|  |  |
| --- | --- |
| {% if document == “North Dakota” %}STATE OF NORTH DAKOTA  COUNTY OF {{ county | title\_case }} | IN DISTRICT COURT  {{ judicial\_district | upper }} JUDICIAL DISTRICT |

|  |  |
| --- | --- |
| In re Marriage of  {{ petitioner.name | upper }},  Petitioner,  vs.  {{ respondent.name | upper }},  Respondent | {# {{ document\_title | upper }} #}Qualified Domestic Relations Order RE: {{ plan\_name | upper }}  Case No.: {{ case\_number }} |

{% endif %}{# NORTHDAKOTA #}IT IS HEREBY ORDERED AS FOLLOWS:

**1. Effect of This Order as a Qualified Domestic Relations Order:** This Order establishes and recognizes an Alternate Payee's right to receive a portion of the Participant's benefits payable under an employer-sponsored defined contribution plan qualified under Section 401 of the Internal Revenue Code (the "Code") and the Employee Retirement Income Security Act of 1974 ("ERISA"). It is intended to act as a Qualified Domestic Relations Order ("QDRO") under ERISA and Code Section 414(p).

**2. Participant Information:** The Participant in the plan has the following name, last known address, social security number, and birthdate:

Name: {{ participant.name }}

Address: {{ participant.address.on\_one\_line() }}

Social Security Number: *PROVIDED TO PLAN VIA ADDENDUM*

Birth Date: *PROVIDED TO PLAN VIA ADDENDUM*

**3. Alternate Payee Information:** The Alternate Payee, who is the former spouse of the participant, has the following last known address, social security number, and birthdate:

Name: {% if who\_is\_participant == ‘Petitioner-Plaintiff’ %}{{ respondent.name }}{% else %}{{ petitioner.name }}{% endif %}

Address: {{ alternate\_payee.address.on\_one\_line() }}

Social Security Number: *PROVIDED TO PLAN VIA ADDENDUM*

Birth Date: *PROVIDED TO PLAN VIA ADDENDUM*

The Alternate Payee shall notify the Plan Administrator in writing of any changes to the Alternate Payee's mailing address following the entry of this Order.

**4. Plan Name:** This Order applies to the {{ plan\_name }} Plan (the "Plan"). This Order also applies to any successor plan to the Plan or other plans that are liable for providing the Participant's benefits. This Order further applies to the Participant's benefits accrued under a predecessor plan of the employer or any other defined contribution plan sponsored by the company, where obligation for such benefits has been transferred to the Plan. Changes in Plan Administrator, Plan Sponsor, or Plan name will not impact Alternate Payee's rights under this Order.

To the extent the name of the Plan differs from the name cited in the Judgment it may be attributed to a merger, acquisition, or name change of the entity offering the plan; incorrect nomenclature used in the Judgment; or, a missed retirement account asset omitted in the Judgment.

**5. State Domestic Relations Law:** This Order is being made in accordance with the authority provided by the State of {{ document }}'s applicable domestic relations statutes.

**6. Marital Property Rights:** The purpose of this Order is to grant the Alternate Payee rights to marital property and/or spousal support as a result of the Order of Divorce between Participant and Alternate Payee.

**7. Amount of Alternate Payee's Benefit:{% if awarding == “Percentage To The Alternate Payee” %}**

(i) Amount of Assignment: This Order awards the Alternate Payee an amount equal to {{ nice\_number(percentage, use\_word=True) | upper }} percent ({{ nice\_number(percentage, use\_word=False) }}%) of the Participant's Total Account Balance accumulated under the Plan as of {{ format\_date(assignment\_date, format='MM/dd/yyyy') }} {# ("Assignment Date") #} or the closest Plan valuation date to that date.

(ii) Investment Earnings: The Alternate Payee's share of the benefits, as described above, will also include any interest and investment gains or losses from the "Assignment Date" until the date of total distribution.

(iii) Allocation of Benefits: The Alternate Payee's share of the benefits will be divided "pro-rata" among all of the Participant's accounts and investment funds managed on Participant’s behalf under the Plan.

