

**U.A. LOCAL NO. 393 DEFINED BENEFIT PENSION PLAN**  
**U.A. LOCAL NO. 393 DEFINED CONTRIBUTION PLAN**

c/o BeneSys Administrators  
6293 San Ignacio Avenue  
San Jose, CA 95119

(408) 588-3751

Rules and Procedures for Administering  
Qualified Domestic Relations Orders (QDRO's)

Federal law provides specific rules under which pension benefits can be paid to an “alternate payee” (a spouse, former spouse, child or other dependent) under a state domestic relations order. A domestic relations order is a judgment, decree, or order issued pursuant to a State domestic relations law that relates to the provision of child support, alimony payments, or marital property rights and that creates or recognizes the existence of an alternate payee’s right to receive all or a portion of the benefits payable to a participant under a plan. If the domestic relations order meets the requirements under Federal law, the pension plan can accept the order as a Qualified Domestic Relations Order (QDRO) and pay benefits to the alternate payee.

Pension plans have the authority to determine whether a particular domestic relations order is in fact a QDRO. Trustees of the U.A. Local No. 393 Defined Benefit Pension Plan and U.A. Local No. 393 Defined Contribution Plan have adopted these rules for administering QDROs. Please contact the Fund Office if you would like any additional information such as a copy of the Summary Plan Descriptions, the Plan Documents, account statements, or sample QDRO.

**A. QDRO REQUIREMENTS**

1. Required Provisions. For an order to be a QDRO it must clearly specify at least the following information:

- a. Name and last known mailing address of the participant and of each alternate payee covered by the order;
- b. Correct name of the Plans: “U.A. Local No. 393 Defined Benefit Pension Plan” and/or “U.A. Local No. 393 Defined Contribution Plan”;
- c. Alternate payee’s amount or percentage of the benefit to be paid to the alternate payee or the manner in which the amount is to be determined; and
- d. The number of payments or time period to which

the order applies.

2. Prohibited Provisions. The order will fail to be a QDRO if it does any of the following:

- a. Requires the Plans to provide any type or form of benefit, or any payment option, not otherwise provided under the Plans;
- b. Requires the Plans to provide increased benefits;
- c. Requires the payment of benefits to an alternate payee that are required to be paid to another alternate payee under a prior QDRO; or
- d. Requires the Plans to provide benefits to the alternate payee in the form of a Joint and Survivor Annuity for the lives of the alternate payee and a subsequent spouse.

## **B. ADMINISTRATIVE HOLD ON PARTICIPANT'S BENEFITS**

Upon receipt of written notice from a participant, spouse, former spouse or attorney of a dissolution of marriage, or otherwise stating that there is a competing claim on the participant's benefits, the Plan(s) may place an administrative hold on the participant's account and decline to make any benefit distributions without further clarification. If a participant demands payment of his or her benefits because no QDRO is in effect, the Plan(s) shall give the proposed alternate payee a reasonable period to seek a court order preventing such distribution. The Trustees and their delegates have absolute discretion to delay paying benefits when either Plan is on notice of a dissolution action or similar proceeding.

It is the responsibility of the parties to keep the Plan(s) informed about the status of their property settlement and to resolve the matter without undue delay. Either Plan may terminate an administrative hold and pay benefits under normal plan rules if the parties fail to submit a final QDRO within a reasonable time.

## **C. EMPLOYEE/SPOUSE RESPONSIBILITY TO SEND COURT ORDER TO PLANS**

Under federal law, a former spouse has no enforceable right to benefits under either of these Plans until the Plan is served with a final order signed or stamped by the judge and filed with the Court Clerk, which meets the requirements described above. The former spouse's interest is not protected merely because the Plan has been joined, or because the Plan has been given notice of the spouse's claim, or because the Plan has approved a draft order.

The Plan has no duty to investigate whether a QDRO exists. As a reminder, the pension application includes questions about marital status and about prior court orders dividing the benefits. If the employee responds that there is no such order, the Plan will not inquire further

unless it has received documents indicating that a QDRO exists.

