

## Model Qualified Domestic Relations Order (QDRO)

**Note:** The sample language contained in the Model QDRO should not be construed as the only acceptable form. It may not be appropriate in a specific case and should be reviewed with counsel prior to its use. In addition, please note that the Model QDRO is not intended to be used as a fill-in form. It is to be used as a reference to draft an Order that pertains to your particular situation.

[Name of Firm]

BY: [Name of Attorney]

ATTORNEY FOR: [Petitioner/Respondent]

[Address of Firm]

[Phone Number of Firm]

[Fax Number of Firm]

.....  
[Name of Petitioner]

: IN THE [COURT]  
: OF [COUNTY, STATE]

Petitioner,

v.

[Name of Respondent]

: Civil No.

Respondent.

This Order is intended to be a qualified domestic relations order ("QDRO"), as defined in Section 206(d) of the Employee Retirement Income Security Act of 1974 ("ERISA") and Section 414(p) of the Internal Revenue Code of 1986 ("Code"). This QDRO is granted in accordance with [specify applicable state domestic relations law citations], which relate to marital property rights, child support, and/or spousal support between spouses and former spouses in matrimonial actions.

### SECTION 1. DEFINITIONS

(a) "Participant" shall hereafter mean \_\_\_\_\_.  
The Participant's last known address is \_\_\_\_\_.  
The Participant has a date of birth of \_\_\_\_\_ and a Social Security Number of \_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_.

(b) "Alternate Payee" shall hereafter mean \_\_\_\_\_.  
The Alternate Payee's last known address is \_\_\_\_\_.  
The Alternate Payee has a date of birth of \_\_\_\_\_ and a Social Security Number of \_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_.

The Alternate Payee is the [spouse / former spouse / child / other dependent] of the Participant.

**Note:** Social Security Numbers and Dates of Birth may be provided under separate cover.

- (c) "Beneficiary" shall hereafter mean such person named by the Alternate Payee on the applicable designation form.
- (d) "Account Balance" shall hereafter mean the vested portion of the amount held by the Plan in the Participant's account as of the date specified in Section 3.
- (e) "Plan" shall hereafter mean the [Insert Plan Name which is stated in the Plan's QDRO Procedures] (the "Plan"). Further, any successor plan to the Plan shall also be subject to the terms of this Order.
- (f) "Trustee" shall hereafter mean the Vanguard Fiduciary Trust Company or any successor trustee duly appointed by the plan administrator for the Plan.

(g) "Legal Representative" shall hereafter mean such person who has been named as the legal guardian for the Alternate Payee and to whom the Alternate Payee's benefit shall be directed.

## SECTION 2. DATE OF MARRIAGE

The Participant and the Alternate Payee were married on \_\_\_\_\_, \_\_\_\_\_, and were [separated / divorced] on \_\_\_\_\_, \_\_\_\_\_.

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

**[Alternate Sample 1]** The Alternate Payee's interest in the Plan shall be [\$ \_\_\_\_\_] of the Participant's Account Balance as of [specify Valuation Date]. Such interest of the Alternate Payee **[SPECIFY ONE: shall / shall not]** be subject to earnings and losses subsequent to [insert date specified above].

**[Alternate Sample 2]** The Alternate Payee's interest the Plan shall be [ \_\_\_\_\_ %] of the Participant's Account Balance as of [specify Valuation Date], **[SPECIFY ONE: including / excluding]** the value of any outstanding loan balance as of such date. Such interest of the Alternate Payee **[SPECIFY ONE: shall / shall not]** be adjusted for earnings and losses subsequent to [insert date specified above].

**[Alternate Sample for Child or Non-Spouse as Alternate Payee]** The Alternate Payee's interest in the Plan shall be [\$ \_\_\_\_\_ or \_\_\_\_\_ %] of the Participant's Account Balance as of [specify Valuation Date], **[SPECIFY ONE: including / excluding]** the value of any outstanding loan balance as of such date, and **[Specify One: net of / gross of]** any applicable Federal income tax withholding requirements. Such interest of the Alternate Payee **[SPECIFY ONE: shall / shall not]** be subject to earnings and losses subsequent to [insert date specified above].

**Note:** Unless the Order specifically provides otherwise, the Alternate Payee's award shall be adjusted for earnings and losses subsequent to the Valuation Date.

**Note:** If an Alternate Payee is awarded earnings and losses on their assigned portion, Vanguard will run a calculation which looks at how the Participant's funds were invested on the valuation date stated in the Order. The calculation then determines the "market performance" on the Alternate Payee's awarded interest by tracking the funds in which the monies are invested, including any fund exchanges, from the valuation date through the date that the Alternate Payee's separate account is established under the Plan. As such, the Alternate Payee will then receive the appropriate market gains or losses on their awarded amount.

**Note:** Any contributions that are made to the Plan after the specified valuation date are not included in the earnings and loss calculation. The calculation only looks at the portion of the account balance that has been awarded to the Alternate Payee.

**Note:** Included: means that the Participant's account balance on the Valuation Date is not reduced by the value of any outstanding loan(s) prior to calculating the split amount

Excluded: means that the Participant's account balance on the Valuation Date is reduced by the value of any outstanding loan(s) prior to calculating the split amount

**Note:** The Alternate Payee may not receive an award that is greater than the value of the Participant's vested account balance, less the value of any outstanding loan balance, as of the Valuation Date.

