DRAFT
MAY 3, 2005

ARTICLE 12:

DEFINED BENEFIT RETIREMENT PROGRAM FOR REPRESENTED EMPLOYEES OF THE COMMUTER RAILS

Effective January 1, 2004

12.0.0 **Preamble**

This Article sets forth the provisions of the Defined Benefit Retirement Program for Represented Employees of the Commuter Rails (Long Island Rail Road and the Metro-North Commuter Railroad) (hereinafter referred to as "the Program")and will become effective January 1, 2004.

The accrued benefits derived from the pre-2004 employer contributions (other than participant contributions, whether made on an after-tax or a "Pick-up" basis pursuant to Section 414(h) of the Internal Revenue Code) under the Long Island Rail Road Company Money Purchase Pension Plan (the "LIRR Money Purchase Plan") and under the Metro-North Commuter Railroad Company Defined Contribution Plan for Agreement Employees (the "Metro-North Agreement Employees' Defined Contribution Plan") for Employees who became Participants under the Program effective January 1, 2004 were transferred to the Plan, effective as of January 1, 2004. The accrued benefits derived from the pre-2004 participant contributions of the foregoing Employees of the LIRR and from the voluntary participant contributions of the foregoing Employees of the Metro-North Commuter Railroad and the

accrued benefits of other employees participating in such plans, were not merged into the Program.

12.1 **Definitions**

The following words and phrases as used in this Article shall have the following meaning:

12.1.01 "Accumulated Contributions" means in respect of a Participant the sum of: (i) the contributions by or in respect of the Participant pursuant to Sections 12.4.01 and 12.4.03 of this Article, with Regular Interest.

12.1.02 "Collective Bargaining Representative" means the collective bargaining representative of the Participants duly recognized by the Participants' Employer.

12.1.03 "Credited Service" means, except as otherwise hereinafter provided, paid service with an Employer credited under the Program in accordance with the provisions set forth in this Section 12.1.03. Credited Service shall be credited for periods of Employment with an Employer on or after January 1, 2004 in accordance with the provisions of subsections (a) and (b) of this Section 12.1.03. In addition, Credited Service shall be credited for periods of Employment with an Employer before January 1, 2004 or before the date the Participant first became a Participant, whichever is later, in accordance with the provisions of subsections (a), and (e) through (f) of this Section 12.1.03.

(a) Credited Service shall include both full-time and part-time paid service with an Employer, as defined in paragraphs (i) and (ii) of this subsection (a) to this Section 12.1.03 of the Plan, from the date such service commenced or commences until the date such service terminates.

(i) Full-time Employment: An Employee who is regularly employed for a greater period than part-time with an Employer, as set forth in the immediately following paragraph (ii), shall be deemed to be in full-time Employment.

(ii) Part-time Employment. An Employee shall be deemed to be part-time if in any Plan Year the Employee is employed in a position for which such Employer has determined that the Employee will be required to work on a regular basis at least seventy percent (70%) but less than one hundred percent (100%) of the normal hours worked per week by a full-time Employee in the Employee's job classification.

(b) Credited Service for full-time and part-time shall be credited in accordance with the following provisions: For all purposes of

determining a Member's eligibility for and the amount of the benefit under Sections 12.3.01 through 12.3.06, an Employee who is in paid service for a full Plan Year (including part-time Employees who are in paid service for a full Plan Year) shall receive credit for the full Plan Year; and if the Employee is not in paid service for the full Plan Year, he or she shall receive credit for the pro rata portion of the Plan Year in which he or she is in Employment, based on a fraction, the numerator of which is the number of full or partial days in which he or she was in paid service in such Plan Year and the denominator of which is the number of work days for that Participant in a year.

(c) Military service. Notwithstanding the foregoing, Credited Service shall be granted to a Participant for his/her military service in accordance with subsection (c) of Section 1.09 and Section 1.10 of the Plan.

(d) All prior service with MTA or any MTA-affiliated agency and any service credited under NYCERS or NYSLERS, or any other State or City Plan shall be recognized under this Article under the same terms and conditions as provided in subsection (d) of Section 1.09 of the Plan, except that the

terms "Employee", "Employer" and "Employment", as used in such subsection, shall be as defined in this Article 12.

(e) Past service credit shall be granted in accordance with the following rules:

(i) (A) Except as provided in subpart (B), no past service credit shall be granted to Employees on the payroll of an Employer as of December 31, 2003 unless such Employee is credited with at least six (6) months of Credited Service completed after December 31, 2003. Notwithstanding the foregoing, where a Member

1. dies; or
2. whose Employment is terminated without cause from a Represented position by his or her Employer after December 31, 2003 and prior to completing at least six months of Credited Service after December 31, 2003, he or she shall be deemed to have completed six months of Credited Service after December 31, 2003 solely for purposes of determining whether the Member shall be granted past service credit hereunder.

