

In the State of: _____

In the Court of: _____

_____,
Petitioner

v.

_____,
Respondent

Case no. _____

APPROVED DOMESTIC RELATIONS ORDER FOR VIRGINIA RETIREMENT SYSTEM – DEFINED BENEFIT PLAN

IT IS HEREBY ORDERED AS FOLLOWS:

DEFINITIONS AND GENERAL PROVISIONS

Effect of This Order as an Approved Domestic Relations Order. This Order creates and recognizes the existence of an Alternate Payee's right to receive a portion of the Member's benefits payable under a defined benefit pension plan that is qualified under § 401 of the Internal Revenue Code ("IRC") and administered by the Virginia Retirement System ("VRS"). Such benefits may represent a portion of the Member's monthly retirement benefit, a refund of employee contributions, or a survivor annuity. This Order is intended to satisfy the requirements for a Qualified Domestic Relations Order ("QDRO") within the meaning of IRC § 414(p) and to constitute an Approved Domestic Relations Order ("ADRO") as determined by VRS in its sole discretion.

Timing of Submission. This Order shall be submitted to VRS by the Member or the Alternate Payee within 30 days of its entry.

Member Information. The name, address, and date of birth of the Member are:

Name: _____

Address: _____

Date of Birth: _____

Alternate Payee Information. The name, address, date of birth, and citizenship of the Alternate Payee are:

Name: _____

Address: _____

Date of Birth: _____

Alternate payee: U.S. Citizen Resident Alien Non-Resident Alien

Marriage. The Member and the Alternate Payee were married on ____/____/____ and were separated on ____/____/____.

Identification of Plan. This Order applies to the VRS-administered defined benefit plan applicable to the Member upon retirement (hereinafter the "Plan"), to include the Virginia Retirement System, the State Police Officers' Retirement System, the Virginia Law Officers' Retirement System, and the Judicial Retirement System. Any changes to the name of the Plan shall not affect Alternate Payee's rights as stipulated under this Order.

Pursuant to State Domestic Relations Law. This Order is entered pursuant to the authority granted in the applicable domestic relations laws of the State of _____.

For Provision of Marital Property Rights. This Order relates to the provision of marital property rights to the Alternate Payee as a result of the order of divorce or dissolution between the Member and the Alternate Payee. This Order pertains to that portion of the Member's retirement benefits which shall be subject to distribution under §§ 51.1-124.4(A) and 20-107.3 of the *Code of Virginia*.

Definitions. As used in this Order, the following terms shall apply:

"Alternate Payee" is a VRS Member's spouse or former spouse who is to receive benefits under this Order.

"Creditable service earned" means creditable service earned and purchased.

"Marriage" means the period of time beginning on the date the Member and Alternate Payee were married and ending on the date the Member and Alternate Payee were separated within the meaning of § 20-107.3 of the *Code of Virginia*.

"Member" is a VRS Member whose benefit is the subject of this Order.

"Parties" means the Member and Alternate Payee.

RETIREMENT BENEFIT

- Option 1:** This Order assigns to the Alternate Payee an amount equal to _____% of the marital share of the Member's gross monthly benefit as calculated by VRS as of the Member's benefit commencement date. For this purpose, the marital share shall be determined by multiplying the Member's gross monthly benefit by a fraction, the numerator of which is the Member's total creditable service earned during the Marriage and the denominator of which is the Member's total creditable service earned as a VRS Member. VRS will pay this amount directly to the Alternate Payee, provided that the Member has both retired and is receiving a monthly benefit. The Member's monthly benefit includes any hazardous duty supplement. Cost-of-living adjustments (COLAs), if any, shall be proportionately applied to both the Member's and the Alternate Payee's monthly benefits. If the Member elects to receive a partial lump-sum option payment (PLOP) upon retirement, VRS will pay the proportionate share of such payment directly to the Alternate Payee.

(Optional) Include the number of marital months that will be used in the numerator of the marital share calculation, if known: _____.