## **D. PROCEDURE FOR HANDLING COURT ORDERS**

1. Review by Plan Administrator and Plan Counsel. The Plans review all court-approved marital property settlements and other court orders potentially affecting pension benefits to determine whether they meet the requirements in Section A for acceptance as a QDRO. The Plan Administrator, in consultation with Plan Counsel if appropriate, makes the final determination whether an order meets the applicable requirements.

2. Notices to Participant and Alternate Payee. Within a reasonable period after receipt of a domestic relations order creating rights for an alternate payee, the Plans shall notify the participant and alternate payee of receipt of the order and the Plans' procedures for determining whether the order is qualified. The Plan Administrator shall determine, within a reasonable amount of time after receipt of any such order, whether the order is a QDRO and shall notify the participant and the alternate payee of the determination. The Plan Administrator may seek the assistance of Plan Counsel related to any notices.

3. Acceptance of Order as QDRO. If the order is accepted as a QDRO, the Plans will notify the parties that the order is qualified. The alternate payee will be entitled to receive his or her share of the benefit in accordance with Plan rules. The Defined Benefit Pension Plan cannot pay benefits to an alternate payee until the participant has attained retirement age or otherwise becomes eligible for a distribution of benefits under Plan rules. The Defined Contribution Plan may make a lump sum distribution to an alternate payee prior to the employee's earliest distribution date of the benefits awarded to the alternate payee in a QDRO, provided the qualified order, and a judgment of final dissolution of marriage or a judgment of legal separation if the alternate payee is a former or legally separate spouse, has been served on the Plan.

4. Rejection of Order. If either Plan rejects the order, the rejection notice will identify the defect(s) in the order. The participant or alternate payee may correct the defects and submit a revised order, or may appeal from the rejection decision using the Plan's appeal procedure. Any appeal must be submitted within sixty (60) days after the rejection notice. If the Plan does not receive a timely appeal or a revised court order, the Plan may pay benefits to the participant in accordance with the normal Plan rules, without notice to or consent by the alternate payee.

5. Limited Purpose of Plan Review of Order. The Plans do not review marital property settlements to determine whether they are fair or complete, or whether they comply with applicable state law. It is the responsibility of the parties to the divorce action and their attorneys, not the Plans, to ensure that community assets are identified and a fair division is accomplished under state law.

When presented with a final order, the Plans look only to see whether it contains language about retirement benefits which creates or recognizes the existence of an alternate payee's right to receive benefits payable by the Plans. Where such language is found, the Plans have a legal duty to determine whether or not the order is a QDRO under federal law, and to provide the notices described above.

The Plans have no duty whatsoever with respect to a marital property settlement unless the court

order manifests an intent to divide benefits payable by the Plans. If there is no clear statement of such intent, the Plans will assume that the parties chose not to divide the benefits payable by the Plans. In such circumstances the Plans take no action and send no notices. Subsequent benefit payments to the participant will be made under the terms of the Plans, without notice to or consent by the former spouse. Examples of orders that will not trigger a notice to the former spouse or other potential alternate payee(s) are:

- a. Orders stating that the participant shall receive his or her entire account under the Plans;
- b. Orders omitting all reference to retirement benefits;
- c. Orders describing the disposition of other pension benefits without mentioning the Plans;
- d. Orders stating that there is no community property to be divided;
- e. Orders dissolving marriage without a formal property settlement.

6. Escrow for Determination Period. During any period in which the issue of whether a domestic relations order is a QDRO is being determined (by the Plan Administrator, Plan Counsel, a court or otherwise), the Plans may segregate the amounts that may be payable to the alternate payee during such period if the order is determined to be a QDRO (usually, this segregation is not necessary as the determination is made in a timely manner). The Plans have full discretion to decide if this is necessary.