**Note:** The maximum amount that can be assigned to an Alternate Payee under the Plan is limited to the vested portion of the Participant's account at the time that the Alternate Payee's account is established (the "segregation date"). If a Participant's account balance is not fully vested as of the Valuation Date specified in the Order (i.e., the effective date of the Alternate Payee's interest), then the Order must specify whether the Alternate Payee's interest shall be calculated based on the vested portion on the Valuation Date or the

vested portion as of the segregation date. If however, an Order purports to assign the Alternate Payee a value that is greater than the Participant's vested account balance as of the segregation date, then the Order will be returned to the Interested Parties as one that is not able to be administered.

**Note:** If the Alternate Payee's assignment is for a flat dollar amount (or percentage) without the application of earnings and losses, then the following provision should also be included in the Order: "If the total amount assigned to the Alternate Payee in the Order is not immediately available for distribution due to unvested balances, outstanding loans, or investment losses, then the Alternate Payee shall receive 100% of the Participant's account balance as of the date of distribution in lieu of the aforementioned assignment."

**Note:** All investment funds assigned to the Alternate Payee will be calculated on a pro rata basis, unless specifically indicated otherwise in the Order.

#### **SECTION 4. LOANS**

The Participant's remaining Account Balance shall contain the entire loan account, if any, including any repayments or defaults, and shall remain as the Participant's separate property with responsibility for all loan repayments resting with the Participant.

#### **SECTION 5. FORM AND TIMING OF PAYMENT TO ALTERNATE PAYEE**

The Alternate Payee's interest in the Plan, as defined in Section 3, shall be paid as soon as practicable after the Order has been determined to be qualified, as elected by the Alternate Payee. Such payment may be made in the forms elected by the Alternate Payee, subject to the distribution provisions of the Plan.

#### **SECTION 6. DEATH OF PARTICIPANT**

The Alternate Payee's entitlement to any distribution of benefits from the Plan pursuant to this Order shall not be affected in any manner by the Participant's death.

#### **SECTION 7. DEATH OF ALTERNATE PAYEE**

In the event the Alternate Payee dies prior to receipt of distribution from the Plan, the Alternate Payee's benefits shall be distributed to the Alternate Payee's designated Beneficiary. Should there be no Beneficiary on record, the benefits shall be distributed to the estate of the Alternate Payee.

#### **SECTION 8. MISCELLANEOUS**

- (a) The Plan provides that the reasonable expenses incurred in the determination of a DRO shall be paid equally from the accounts (to which the DRO relates) of the Participant and Alternate Payee seeking the determination. The expense incurred in the determination of a DRO shall be a one-time fee of \$500.

The Participant's portion of such fee shall be deducted from the Participant's account upon receipt of the first initial DRO received by QDS, whether proposed or certified. The Alternate Payee's portion of the fee will be deducted once the DRO has been determined to qualify and the Alternate Payee's awarded interest transferred into a separate account under his/her name.

**Note:** The above-referenced fee assessment method is the default practice where the DRO is silent on the fee assessment method. The parties may submit a DRO that provides for the fee to be deducted solely from the account of the Participant, solely from the Alternate Payee's account, or any other allocation method provided by the parties.

**Note:** In the event the DRO provides that the Alternate Payee is required to pay all or a portion of the fee, the Participant's account will be billed for any remaining QDRO fee balance if the Alternate Payee is not required to pay their portion of the fee [i.e. - parties decide to rescind the QDRO, or the parties fail to submit a QDRO].

**In the event the affected Participant's current available account balance (less any outstanding loan balances) is less than \$1,000.00, the fee charged for determination services shall be 10% of the Participant's account balance.**

**In the event the DRO received is for child support (and names a child as the Alternate Payee), the fee will be charged solely to the account of the Participant.**

- (b) A separate account shall be established for the benefits due the Alternate Payee.
- (c) The Alternate Payee, if a former spouse, shall not be treated as the surviving spouse of the Participant for any purposes under the Plan.
- (d) The Alternate Payee's interest awarded pursuant to this Order shall be the sole and exclusive property of the Alternate Payee.
- (e) The Participant's remaining interest in the Plan shall be the sole and exclusive property of the Participant.
- (f) This Order does not require the Plan to provide any type or form of benefit, or any option, not otherwise provided for under the Plan.
- (g) This Order does not require the Plan to provide benefits to the Alternate Payee which are required to be paid to another alternate payee under another Order previously determined to be a QDRO.
- (h) This Order does not provide increased benefits to the Alternate Payee that are not otherwise available under the Plan.
- (i) The spousal Alternate Payee is required to report any retirement benefits received pursuant to this Order on all appropriate income tax returns.
- (j) Should the Participant receive any retirement benefits under the Plan which are rightfully owed to the Alternate Payee, the Participant is designated as constructive trustee and must pay such retirement benefits to the Alternate Payee within three days after receipt.
- (k) This Order shall be governed by the rules of the Plan and, in the event of a conflict between the documents, the terms of the Plan shall prevail.
- (l) This Order shall become effective immediately and shall remain in effect until further Order of this Court.
- (m) The Participant shall have the responsibility to serve a copy of this Order on the plan administrator of the Plan.

**SECTION 9. RESERVATION OF JURISDICTION**

This Court reserves jurisdiction to amend this Order for the purpose of establishing or maintaining its qualification as a QDRO, so long as the amendment does not require the Plan to provide any type or form of benefit not otherwise available under the Plan.

IT IS SO ORDERED:

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE

The certified Order should be forwarded to the below address for approval:

**USPS**

The Vanguard Group  
Attn: QDRO Determination Services  
PO Box 982902  
El Paso, TX 79998-2902

**Overnight**

The Vanguard Group  
Attn: QDRO Determination Services  
5951 Lockett Court, Suite A2  
El Paso, TX 79932