

such Member intends to have his or her Vested Benefit commence, which may be the first day of any month on or after his or her fifty-fifth (55th) birthday. Subject to Section 3.09, the Member's Vested Benefit shall be payable only as of the date specified in the Member's application therefore.

### 3.04 Disability Retirement

(a) A Member shall be eligible to receive a Disability Retirement Allowance if the Board of Managers, based on a proper application filed in accordance with subsection (b) of this Section 3.04 makes a determination of disability, provided a physician designated by the Board of Managers determines that the Member is disabled as described below. Notwithstanding anything herein to the contrary, a Member who incurs a termination of Employment for Cause prior to becoming eligible for a Service Retirement Allowance shall forfeit his or her Disability Retirement Allowance.

(b) An application for a Disability Retirement Allowance for a Member may be made by:

- (i) such Member; or
- (ii) the Employer.

The application must be filed with the Board of Managers, on a form acceptable to it, within the later of (i) three (3) months from the last date the Member was being paid on the payroll or (ii)

compensation for any prior determination period is taken into account in determining an Employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the Plan Year beginning on or after January 1, 1996, the OBRA '93 annual compensation limit is \$150,000.

Article 6. Administration

6.01 Appointment of Board of Managers of Pensions

(a) There shall be a Board of Managers of Pensions comprised of the persons holding the following positions:

(i) the Chairman of the MTA;

(ii) the MTA Chief Financial Officer

(iii) the MTA Director of Labor Relations;

and

(iv) the agency head of each participating Employer.

(b) Designation of Others:

Any member of the Board of Managers, serving as such by virtue of holding a position described in subsection (a) of this Section, may, by written authorization filed with the Secretary who shall notify the other members of the Board of Managers, designate another individual, not then a member of

the Board of Managers, to serve in that member's stead, in accordance with procedures established with the approval of the Executive Director. Any such authorization may be revoked by the designating member at any time in writing filed in the same manner.

- (c) The Board of Managers shall be the agent for the service of legal process with respect to the Plan. No bond or other security is required in any jurisdiction of the Board of Managers or any member thereof except as required by law.

6.06 Legal Counsel

The MTA General Counsel or his/her designee shall be counsel to the Board of Managers and the legal advisor for the Plan.

**Article 7. Contributions and Funding**

7.01 Contributions, Exclusive Benefit and Expenses

The Benefits provided under this Plan shall be financed entirely through contributions to the trust fund made by each Employer except to the extent funded through Employee contributions as provided for in the Plan. Each Employer shall be responsible for its own contributions and shall have no responsibility for the contributions of any other Employer. Each Employer intends to contribute each year in such amounts as are necessary to maintain the Plan and trust fund on a sound actuarial basis insofar as such contributions relate to its Employees and to meet the minimum funding standards, if any, prescribed for qualification of the trust fund as part of a "governmental plan" under Section 401(a) of the Code. All such contributions to provide the Benefits under the Plan shall be paid into the trust fund. The trust fund will be held and invested as described in the Trust Agreement. Except as otherwise provided herein and in the Trust Agreement relating to a mistake of fact or denial of initial plan qualification, no part of the trust fund may be used for, or diverted to,

eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(c) Distributee: A distributee includes an Employee or former Employee, and, in addition, the Employee's or former Employee's surviving spouse.

(d) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

## Article 9. General Provisions

### 9.01 Conditions of Employment Not Affected by Plan

The establishment of the Plan shall not confer any legal rights upon any Employee or other person for a continuation of employment, nor shall it interfere with the rights of any Employer to discharge any Employee or other person and to treat him without regard to the effect which that treatment might have upon him as a Member.

### 9.02 Adoption of Plan and Discontinuance of Participation by MTA-Affiliated Agencies

With the consent of the Board, any MTA-Affiliated Agency may adopt the Plan and Trust Agreement for any of its employees by resolution of the Board of the MTA and by resolution of the board of such MTA-Affiliated Agency adopting such Plan. An MTA-Affiliated Agency's discontinuance of its

participation under the Plan shall be effected by resolution of the Board of the MTA and by resolution of the board of such MTA-Affiliated Agency.

9.03 Correction of Errors

Should any mistake of fact, change or error in records or administration result in any Member or Beneficiary receiving under the Plan more or less than the Member or Beneficiary would otherwise have been entitled to receive, on the discovery of any such mistake of fact, change or error, an Employer shall correct such error, and, as far as practicable, shall adjust the payments in such manner that any underpayment is paid or any overpayment is recovered. Where an overpayment cannot be recouped by adjusting a future payment or payments to a Member, Retired Member or Beneficiary, such Employer may initiate a claim directly against such Member, Retired Member or Beneficiary and, if necessary, commence a legal proceeding to recoup such overpayment.

9.04 Amendment and Termination

(a) The MTA, by action of its Board pursuant to the provisions of Article 5, Title 11 of the New York Public Authorities Law, reserves the right to modify, amend or restrict this Plan or to discontinue it altogether, subject, however, to the obligations of any Employer under applicable law. However, no amendment shall adversely affect pensions previously accrued nor prior to

termination convert any part of the Trust Fund to any purpose other than the exclusive benefit of Members, Retired Members, Employees and Beneficiaries.

- (b) In the event the Plan is terminated, the Trust fund shall continue to be held and applied for the exclusive benefit of Members, Retired Members, Employees, and Beneficiaries as provided below until paid out in full; provided that expenses may continue to be paid as if the Plan had not terminated and all necessary and reasonable expenses connected with the termination of the Plan may also be paid from the Trust fund to the extent specified by the MTA. On termination of the Plan, all Employees shall be fully vested to the extent of their then accrued Benefits. To the extent that they suffice, the assets of the Trust Fund in the event of termination of the Plan shall be applied to provide benefits in the manner directed by the Board. If the assets of the Trust Fund exceed the amount sufficient to provide all accrued Benefits to the date of termination, any excess assets shall be returned to each Employer in accordance with the methodology adopted by the Board which shall equitably reflect each Employer's share of the contributions to the Plan. A complete discontinuance of Employer

contributions shall constitute a termination of this Plan.

9.05 Pre-Termination Restrictions

In the event of plan termination, the Benefit of any highly compensated active or former Employee is limited to a Benefit that is nondiscriminatory under Code Section 401(a)(4).

(a) For Plan Years beginning on or after January 1, 1996, benefits distributed to any of the 25 most highly compensated active and highly compensated former Employees with the greatest compensation in the current or any prior year are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the Employee under a straight life annuity that is the actuarial equivalent of the sum of the Employee's accrued Benefit, the Employee's other benefits under the Plan (other than a Social Security supplement, within the meaning of section 1.411(a)-7(c)(4)(ii) of the Treasury Regulations), and the amount the Employee is entitled to receive under a Social Security supplement.

(b) Subsection (a) of Section 9.05 shall not apply if:

(i) after payment of the Benefit to an Employee described in the preceding paragraph, the value of the Plan assets equals or exceeds 110% of the value of current liabilities, as defined in