If the Plan determines that the order is not a QDRO or if eighteen months (18) have expired without a determination whether the order is qualified, benefits may be paid to the participant and his or her beneficiary as provided in the Plans.

7. Trustee Discretion. The Trustees or their delegates have full discretion to determine whether either Plan should comply with a proposed or final order. For old orders entered prior to ERISA (1974) or REA (1984), the Plans may (to the extent allowed by law) accept orders that do not technically meet all of the requirements of a QDRO. The Plans, however, have total discretion in this area.

The Plans' decision to accept an order as a QDRO is not binding upon the Internal Revenue Service. The IRS may independently determine that an order previously accepted by the Plans is not a QDRO. If this occurs, payments made to an alternate payee pursuant to the order may be ineligible for favorable tax treatment.

8. Policy Prohibiting Plan Signature on Order. QDRO's shall not be signed by any Plan representative. The purpose of this policy is to avoid any suggestion that the Plans have evaluated or endorsed the division of benefits in any manner except the limited review described above.

9. Commencement of Benefits to Alternate Payee. Under the Defined Benefit Pension Plan, benefit payments to an alternate payee pursuant to a QDRO may commence at any time on

or after the earliest date on which the participant would be eligible for a distribution under the terms of the Plan, whether or not the participant elects to begin receiving benefits.

Under the Defined Contribution Plan, the Plan may make a lump sum distribution to an alternate payee, prior to the participant's earliest distribution date, of the benefits awarded to the alternate payee in a QDRO provided the order has been served on the Plan and, if the alternate payee is a former spouse or legally separated spouse, the Plan is served a notice of judgment of final dissolution of the marriage or a judgment of legal separation.

10. Designation of Spouse as Beneficiary. Under the Defined Benefit Pension Plan, for divorce before the employee's retirement, the designation of a spouse of an employee as beneficiary for a pre-retirement death benefit is automatically revoked if they divorce, unless the Plan is served with a QDRO preserving the spouse's status as beneficiary, or unless renewed in writing by the employee after the divorce. For divorce after the employee's retirement, an employee's designation of his or her spouse at the time of retirement as beneficiary for a post-retirement plan death benefit is not automatically revoked if they divorce, except as provided in a QDRO.

Under the Defined Contribution Plan, if an employee divorces his or her spouse prior to the first disbursement of benefits from his or her account, any elections made while the employee was married to his former spouse remain valid, unless otherwise provided in a QDRO, or unless the employee changes them or is remarried. If an employee dies after his retirement, the spouse to whom the participant was married on the date benefit payments commence is entitled to the Qualified Joint and Survivor Annuity protection under the Plan. The spouse is entitled to this protection (unless waived and consented to by such spouse) even if the participant and spouse are not married on the date of the participant's death, except as provided in a QDRO.

11. Unreduced Early Retirement Pension Benefit Under Defined Benefit Pension Plan. Under the Defined Benefit Pension Plan, a Participant may be entitled to an Unreduced Early Retirement Pension Benefit (also known as an early retirement subsidy) if certain requirements are met. If the parties wish to award the spouse a proportional share of any early retirement subsidy provided to the participant, then the parties should include such language in the QDRO. If the QDRO is silent with regards to early retirement subsidy, then the following approach will be taken: if spouse begins to receive benefits under the Defined Benefit Pension Plan and participant subsequently retires and becomes entitled to and receives an early retirement subsidy under the Defined Benefit Pension Plan, spouse's benefit will not be recalculated as of the date the participant commences benefits to include the early retirement subsidy. If spouse commences benefits under the Defined Benefit Pension Plan at the same time or after participant and participant is entitled to and receives an early retirement subsidy under the Defined Benefit Pension Plan, spouse will receive a proportional share of any early retirement subsidy paid to participant as of the date spouse commences benefits.

## **E. PROCEDURE FOR HANDLING PROPOSED ORDERS OR INQUIRIES**

1. Written Request for Information. Inquiries concerning the potential interest of a current or former spouse, child or other alternate payee should be made in writing to the Plan Administrator at the address above. A participant may ask the Plans for a determination of the participant's interest as of the date of separation or dissolution. Individual benefit information

cannot be released to anyone other than the participant without either the participant's written consent or a subpoena.