(iv) Impact of Outstanding Loan Balance: If the Participant has an outstanding loan balance as of the assignment date specified above, then the percentage assigned to the Alternate Payee will be determined "after" the loan amount is deducted from the Participant's total account balance. (As an example, if the Participant's total account balance is $50,000 and $10,000 of that is an outstanding Plan loan, then the Alternate Payee's share of the benefits will be 50% of ($50,000 minus $10,000), or $20,000.) The Participant is solely responsible for repaying any outstanding Participant loans from and after the date of this Order.

(v) Participant's Vesting Status: If the Participant is not 100% vested in the Total Account Balance as of the "Assignment Date" above, this does not affect the Alternate Payee's rights to the assigned share of the Total Account Balance. Instead, as of the Assignment Date, the Alternate Payee's vesting status shall be identical to the Participant's, and it shall continue to "mirror" the Participant's vesting status as it increases until both have 100% vesting in their respective shares of the Total Account Balance set forth herein. In addition, if the Participant terminates employment before becoming 100% vested in such Total Account Balance, the Alternate Payee's "final" vesting status will be the same as the Participant's. This paragraph is intended to treat each party's share of the Total Account Balance the same for vesting under the Plan. The Court understands that this paragraph may require the Alternate Payee to wait until full vesting to receive a full Plan distribution.**{% elif awarding == “Fixed Dollar Amount With Gains Or Losses” %}**

(i) Amount of Assignment: This Order assigns to Alternate Payee a portion of Participant's Total Account Balance under the Plan in the amount of {{ nice\_number(dollar, use\_word=True) | upper }} Dollars (${{ nice\_number(dollar, use\_word=False) }}), effective as of {{ format\_date(assignment\_date, format='MM/dd/yyyy') }}{# ("Assignment Date") #} or the closest Plan valuation date thereto. In addition, from the "Assignment Date" until the date of final distribution, the Alternate Payee’s assigned share will be adjusted for any interest and investment earnings or losses attributable to that share of the benefits. Important Note: The Alternate Payee's separate account will continue to experience market fluctuations based on how the investments perform until the funds are finally withdrawn from the Plan. The Alternate Payee understands that the final amount payable from the Plan to the Alternate Payee as a result of this Order could be more or less than the dollar amount listed above.

(ii) Insufficient Assets: If there are not enough assets in the Participant's accounts on the date the Plan Administrator segregates the Alternate Payee's assigned share of the benefits as described above to cover the award of benefits to the Alternate Payee, then this Order shall be interpreted as an award of One Hundred Percent (100%) of the Participant's total account balance under the Plan as of such segregation date.

(iii) Allocation of Benefits: The Alternate Payee's share of the benefits will be divided "pro-rata" among all of the Participant's accounts and investment funds managed on Participant’s behalf under the Plan.

(iv) Participant’s Vesting Status: If the Participant is not 100% vested in the Total Account Balance as of the "Assignment Date" above, this does not affect the Alternate Payee's rights to the assigned share of the Total Account Balance. Instead, as of the Assignment Date, the Alternate Payee's vesting status shall be identical to the Participant's, and it shall continue to "mirror" the Participant's vesting status as it increases until both have 100% vesting in their respective shares of the Total Account Balance set forth herein. In addition, if the Participant terminates employment before becoming 100% vested in such Total Account Balance, the Alternate Payee's "final" vesting status will be the same as the Participant's. This paragraph is intended to treat each party's share of the Total Account Balance the same for vesting under the Plan. The Court understands that this paragraph may require the Alternate Payee to wait until full vesting to receive a full Plan distribution.**{% elif awarding == “Fixed Dollar Amount With No Gains Or Losses” %}**

(i) Amount of Assignment: This Order assigns to Alternate Payee a portion of Participant's Total Account Balance under the Plan in an amount equal to {{ nice\_number(dollar, use\_word=True) | upper }} Dollars (${{ nice\_number(dollar, use\_word=False) }}), effective as of the date the Plan Administrator actually segregates the specified funds from the Participant’s accounts (the “Segregation Date”).

(ii) No Interest or Investment Earnings or Losses: The Alternate Payee's assigned share of the benefits shall NOT accrue interest or investment earnings or losses. All investment earnings or losses that occur between the assignment date and the distribution of the Alternate Payee's assigned share shall remain the property of the Participant and shall be reflected in the Participant's remaining account balance.

