

Model Qualified Domestic Relations Order (QDRO)

Deloitte Profit Sharing Plan

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 Deloitte Profit Sharing Plan (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 administrator of 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].

[Alternate Sample for Marital Periods where multiple sources of assets are involved] In the event the parties are awarding the Alternate Payee with a portion of what accrued between the date of marriage and the date of divorce and the Participant had balances in both the Deloitte 401(k) Plan ("prior plan") and the Deloitte Profit Sharing Plan ("current plan") however the prior plan assets were later merged into the current plan on September 11, 2013, the Order will need to clearly address whether the sources to be divided include (a) all current plan sources (i.e., both 401(k) and profit sharing) (b) only 401(k) sources, or (c) only profit sharing sources. The following examples provide suggested language to draft the Order, depending on the intentions of the parties involved:

If the parties wish to split all plan balances, we recommend using the following suggested language:

- (a) **[The parties wish to assign the Alternate Payee a portion of the Participant's entire plan benefit, which includes both 401(k) and profit sharing plan sources:]**

The Alternate Payee's interest in the Plan shall be [_____ %] of the Participant's vested Account Balance attributable to both 401(k) and profit sharing account balances accrued between [specify date, e.g. the date of marriage] and [specify date, e.g. the date of divorce], **[SPECIFY ONE: including / excluding]** the value of any outstanding 401(k) loan balance as of the latter date. The Alternate Payee's interest **[SPECIFY ONE: shall / shall not]** be subject to earnings and losses subsequent to the latter date.

If, instead, the parties wish to split only a portion of the plan balances for a specific reason, we recommend using one of the following suggested examples:

(b) [Parties wish to assign the Alternate Payee a portion of the Participant's 401(k) sources, ONLY:]

The Alternate Payee's interest in the Plan shall be [_____]% of the Participant's vested Account Balance attributable to 401(k) balances accrued between [specify date, e.g. the date of marriage] and [specify date, e.g. the date of divorce], [SPECIFY ONE: including / excluding] the value of any outstanding 401(k) loan balance as of the latter date. The portion of the Participant's vested Account Balance attributable to profit sharing balances is not subject to this Order. The Alternate Payee's interest [SPECIFY ONE: shall / shall not] be subject to earnings and losses subsequent to the latter date.

(c) [Parties wish to assign the Alternate Payee a portion of the Participant's profit sharing sources, ONLY:]

The Alternate Payee's interest in the Plan shall be [_____]% of the Participant's vested Account Balance attributable to profit sharing balances accrued between [specify date, e.g., the date of marriage] and [specify date, e.g., the date of divorce]. The portion of the Participant's vested Account Balance attributable to 401(k) balances is not subject to this Order. The Alternate Payee's interest [SPECIFY ONE: shall / shall not] be subject to earnings and losses subsequent to the latter date.

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. If the QDRO has not stated otherwise, the benefit payable to the Alternate Payee will be invested in the age-appropriate Vanguard Target Retirement Trust Fund based on the Alternate Payee's age in accordance with the Plan's default provisions.

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 segregated as soon as administratively practicable after the Order has been determined to be qualified, as elected by the Alternate Payee. The Alternate Payee's segregated account will be invested in accordance with the Plan's default investment provisions until the Alternate Payee makes a new investment election. In the event that the Alternate Payee elects an immediate distribution, payment may be made in the forms elected by the Alternate Payee, subject to the distribution provisions of the Plan. In the event that the Alternate Payee does not elect an immediate distribution, the Alternate Payee's account shall continue to be invested subject to the provisions of the Plan. In addition to making investment elections, the Alternate Payee shall be entitled to all of the other rights and election privileges that are afforded to Plan beneficiaries, including, but not limited to the rules regarding the right to designate a beneficiary for death benefit purposes, but only to the extent permitted under the terms of the Plan. Notwithstanding the above, the Alternate Payee will not be permitted to take loans and/or hardship withdrawals from 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 determined in accordance with the provisions of the Plan.

SECTION 8. MISCELLANEOUS

- (a) The Plan(s) 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 \$350, per affected Plan.

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 their 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: 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 administrator for the Plan.
- (n) The Participant or Alternate Payee may designate another address for the purpose of receiving notice and communications pursuant to this Order by giving written notice thereof to the Plan Administrator and the other party at the addresses then currently in effect.

- (o) The parties certify that they are not aware of any prior Orders or QDROs that purport to dispose of the Participant's benefits under the Plan.
- (p) All payments made pursuant to this Order shall be conditioned on the certification by the Alternate Payee or the Participant to the Plan Administrator of such information as the Plan Administrator may reasonably require from such parties to make the necessary calculation and payment of any benefit within no more than thirty (30) days of request of the Plan Administrator.

In addition, the parties shall execute any other documents deemed necessary by either the Court or Plan Administrator to effectuate the purposes of this Order.

- (q) For purposes of Sections 402 and 72 of the Code, an Alternate Payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payment made to the Alternate Payee under the terms of the Order, and, as such, will be required to pay the appropriate federal, state, and local income taxes on such distribution.
- (r) Any changes in Plan Administrator, Plan Sponsor, or name of Plan shall not affect the Alternate Payee's rights granted under this Order.
- (s) In the event the Plan is terminated prior to the distribution of the Alternate Payee's interest, the remaining interest shall be distributed in accordance with the terms of the Order, unless otherwise required by the Plan's termination provisions or applicable law.
- (t) This Order shall be interpreted and administered in conformity with ERISA and the Code. In the event that ERISA or the Code is otherwise changed or modified, the parties hereto shall take such steps as are necessary to amend this Order to comply with any such changes, amendments or modifications such that the Order retains its status as a QDRO.
- (u) No provision of this Order shall be understood to cause total payments from the Plan in respect of the Participant and the Alternate Payee to exceed the maximum benefit payment limitations of Section 415 of the Code.
- (v) The Plan Administrator has full discretionary and final authority to implement and interpret this Order, including any uncertain terms, in order to comply with the terms of the Plan and all legal requirements.

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. No change to this Order shall be effective until the Plan Administrator determines that the change does not adversely affect the Order's status as a QDRO.

A certified copy of this Order shall be served upon the Plan Administrator forth-with by counsel for the plaintiff, and this Order shall take effect as soon as administratively possible after the later of its entry by the Court or the Plan Administrator's determination that this Order constitutes a QDRO. This Order shall then remain in effect until further Order of this Court.

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