name of the Plaintiff, the Plaintiff shall be treated as the surviving spouse of the Defendant for any survivor benefits payable under the Plan to the extent of the full amount of his or her benefits as called for under the terms of this Agreement and the associated QDRO. Should the Defendant predecease the Plaintiff after the new account(s) have been established on his or her behalf, the Defendant's death shall in no way affect the Plaintiff's right to the portion of his or her benefits as stipulated herein.

7. Tax Treatment of Distributions Made to Plaintiff under the Qualified Domestic Relations Order: For purposes of Section 402(a)(1) and 72 of the Internal Revenue Code, the Plaintiff shall be treated as the distributee of any distribution or payments made to him or her under the terms of the QDRO, and, as such, will be required to pay the appropriate federal, state, and local income taxes on such distribution.

8. Inadvertent Payment(s) to Plan Participant: In the event that the Plan Trustee inadvertently pays to the Participant any benefits that are assigned to the Alternate Payee pursuant to the terms of this Order, the Participant shall immediately return such payments to the plan administrator. Upon receipt of the repayment, the plan administrator shall issue an amended Form 1099 to the participant so that he is not liable for any income taxes associated with the alternate payee's assigned share of the benefits.

9. A QDRO Shall Issue: In order to effectuate the Assignment provisions of this Separation Agreement regarding the division of the Defendant's retirement benefits under the Plan, a QDRO shall be prepared in accordance with the terms of this Agreement and submitted to the Plan Administrator for processing. Notwithstanding the previous sentence, in the event the Defendant predeceases the Plaintiff prior to the date that a QDRO is officially approved the Plan

Administrator, it is hereby ordered that the terms and provisions of this Judgment Entry/Agreement shall, in and of itself be deemed a QDRO by such Plan Administrator and processed accordingly.

10. Continued Jurisdiction: The court shall retain jurisdiction to amend the provisions contained herein in order to establish and/or maintain the qualified status of the QDRO under the Employee Retirement Income Security Act of 1974, and to effectuate the original intent of the parties. The court shall also retain jurisdiction to enter such further orders that are just, equitable, and necessary to enforce, secure, and sustain the benefits awarded to the Plaintiff in the event that the Defendant and/or the Plan Administrator fail to comply with any or all of the provisions contained herein. Such further orders may also include, but not limited to, *nunc pro tunc* orders or orders that recharacterize the benefits awarded under the Plan to apply to benefits earned by the Defendant under another plan.

11. Actions by Defendant: The Defendant shall not take any actions, affirmative or otherwise, that can circumvent the terms and provisions of the QDRO or that could diminish or extinguish the rights and entitlements of the Plaintiff as set forth herein. Should the Defendant take any action or inaction to the detriment of the Plaintiff, the Defendant shall be required to make sufficient payments directly to the Plaintiff to the extent necessary to neutralize the effects of his or her actions or inactions and to the extent of the Plaintiff's full entitlements hereunder.