(iii) Allocation of Benefits: The Alternate Payee's share of the benefits will be divided "pro-rata" among all of the Participant's accounts and investment funds managed on Participant’s behalf under the Plan..

(iv) QDRO Processing Fee: The Alternate Payee's assigned share of benefits shall be reduced by one-half of any QDRO Processing Fee imposed by the Plan Administrator for the review and administration of this Order.**{% elif awarding == “Percentage, But Excluding Pre-Marital Balance” %}**

(i) Amount of Assignment: This Order gives the Alternate Payee a portion of the Participant's Total Account Balance under the Plan that was earned during the marriage. The Alternate Payee is not entitled to any of the Participant's "pre-marital" account balance, if any. Accordingly, the Alternate Payee is assigned an amount equal to {{ nice\_number(percentage, use\_word=True) | upper }} Percent ({{ nice\_number(percentage, use\_word=False) }}%) of [(a) MINUS (b)] below, where:

(a) equals the Participant's Total Account Balance accumulated under the Plan as of {{ format\_date(assignment\_date, format='MM/dd/yyyy') }}{# ("Assignment Date") #} (or the closest valuation date thereto); and

(b) equals the Participant's Total Account Balance accumulated under the Plan as of {{ format\_date(date\_of\_marriage, format='MM/dd/yyyy') }}{# [date of marriage] #} (or the closest valuation date thereto).

(ii) Investment Earnings: The Alternate Payee's share of the benefits, as set out above, will also include any interest and investment gains or losses from {{ format\_date(assignment\_date, format='MM/dd/yyyy') }}{# ("Assignment Date") #} (or the closest valuation date thereto) until the date of total distribution.

(iii) Impact of Outstanding Loan Balance: In the event the Participant has an outstanding loan balance as of {{ format\_date(assignment\_date, format='MM/dd/yyyy') }}{# ("Assignment Date") #}, then the Alternate Payee's ({{ nice\_number(percentage, use\_word=False) }}%) share is to be calculated “after” the loan amount is subtracted from the difference of (a) minus (b). (As an example, if the Participant's total account balance is $50,000 and $10,000 of that is an outstanding Plan loan, then the Alternate Payee's share of the benefits will be 50% of ($50,000 minus $10,000), or $20,000.) The Participant is solely responsible for repaying any outstanding Participant loans from and after the date of this Order.

(iv) Allocation of Benefits: The Alternate Payee's share of the benefits will be divided "pro-rata" among all of the Participant's accounts and investment funds managed on Participant’s behalf under the Plan.**{% elif awarding == “Percentage, But Excluding Pre-Marital Balance With Passive Growth” %}**

(i) Amount of Assignment: This Order gives the Alternate Payee a portion of the Participant's Total Account Balance under the Plan that was earned during the marriage. The Alternate Payee is not entitled to any of the Participant's "pre-marital" account balance, if any. Accordingly, the Alternate Payee is assigned an amount equal to {{ nice\_number(percentage, use\_word=True) | upper }} Percent ({{ nice\_number(percentage, use\_word=False) }}%) of [(a) MINUS (b)] below, where:

(a) equals the Participant's Total Account Balance accumulated under the Plan as of {{ format\_date(assignment\_date, format='MM/dd/yyyy') }} [assignment date] (or the closest valuation date thereto); and

(b) equals the Participant's Total Account Balance accumulated under the Plan as of {{ date\_of\_marriage }} [date of marriage] (or the closest valuation date thereto) and INCLUDING any and all investment earnings/losses that are attributable to such “pre-marital” account balance which have accrued during the marriage (from {{ format\_date(date\_of\_marriage, format='MM/dd/yyyy') }}{# [date of marriage] #} to {{ format\_date(assignment\_date, format='MM/dd/yyyy') }}{# ("Assignment Date") #}).

(ii) Investment Earnings: The Alternate Payee's share of the benefits, as set out above, will also include any interest and investment gains or losses from {{ format\_date(assignment\_date, format='MM/dd/yyyy') }}{# ("Assignment Date") #} (or the closest valuation date thereto) until the date of total distribution.