The following formula demonstrates the calculation of the Alternate Payee's monthly benefit if the Order assigns the Alternate Payee 50% of the marital share of the Member's monthly benefit:

$$\frac{\text{Creditable service earned during marriage}}{\text{Total creditable service}} \times \text{Member's monthly benefit} \times 50\% = \text{Alternate Payee's share of monthly benefit}$$

- Option 2:** This Order assigns to the Alternate Payee an amount equal to _____% of the Member's gross monthly benefit as calculated by VRS as of the Member's benefit commencement date. VRS will pay this amount directly to the Alternate Payee, provided that the Member has both retired and is receiving a monthly benefit. The Member's monthly benefit includes any hazardous duty supplement. Cost-of-living adjustments (COLAs), if any, shall be proportionately applied to both the Member's and the Alternate Payee's monthly benefits. If the Member elects to receive a partial lump-sum option payment (PLOP) upon retirement, VRS will pay the proportionate share of such payment directly to the Alternate Payee.

- Option 3:** This Order assigns to the Alternate Payee a fixed dollar amount equal to \$_____ of the Member's gross monthly benefit as calculated by VRS as of the Member's benefit commencement date. VRS will pay this amount directly to the Alternate Payee, provided that the Member has both retired and is receiving a monthly benefit. The Member's monthly benefit includes any hazardous duty supplement. Cost-of-living Adjustments (COLAs), if any, shall not be applied to the Alternate Payee's monthly benefits. If the Member elects to receive a partial lump-sum option payment (PLOP) upon retirement, the Alternate Payee will not be entitled to any portion of the PLOP. The Member shall ensure that any elections that result in a decrease of the Member's monthly benefit (i.e., the PLOP, the Advance Pension Option, the receipt of a hazardous duty supplement, etc.) do not result in insufficient funds to pay the full amount of the Alternate Payee's monthly benefit.

- Option 4:** This Order does not assign the Alternate Payee a portion of the Member's gross monthly benefit.

SURVIVOR OPTION

- Option 1:** Upon retirement, the Member is required to elect to receive his or her benefit in the form of a survivor option and to designate the Alternate Payee as a contingent annuitant to receive a _____% (*enter any whole number between 10 and 100*) survivor benefit. The Member shall complete the applicable VRS form to make the required designation and election. If the Alternate Payee predeceases the Member, then this section of the Order shall no longer apply. If the survivor option percentage stated above exceeds the maximum percentage allowed by law due to the age difference between the Member and the Alternate Payee, then the maximum percentage allowed by law will be used for purposes of this Order. Notwithstanding the foregoing, the provisions of this Survivor Option paragraph shall not be construed to require modification of an existing payout selection, if applicable, and will be void if the Member already retired and the existing retirement payout selection cannot be modified in accordance with applicable law.

- Option 2:** This Order does not require the Member to elect to receive his or her benefit in the form of a survivor option that designates the Alternate Payee as a contingent annuitant.

REFUND OF EMPLOYEE CONTRIBUTIONS

- Option 1:** If the Member requests a refund of his or her defined benefit member contribution account, this Order assigns to the Alternate Payee an amount equal to _____% of the marital share of the Member's refund, as calculated by VRS as of the Member's refund date. For this purpose, the marital share shall be determined by multiplying the Member's refund by a fraction, the numerator of which is the Member's total creditable service earned during the Marriage and the denominator of which is the Member's total creditable service earned as a VRS Member.

(Optional) Include the number of marital months that will be used in the numerator of the marital share calculation, if known: _____.

The following formula demonstrates the calculation of the Alternate Payee's refund if the Order assigns the Alternate Payee 50% of the marital share of the Member's refund:

$$\frac{\text{Creditable service earned during marriage}}{\text{Total creditable service}} \times \text{Member's refund} \times 50\% = \text{Alternate Payee's share of refund}$$

- Option 2:** If the Member requests a refund of his or her defined benefit member contribution account, this Order assigns to the Alternate Payee an amount equal to _____% of Member's refund, as calculated by VRS.
- Option 3:** If the Member requests a refund of his or her defined benefit member contribution account, this Order assigns to the Alternate Payee a fixed dollar amount equal to \$_____ of the Member's refund as calculated by VRS. If the fixed dollar amount exceeds the amount of the refund available to the Member, then the Alternate Payee will receive the full amount available for refund to the Member.
- Option 4:** This Order does not assign the Alternate Payee a portion of a refund the Member may request.