2. Joinders, proposed court orders, subpoenas, other communications involving attorneys. The Plan Administrator will promptly forward to Plan Counsel any communications involving attorneys, including Joinder Requests, proposed orders, filed orders, and any related correspondence or information relating to a pending dissolution or support order, along with the information described in paragraph 1.

Plan Counsel will provide participants and beneficiaries with these QDRO Procedures and the sample QDRO. Participants and alternate payees are not required to use the sample order. The sample order is used simply to assist participants, alternate payees and their attorneys in understanding the Plan and to expedite the preparation of a QDRO. The Plan does not warrant that the sample order is appropriate in each instance.

3. Draft QDRO. The Plan Administrator or in some cases Plan Counsel will review proposed orders (draft QDROs) and inform the parties whether a draft order meets the requirements for a QDRO and, if not, how to correct it. Anyone seeking to obtain a QDRO is strongly encouraged to submit the proposed order for review before it is signed by the judge. This will avoid issuance of a non-qualified order with which the Plan(s) cannot comply.

## **F. SAMPLE QDRO**

Attached is a sample QDRO. The sample order is intended to assist employees, prospective alternate payees and their attorneys in preparing Qualified Domestic Relations Orders (QDROs). This language is currently being accepted by the Plans as meeting the requirements of a QDRO, although the language has not been challenged in court nor has a court definitively stated that it meets ERISA's standards for a QDRO.

The Plans do not warrant that the sample order is appropriate in each instance. The sample language is provided as a courtesy. The language divides the community property portion of the benefits equally between both spouses. A 50-50 division is not legally required and does not necessarily accomplish the best result for either spouse. The parties should always consult their own attorneys before agreeing to this form, and the attorneys should adopt and revise the language where appropriate. Moreover, the sample order contains provisions that are optional or which involve choices that the parties may want to modify. The Plans take no position on these specific provisions.

Future Plan changes and amendments to ERISA could also affect the validity of this sample order.

1  
2  
3  
4  
5 SUPERIOR COURT OF THE STATE OF \_\_\_\_\_  
6 IN AND FOR THE COUNTY OF \_\_\_\_\_  
7  
8

In re the Marriage of: ) Case No. \_\_\_\_\_  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
Petitioner, )  
and )  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
Respondent. )  
\_\_\_\_\_)  
\_\_\_\_\_)  
U.A. LOCAL NO. 393 DEFINED )  
BENEFIT PENSION PLAN (PART A) )  
and )  
U.A. LOCAL NO. 393 DEFINED )  
CONTRIBUTION PLAN (PART B) )  
\_\_\_\_\_)  
Claimants. )  
\_\_\_\_\_)  
21

22 Pursuant to the Judgment of Dissolution of Marriage entered herein on  
23 \_\_\_\_\_ and with the agreement of the parties as to the provisions in this Order,  
24 IT IS HEREBY ORDERED as follows:

25 1. The purpose of this Order is to dispose of the respective interests of  
26 \_\_\_\_\_ (“Employee”) and \_\_\_\_\_ (“Spouse”) in the  
27 community property portion of benefits payable to Employee by the U.A. LOCAL NO. 393  
28

1 DEFINED BENEFIT PENSION PLAN ("Part A") and the U.A. LOCAL NO. 393 DEFINED  
2 CONTRIBUTION PLAN ("Part B").

3 This Order is intended to satisfy the requirements of the Employee Retirement Income  
4 Security Act ("ERISA"), as amended, concerning Qualified Domestic Relations Orders  
5 ("QDRO"), as provided in ERISA Section 206(d)(3) and Internal Revenue Code Section 414(p).