(iii) Impact of Outstanding Loan Balance: In the event the Participant has an outstanding loan balance as of {{ format\_date(assignment\_date, format='MM/dd/yyyy') }}{# ("Assignment Date") #}, then the Alternate Payee's ({{ nice\_number(percentage, use\_word=False) }})% share is to be calculated “after” the loan amount is subtracted from the difference of (a) minus (b). (As an example, if the Participant's total account balance is $50,000 and $10,000 of that is an outstanding Plan loan, then the Alternate Payee's share of the benefits will be 50% of ($50,000 minus $10,000), or $20,000.) The Participant is solely responsible for repaying any outstanding Participant loans from and after the date of this Order.

(iv) Allocation of Benefits: The Alternate Payee's share of the benefits will be divided "pro-rata" among all of the Participant's accounts and investment funds managed on Participant’s behalf under the Plan.**{% elif awarding == “Percentage Of An Employee Stock Ownership Plan (ESOP)” %}**

Amount of Assignment: This Order awards the Alternate Payee an amount equal to {{ nice\_number(percentage, use\_word=True) | upper }} Percent ({{ nice\_number(percentage, use\_word=False) }}%) of the Participant's Total Account Balance accumulated under the Plan as of {{ format\_date(assignment\_date, format='MM/dd/yyyy') }}{# ("Assignment Date") #} or the closest Plan valuation date to that date.

Alternate Payee's Share Determined From All ESOP Trust Fund Account(s): For purposes of calculating the Alternate Payee's assigned share of the benefits under the ESOP, the Participant's applicable Total Account Balances shall include all amounts maintained under all of the ESOP Trust Fund accounts, including but not limited to stock accounts, dividends, stock purchases from dividends, stocks released from suspense accounts, cash accounts, subaccounts, and investment funds held under the ESOP Trust Fund.

If Plan Borrows Money to Purchase Stock: In the event the Plan has borrowed money to purchase Company stock, the Alternate Payee will also receive a pro rata share of any stock allocations made to the Participant's account based on the repayment of such loan amounts.

Post-Divorce Contributions Attributable to Periods Before Divorce: Any Plan contributions made to the Participant's account(s) after the "Assignment Date" but that are attributable to employee service, bonuses, or compensation before this date, shall also be included in the Participant's Total Account Balance.

Investment Earnings: The Alternate Payee's share of the benefits, as described above, will also include any interest and investment gains or losses from the "Assignment Date" until the date of total distribution.

Allocation of Benefits: The Alternate Payee's share of the benefits will be divided "pro-rata" among all of the Participant's accounts and investment funds managed on Participant’s behalf under the Plan.

Impact of Outstanding Loan Balance: Impact of Outstanding Loan Balance: If the Participant has an outstanding loan balance as of the assignment date specified above, then the percentage assigned to the Alternate Payee will be determined "after" the loan amount is deducted from the Participant's total account balance. (As an example, if the Participant's total account balance is $50,000 and $10,000 of that is an outstanding Plan loan, then the Alternate Payee's share of the benefits will be 50% of ($50,000 minus $10,000), or $20,000.) The Participant is solely responsible for repaying any outstanding Participant loans from and after the date of this Order.

Participant’s Vesting Status:If the Participant is not 100% vested in the Total Account Balance as of the "Assignment Date" above, this does not affect the Alternate Payee's rights to the assigned share of the Total Account Balance. Instead, as of the Assignment Date, the Alternate Payee's vesting status shall be identical to the Participant's, and it shall continue to "mirror" the Participant's vesting status as it increases until both have 100% vesting in their respective shares of the Total Account Balance set forth herein. In addition, if the Participant terminates employment before becoming 100% vested in such Total Account Balance, the Alternate Payee's "final" vesting status will be the same as the Participant's. This paragraph is intended to treat each party's share of the Total Account Balance the same for vesting under the Plan. The Court understands that this paragraph may require the Alternate Payee to wait until full vesting to receive a full Plan distribution.

Participant Prohibited from Transferring Funds to Another Defined Contribution Plan: Some employers let ESOP participants choose to move all or part of the value of their ESOP accounts directly to another defined contribution plan that the employer runs. If the Employer or plan sponsor allows such transfers, the Participant shall not be permitted to roll over any portion of the value of his ESOP funds or account balances to any other defined contribution plan sponsored by the Employer for its employees, including but not limited to a 401(k) plan.