DEATH BENEFITS

- Option 1:** The Member is required to designate the Alternate Payee as a beneficiary entitled to an amount equal to _____% of the marital share of the funds remaining in the Member's defined benefit member contribution account upon the Member's death, as calculated by VRS. For this purpose, the marital share shall be determined by multiplying the funds remaining in the Member's defined benefit member contribution account at Member's death by a fraction, the numerator of which is the Member's total creditable service earned during the Marriage and the denominator of which is the Member's total creditable service earned as a VRS member. The Member shall complete the applicable VRS form to make the required beneficiary designation and election, and the designation must post-date the Member's and the Alternate Payee's divorce. It is the sole responsibility of the Member to maintain a beneficiary designation on file with VRS necessary to effectuate the terms of this paragraph.

(Optional) Include the number of marital months that will be used in the numerator of the marital share calculation, if known: _____.

The following formula demonstrates the calculation of the Alternate Payee's benefit if the Order assigns the Alternate Payee 50% of the marital share of the funds remaining in the Member's defined benefit member contribution account:

$$\frac{\text{Creditable service earned during marriage}}{\text{Total creditable service}} \times \text{Member's remaining funds} \times 50\% = \text{Alternate Payee's share of remaining funds}$$

- Option 2:** The Member is required to designate the Alternate Payee as a beneficiary entitled to an amount equal to _____% of the funds remaining in the Member's defined benefit member contribution account upon the Member's death, as calculated by VRS. The Member shall complete the applicable VRS form to make the required beneficiary designation and election, and the designation must post-date the Member's and the Alternate Payee's divorce. It is the sole responsibility of the Member to maintain a beneficiary designation on file with VRS necessary to effectuate the terms of this paragraph.

- Option 3:** The Member is required to designate the Alternate Payee as a beneficiary entitled to a fixed dollar amount equal to \$_____ of the funds remaining in the Member's defined benefit member contribution account upon the Member's death. The Member shall complete the applicable VRS form to make the required beneficiary designation and election, and the designation must post-date the Member's and the Alternate Payee's divorce. It is the sole responsibility of the Member to maintain a beneficiary designation on file with VRS necessary to effectuate the terms of this paragraph. If the fixed dollar amount exceeds the remaining funds in the Member's defined benefit member contribution account, then the Alternate Payee will receive the full amount of the remaining funds in the Member's account.

- Option 4:** This Order does not assign the Alternate Payee a portion of the Member's death benefits.

ADDITIONAL PROVISIONS

Approval of Order. If an option box is selected but corresponding information is not provided (*e.g.*, the Option 1 box is checked, but a marital share percentage is not provided), if none of the option boxes are selected, or if multiple option boxes are selected in any section, VRS will not approve a benefit payment to the Alternate Payee under that section. If information for an option is provided but the corresponding option box is not selected, then VRS may approve a benefit payment to the Alternate Payee if, in the sole discretion of VRS, there is no ambiguity regarding the intent of the Order. If VRS determines that any ambiguity exists regarding the intent of this Order, then VRS, in its sole discretion, may choose not to approve a benefit payment to the Alternate Payee. Nothing in this Order, including VRS' approval or acceptance of this Order, shall be construed as a waiver of the sovereign immunity of VRS and the Commonwealth or VRS' obligation to follow and apply applicable law.

Commencement Date and Form of Payment to the Alternate Payee. The benefits payable to the Alternate Payee under this Order shall commence to the Alternate Payee as soon as administratively practicable following the approval of this Order as an ADRO. The Alternate Payee shall receive his or her benefits either as a direct payment to the Alternate Payee or, if eligible, as a direct rollover to an eligible retirement plan. The Alternate Payee will continue to receive his or her assigned share of the benefits under this Order until the earlier to occur of his or her death or the Member's death.