6 2. The name, mailing address, phone number, Social Security number and date of  
7 birth of each party is:

8 a. Employee (Plan Participant):

9 Name: \_\_\_\_\_

10 Address: \_\_\_\_\_

11 \_\_\_\_\_

12 Phone: \_\_\_\_\_

13 Email: \_\_\_\_\_

14 Social Security No.: Provided under Separate Cover

15 Date of Birth: Provided under Separate Cover

16 b. Spouse (Alternate Payee):

17 Name: \_\_\_\_\_

18 Address: \_\_\_\_\_

19 \_\_\_\_\_

20 Phone: \_\_\_\_\_

21 Email: \_\_\_\_\_

22 Social Security No.: Provided under Separate Cover

23 Date of Birth: Provided under Separate Cover

24 The parties agree to notify the Plans of any change in address, name change and/or the death of  
25 the other party.

26 3. Spouse is acknowledged to have an ownership interest in the benefits payable to  
27 Employee by Part A and by Part B equal to one-half the Community Benefit.

1       4. The Community Benefit is the portion of the benefit payable by each Plan which  
2 is attributable to Employee's employment during the marriage. For purposes of calculating the  
3 Community Benefit, the period of the marriage is the period from \_\_\_\_\_ to  
4 \_\_\_\_\_.

5 For purposes of this QDRO:

- If the marriage was on or before the 15th of a month, the parties will be considered married the entire month.
  - If the marriage occurred after the 15th of a month, the parties will not be considered married that month.
  - If the separation was on or before the 15th of a month, the parties will not be considered married that month.
  - If the separation occurred after the 15th of a month, the parties will be considered married for the month.

14        5.      The Community Benefit under Part A shall be calculated by multiplying the total  
15 benefit payable to Employee by a fraction. The numerator of the fraction is the total years during  
16 the marriage for which Employee receives credit under Part A. The denominator is the total  
17 years for which Employee receives credit under Part A. This calculation shall be performed as  
18 of the date when benefit payments to the Spouse are to begin, in accordance with the terms of  
19 Part A in effect at that time.

20        6.      The Community Benefit under Part B shall consist of all contributions earned by  
21 the Employee during the marriage, plus net investment earnings credited to Employee's benefit  
22 account under the terms of the Plan. Pursuant to this Order, Spouse shall be entitled to receive  
23 one-half the Community Benefit, plus a pro rata share of net investment income for the period  
24 from the date his/her share is determined until the date payment is made.

25        7.        Benefits not allocated to Spouse pursuant to this Order are the separate property  
26 of Employee and are subject to Employee's disposition in accordance with the terms of the  
27 particular Plan.

1       8.     Spouse's share shall not include amounts paid to Employee on account of  
2 disability, except to the extent that such benefits would have been payable to Employee as  
3 retirement benefits based on longevity. The Court shall reserve jurisdiction in the event of a  
4 dispute as to the characterization of any payment which is based on the disability of Employee.

5       9.     Spouse shall be entitled to receive Spouse's share of the benefits payable by each  
6 Plan in any form of payment permitted by that Plan at the time distribution is made, except a  
7 joint and survivor annuity.

8       10.    Nothing in this Order shall require either Plan to provide any type or form of  
9 benefit or any option not otherwise provided by that Plan, or to pay any amount in excess of the  
10 benefits payable to Employee under the terms of the Plan.

11      11.    Spouse shall be entitled to begin receiving payments pursuant to this Order at any  
12 time on or after the earliest date on which Employee would be eligible for a distribution under  
13 the terms for Part A, subject to the completion by Spouse of an application for benefits in the  
14 form and manner required of all participants in that Plan. Spouse shall be entitled to receive a  
15 lump sum distribution upon receipt of a valid QDRO and a final judgment under the terms of  
16 Part B, subject to the completion by Spouse of an application for benefits in the form and manner  
17 required of all participants in that Plan.