Establishment of New Account(s): If the Alternate Payee does not choose an immediate distribution, the benefits assigned to the Alternate Payee as described above shall be separated and kept separately in Account(s) set up on the Alternate Payee's behalf and shall also be credited with any interest and investment income or losses attributable thereto from the date of separation until the date of total distribution to the Alternate Payee.**{% endif %}**

**8. Commencement Date and Form of Payment to Alternate Payee:** After the Plan Administrator approves this Order as a QDRO, the Alternate Payee may start benefits as soon as administratively feasible. Benefits will be paid out in any way that is permissible under the plan terms, including, but not limited to, a lump-sum payment. The Participant and Alternate Payee shall cooperate with the Plan Administrator by signing all forms, letters, applications, and other documents required to distribute benefits to the Alternate Payee as set forth herein.

**9. Alternate Payee's Rights and Privileges:** To the extent permitted under the provisions of the Plan, on and after the date this Order is deemed to be a Qualified Domestic Relations Order, but prior to the date the Alternate Payee receives a total distribution under the Plan, the Alternate Payee shall be entitled to all of the 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 and the right to direct the investment of Plan assets.

**10. Death of Alternate Payee:** If Alternate Payee dies before receiving the full amount of benefits called for under this Order and under the benefit option chosen by Alternate Payee, the beneficiary(ies) designated on the appropriate form provided by the Plan Administrator shall receive the remainder of any unpaid benefits under this Order. If the Alternate Payee does not have a valid beneficiary designation form on file with the Plan Administrator, the assigned benefits will devolve to their "estate" or, if not permitted, in accordance with the Plan's succession provisions.

**11. Participant's Death:** The Alternate Payee's assigned share of benefits shall not be affected by the Participant's death. However, if required by the Plan Administrator to secure the Alternate Payee's assigned share of the benefits in the event of the Participant's death, the Alternate Payee shall be treated as the surviving spouse beneficiary of the Participant for any survivor benefits payable under the Plan, but only to the extent of the Alternate Payee’s assigned interest as set forth herein.

**12. Administrative QDRO Processing Fee to Be "Equally Divided" Between Participant and Alternate Payee:** If the Plan Administrator charges a QDRO Processing Fee for their defined contribution plan QDROs, the Plan Administrator must equally divide it between the Participant and the Alternate Payee. If the Plan Administrator deducts the entire fee from the Participant's account before this Order is approved as a QDRO, one-half of such fee shall be deducted from the Alternate Payee's assigned share of benefits as set forth in herein.

**13. Savings Clause:** This Order is not intended and shall not be construed to require the Plan:

(a) to provide any type or form of benefit option not otherwise provided in accordance with the terms of the Plan;

(b) to require the Plan to offer enhanced benefits based on actuarial value; or

(c) to require the payment of any benefits to the Alternate Payee that are required to be paid to another alternate payee under a previous QDRO.

**14. Certification of Necessary Information:** All payments made pursuant to this Order shall be conditioned on the certification by the Alternate Payee and the Participant to the Plan of such information as the Plan may reasonably require from such parties.

**15. Tax Treatment of Distributions Made Under this Order:** Any Alternate Payee who is the Participant's spouse or former spouse shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of this Order and shall be required to pay the appropriate federal, state, or local income taxes on such distribution.

If the Alternate Payee's assigned share of the benefit includes units or shares of stock, the Plan Administrator must maintain an equivalent tax basis for the Alternate Payee when segregating the Participant's account.

**16. Inadvertent Payment(s):** If the Plan Trustee accidentally pays the Participant benefits assigned to the Alternate Payee under this Order, the Participant shall immediately return such payments to the Plan Administrator. The Participant shall hold such inadvertent payments in "constructive trust" for the Alternate Payee until they are returned to the Plan Administrator. The Plan Administrator may issue an amended Form 1099 to the Participant after receiving the repayment to avoid income taxes on the Alternate Payee's share of the benefits.   
  
Similarly, if the Plan Trustee accidentally pays the Alternate Payee benefits assigned to the Participant under this Order, the Alternate Payee shall immediately return such payments to the Plan Administrator. The Alternate Payee shall hold such inadvertent payments in "constructive trust" for the Participant until they are returned to the Plan Administrator. The Plan Administrator may issue an amended Form 1099 to the Alternate Payee after receiving the repayment to avoid income taxes on the Participant’'s share of the benefits.