Death of Alternate Payee. If the Alternate Payee predeceases Member, the Alternate Payee's portion of Member's benefits, as stipulated herein, shall revert to the Member.

Savings Clause. This Order is not intended and shall not be construed in such a manner as to require VRS:

- To provide any type or form of benefit, or any option, not otherwise provided under the terms of the relevant Plan, including a payout selection revision not provided under the terms of the relevant Plan or allowed under applicable law;
- To pay increased benefits;
- To recover or distribute any funds distributed to the Member or at the Member's direction prior to the approval of this Order by VRS;
- To pay benefits to the Alternate Payee that are required to be paid to another alternate payee under another order that was previously deemed to be an ADRO;
- To pay any benefits or take any action inconsistent with federal or state law, VRS policy, or court order;
- To notify the Alternate Payee of any change or alteration of benefits due to Member;
- To pay any life insurance proceeds or refund of retirement contributions upon the death of the Member to anyone other than a designated beneficiary;
- To pay benefits to the Alternate Payee before the Member retires, terminates covered employment, and requests a refund, or dies with a refund payable as a death benefit; or
- To pay benefits to the Alternate Payee before the Member's benefits commence.

Certification of Necessary Information. All payments made pursuant to this Order shall be conditioned on the certification by the Alternate Payee and the Member to VRS of such information as VRS may reasonably require from such Parties to calculate the benefits payable under this Order. VRS will not be liable for any incorrect payment resulting from the Alternate Payee's failure to provide updated address, payment, or other information. **The Parties will provide VRS with a separate private addendum containing the Member's and the Alternate Payee's Social Security numbers.**

Tax Treatment of Distributions Made Under This Order. For purposes of IRC §§ 402(a)(1) and 72, Alternate Payee shall be treated as the distributee of any distribution or payments made to Alternate Payee under the terms of this Order, and as such, will be required to pay the appropriate federal income taxes on such distribution.

Inadvertent Payments. In the event that VRS inadvertently pays to the Member any benefits that are assigned to the Alternate Payee pursuant to the terms of this Order, VRS may, in its sole discretion, recoup such payments on a prospective basis by reducing Member's monthly pension benefits on a temporary basis until a full recovery is made. Similarly, in the event that VRS inadvertently pays to the Alternate Payee any benefits that belong to the Member, VRS may, in its sole discretion, recoup such payments on a prospective basis by reducing the Alternate Payee's monthly pension benefits on a temporary basis until a full recovery is made.

Correcting, Suspending, or Terminating Payments. VRS will retain any rights it may have to correct, suspend, or terminate payments to the Alternate Payee and the Member. The Member or Alternate Payee may contest benefit amounts, payments, corrections, suspensions, or terminations solely through the other Party and not VRS. Payments pursuant to the Order will be without prejudice to any right VRS has under applicable law to seek recoupment or offset for overpayment.

Plan Terms. In the case of conflict between any of the terms of this Order and the terms of the Plan, the terms of the Plan shall prevail. This Order does not entitle the Alternate Payee to VRS membership or the ability to maintain an independent account under a VRS administered retirement plan.

Enforcement. Compliance with this Order is solely the responsibility of the Member and the Alternate Payee. VRS shall not be responsible for ensuring that a Member complies with this Order. VRS shall not be legally or financially responsible for the Member's or the Alternate Payee's failure to comply with this Order.

AND IT IS SO ORDERED THIS _____ DAY OF _____, _____.
(month) (year)

ENTER:

Judge

Endorsements:

1. _____

Signature: _____

Name: _____

Mailing Address: _____

Phone: _____

Email: _____

Fax: _____

Counsel For: _____

2. _____

Signature: _____

Name: _____

Mailing Address: _____

Phone: _____

Email: _____

Fax: _____

Counsel For: _____