(B) Past service credit shall be granted to Participants who were covered by a collective bargaining agreement ratified and approved by April 1, 2004 and were Employees paid on the payroll of Metro-North from January 1, 2004 until any such Participant's date of retirement; provided, however, any such Participant's retirement benefit payable pursuant to Sections 12.3.01, 12.3.02 and 12.3.03 shall not commence until July 1, 2004.

(ii) No past service credit shall be granted to Employees hired by an Employer after December 31, 2003 unless such Employee is credited with at least two (2) years of Credited Service completed after such date of hire.

(iii) No past service credit shall be granted for service with Conrail or any other predecessor railroad service to Conrail.

(iv) A Participant who transfers from a category where he or she is not an Employee, as defined by this Article 12, to a category where he or she is such an Employee shall, upon such transfer, be credited under this Section 12.01.03 with

any past service credit which was credited as Credited Service pursuant to Section 1.09 of the Plan.

In no event shall past service credit covered by this paragraph (iv) qualify as Credited Service until a Participant is credited with at least two (2) years of Credited Service completed after first becoming an Employee, not including any purchased Credited Service.

(f) All past service credit shall be recognized under the same terms and conditions as provided in subsection (f) of Section 1.09 of the Plan, except that the terms "Employee", "Employer" and "Employment", as used in such subsections, shall be as defined in this Article 12, the term "Member" shall be deemed "Participant" and the period referenced in subsection (f) shall be December 31, 2003 to July 1, 2004.

(g) Credited Service shall include any service that qualifies as Credit for Military Service Rendered During Periods of Military Conflict, as defined in Section 1.10 of the Plan.

(h) Split Employment: any service by a Participant who has at least five (5) years of Participant service pursuant to subsections (a) and (b) of this section and who is granted a leave of

absence for employment by the Participant's collective bargaining representative, provided that:

(i) the collective bargaining representative and the Employer have agreed in writing that such service shall qualify as Credited Service;

(ii) for purposes of any benefit calculation pursuant to Sections 3.01, through 3.06, the salary used shall not exceed the "Salary Cap", as established by the agreement referred to in subpart (i) of this subsection (h); the Salary Cap shall be pro-rated for any Participant whose split employment is not fulltime,

(iii) the collective bargaining representative shall withhold the Participant's required contributions from the Participant's salary, up to the Salary Cap, which shall be pro-rated for any Participant whose split employment is not fulltime; such contributions will not be subject to Section 4.03 of the Plan;

(iv) the collective bargaining representative shall also make contributions to the Plan based upon a rate as determined by the Plan's actuary; such contributions will be

determined based on the Participant's salary, subject to the Salary Cap, which shall be pro-rated for any Participant whose split employment is not fulltime, and

(v) the collective bargaining representative shall transmit the Participant's required contributions as provided in subpart (iii) of this subsection (h) of this section and pay its contributions as provided in subpart (iv) of this subsection (h) of this section in the manner and at the time as prescribed by the Plan's actuary; otherwise the service will not qualify as Credited Service.

(i) The Board of Managers' determination as to what constitutes Credited Service shall in all cases be final, binding and conclusive.

12.1.04 "Employee" means:

(a) Any employee of Metro-North paid on the payroll of Metro-North on or after December 31, 2003, or who is on a leave of absence described in Section 1.09(h), and who is covered by a collective bargaining agreement which provides for participation in this Program by such employee.

(b) Any employee of LIRR hired by LIRR on or after January 1, 1988, paid on the payroll of LIRR on or after December 31, 2003, or who is on a leave of absence described in Section 1.09(h) and who is

covered by a collective bargaining agreement which provides for participation in this Program by such employee.

(c) Any employee of any other Employer that adopts this Program who is paid on the payroll of such Employer on or after the date of such adoption, and who is covered by a collective bargaining agreement which provides for participation in this Program.

(d) Temporary employees, leased employees (within the meaning of Section 414(n) of the Code) and independent contractors shall not be deemed Employees for purposes of the Program.

12.1.05 "Employer" means Metro-North, LIRR, or any successor thereto by merger, purchase or otherwise, or any other MTA-Affiliated Agency that chooses to adopt the Program, with respect to its Employees pursuant to the procedures contained in Section 9.02.

12.1.06 "Employment" means employment as an Employee and the period of such employment.