18      12.    In the event of Spouse's death prior to the commencement of benefit payments to  
19 Spouse, Spouse's rights to Part A benefits under this Order are terminated. Subsequent benefit  
20 payments by Part A to Employee shall be paid as if this Order did not exist. Spouse's death shall  
21 have no effect on the amount payable to Spouse by Part B.

22      13.    In the event of Employee's death prior to the earlier of (1) Employee's retirement  
23 and (2) the commencement of payments by Part A to Spouse pursuant to this order, Spouse shall  
24 be entitled to receive one-half the community property portion of the qualified pre-retirement  
25 survivor annuity payable by Part A. To the extent necessary to allow payment of this benefit,  
26 Spouse shall be deemed to be the surviving spouse of Employee. Employee's death shall have  
27 no effect upon the amount payable to Spouse by Part B.

28

1           14. Provided that Part B determines that this Order is a Qualified Domestic Relations  
2 Order, Part B shall establish a separate benefit account in the name of Spouse. Spouse's interest  
3 in Employee's account shall be transferred to the new account. Following such transfer Spouse  
4 shall receive the same reports and statements and shall have the same rights with respect to his or  
5 her benefit account as do other participants under the terms of Part B, except to the extent that  
6 such rights are limited by the terms of this Order.

7           15. Upon establishment of Spouse's separate account as described in paragraph 14,  
8 Spouse shall have total control over such account to the extent allowed by Part B, including the  
9 right to designate beneficiaries if allowed by the benefit option selected. Employee will have no  
10 interest in Spouse's Account. Similarly, Employee shall have total control over his/her  
11 remaining interest in Part B. Spouse will have no interest in such remaining balance, as a future  
12 beneficiary before or after Employee's death or otherwise.

13           16. Inadvertent Payments. In the event that Part A or Part B inadvertently pays to the  
14 Employee any benefits that are assigned to the Spouse pursuant to the terms of this Order, the  
15 Employee shall immediately return such payments to the Plan Administrator. Upon receipt of  
16 the repayment, the Plan Administrator shall issue an amended Form 1099 to the Employee so  
17 that he/she is not liable for any income taxes associated with the Spouse's assigned share of the  
18 benefits. Notwithstanding the above, rather than requiring the Employee to return the  
19 inadvertent payments, the Plan Administrator may, in its sole discretion, recoup such payments  
20 on a prospective basis by reducing the Employee's benefit payments on a temporary basis until a  
21 full recovery is made.

22           Similarly, in the event that Part A or Part B inadvertently pays to the Spouse any benefits  
23 otherwise payable to the Employee, the Spouse shall immediately return such payment to the  
24 Plan Administrator. Upon receipt of the repayment, the Plan Administrator shall issue an  
25 amended Form 1099 to the Spouse so that he/she is not liable for any income taxes associated  
26 with the Employee's benefit. Notwithstanding the above, rather than requiring the Spouse to  
27 return the inadvertent payments, the Plan Administrator may, in its sole discretion, recoup such  
28

1 payments on a prospective basis by reducing the Spouse's benefit payments on a temporary basis  
2 until a full recovery is made.

3        17. Remarriage. The remarriage of either party shall not affect the disposition of  
4 benefits provided herein.

5        18. No Prior Order. The parties certify that they are not aware of prior orders which  
6 may dispense of benefits hereunder.

7       19. Amendment. The Court retains jurisdiction over this matter to amend this Order  
8 as necessary.

9       20. Copy of Order to Plans. Counsel for the petitioner shall furnish the Plans with a  
10 copy of the Order file-endorsed by the Court Clerk approved by the Court, within 30 days of  
11 approval of this Order.

12 Dated: \_\_\_\_\_, 20\_\_\_\_

---

## Attorney for Participant

15 Dated: \_\_\_\_\_, 20\_\_\_\_

## Attorney for Alternate Payee

17 | Dated: \_\_\_\_\_, 20\_\_\_\_

## Participant

19 Dated: \_\_\_\_\_, 20\_\_\_\_

---

---

22 Dated: , 20

JUDGE OF THE SUPERIOR COURT