**17. Continued Jurisdiction: The Court shall retain jurisdiction to establish and/or maintain this Order's QDRO status under ERISA and to carry out the parties' original intent as stipulated herein.** If the Participant and/or Plan Administrator fail to comply with any or all of the provisions herein, the Court shall retain jurisdiction to enter further orders that are just, equitable, and necessary to enforce, secure, and sustain the Alternate Payee's benefits. Further orders may include, but are not limited to, nunc pro tunc orders or orders that "recharacterize" the benefits awarded under this Plan to apply to benefits earned by the Participant under another plan, or the issuance or modification of support orders, as necessary to carry out the intentions and terms of this Order.

The Court's reservation of jurisdiction shall be liberally construed to effect the provisions of this Order and resolve any disputes that may arise among the parties and/or between the parties and the Plan Administrator of the Plan regarding benefit payments or any other aspect of this Order.

**18. Plan Termination:** In the event of a Plan termination, the Alternate Payee shall be entitled to receive the assigned portion of Participant's benefits as stipulated herein in accordance with the Plan's termination provisions for participants and beneficiaries.

**19. Actions by the Participant and/or the Participant's Heirs or Assigns:** The Participant and/or Participant's heirs or assigns must not take any actions to circumvent this QDRO or reduce or eliminate the Alternate Payee's benefit entitlements. If the Participant and/or Participant's heirs or assigns take any such action or inaction to the detriment of the Alternate Payee, the Court may order them to make sufficient payments directly to the Alternate Payee to neutralize the effects of those actions or inactions and to the extent of their full entitlements set forth herein. This provision applies to situations where the Court believes the Participant and/or Participant's heirs or assigns intentionally reduced or diminished the Alternate Payee's benefit entitlements. The Court shall reserve jurisdiction to determine whether the Participant's and/or Participant's heirs' or assigns' actions or inactions were intended to undermine and diminish the Alternate Payee's benefit entitlements.

**20. Alternate Payee Responsible for Initiating Benefits:** Once the QDRO is approved, the alternate payee is solely responsible for requesting, completing, and submitting the appropriate distribution election forms and/or beneficiary designation forms from the plan administrator

**21. Continued Cooperation of the Parties:** The Participant and Alternate Payee shall cooperate with each other and with the Plan Administrator and/or each party's legal counsel by providing the requesting party with any information, forms, statements, and documents necessary to carry out the intentions of this Order and establish and maintain the qualified status of the QDRO (or amended QDRO as applicable), including, without limitation, execution of limited authorization/release forms, plan contact information, benefit statements, election forms, summary plan descriptions (“SPDs”), any other pertinent information the parties might readily obtain.

**22. Correcting, Suspending, or Terminating Payments:** The Plan will retain any rights it may have under its terms to correct, suspend, or terminate payments to the Alternate Payee and/or Participant, provided that the affected party may contest such correction, suspension, or termination through any administrative remedies available under the Plan. Payments made by the Plan under the QDRO will not affect the Plan's legal right to seek recoupment or offset for overpayment.

**23. Plan Terms:** If there is any inconsistency between the terms of this Order and the terms of the Plan, the Plan terms will control.

**24.** **Acceptable Signatures:** Facsimile and electronic signatures shall be accepted in lieu of the originals, this stipulation can be signed in multiple identical counterparts, and each signature will be deemed an original, without all signatures having to appear on the same signature page.

**25.** **Participant Prohibited From Affecting Portfolio:** To the extent permitted by the Plan, the Participant shall be prohibited from borrowing against the plan or making any changes to the current investment mix portfolio under all accounts maintained on behalf of the Participant under the Plan, prior to distribution and/or the establishment of new account(s) in the name of the Alternate Payee.

CONSENTED AS TO FORM AND SUBSTANCE:{% if document == “North Dakota” %}

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

{{ petitioner.name | upper }}, Petitioner

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

{{ respondent.name | upper }}, Respondent

IT IS SO ORDERED.

Dated:

JUDGE PRESIDING

{% endif %}{# NORTHDAKOTA #}