12.1.07 "Initial Participant" means an Employee of the LIRR or of Metro-North who became a Participant as of the Program Effective Date.

12.1.08 "Initial Participant Balance" mean the total account balance of an Initial Participant under the LIRR Money Purchase Plan and/or the Metro-North Agreement

Employees Plan as of the Transfer Valuation Date, less (i) an amount equal to any employee contributions; plus any earnings, thereon made by the Initial Participant to the LIRR Money Purchase Plan prior to the Program Effective Date or (ii) an amount equal to any employee contributions, plus any earnings thereon, made by the Initial Participant to the Metro-North Agreement Employees Plan.

12.1.09 "Medical Board" shall mean a three member board of physicians which shall be composed as follows:

(a) a physician selected by the Employer;

(b) a physician, selected by the Collective Bargaining Representatives of Participants who are entitled to participate in this Program and/or the program provided by Article 10 of the Plan, or, at the Participant's Collective Bargaining Representative's discretion, such Collective Bargaining Representative may select a Participant's physician to serve on the Medical Board considering such Participant's application; and

(c) a physician selected by an independent occupational health care provider retained by the Employer; such physician shall serve as chairperson and shall have expertise in occupational medicine.

12.1.10 "Metro-North Agreement Employees Plan" means the Metro-North Commuter Railroad Company Defined Contribution Plan for Agreement Employees.

12.1.11 "Participant" shall mean any Member who satisfies the requirements of Section 12.2.01 of this Article.

12.1.12 "Program Effective Date": shall mean

(a) January 1, 2004 for the Participants (i) who are employees of the LIRR and who are covered by a collective bargaining agreement ratified and approved prior to December 31, 2004; or (ii) who are employees of Metro-North and are covered by a collective bargaining agreement ratified and approved by April 1, 2004; or

(b) for all other Participants, the date set by their applicable collective bargaining agreement.

12.1.13 "Transfer Valuation Date" means the date as of which the amount to be transferred from the LIRR Money Purchase Plan and the Metro-North Agreement Employees Plan to the Trust Fund, as referred to in Section 12.5.01, is to be determined under such plans, which date may not necessarily be the same for all members of each such plan.

12.2 **Participation in the Program**

12.2.01 Participation Requirements

(a) A Member who is employed as an Employee as of the Program Effective Date shall be a Participant.

(b) Every other Member who becomes employed as an Employee after the Program Effective Date shall be a Participant in this Program.

(c) A Participant who is on a leave of absence for employment by the Participant's collective bargaining representative, and whose service qualifies as Credited Service pursuant to subdivision (h) of Section 12.1.03 shall continue to be a Participant.

12.2.02 Events Affecting Participation

A Participant's participation in this Program shall terminate upon the first to occur of the following events:

(a) when a Participant's membership terminates pursuant to Section 2.02 of the Plan; or

(b) when a Participant ceases to be an Employee and is not entitled to a vested benefit pursuant to Section 12.3.03 of this Article; or

(c) when a Participant withdraws his or her Accumulated Contributions pursuant to Section 12.4.02 of this Article.

12.2.03 Restoration of a Participant

A former Participant who withdrew his or her Accumulated Contributions pursuant to Section 12.4.02 of this Article and who, thereafter, returns to employment as an Employee with the Employer shall not receive any credit for previous service to which such

withdrawn Accumulated Contributions applied unless such participant applies therefore, on a form acceptable to the Board of Managers, and repays the amounts so withdrawn, together with Regular Interest through the date of repayment and such service shall be subject to subdivision (e)(ii) of Section 12.1.03 of this Article.

12.3 **Eligibility for and Amount and Payment of Benefits For Participants**

12.3.01 Service Retirement

(a) A Participant shall be eligible for a Service Retirement Allowance upon the termination of Employment if the Participant has (i) attained age sixty-two (62) and completed at least five (5) years of Credited Service, (ii) has attained age fifty-five (55) and has completed at least thirty (30) years of Credited Service.

(b) The Service Retirement Allowance of such a Participant shall be computed by multiplying the Final Average Compensation of the Participant:

(i) If the Participant has less than twenty (20) years of Credited Service at such termination, by one and two-thirds percent (1 2/3%)per year of the Participant's Credited Service; or

(ii) If the Participant has twenty (20) or more years of Credited Service at such

termination, by two (2) percent per year of the Participant's Credited Service up to a maximum of thirty (30) years of Credited Service and by one and one-half percent (1½%) per year of the Participant's Credited Service over thirty (30) years, if any.

(c) Filing Requirements:

A Participant shall file an application for a Service Retirement Allowance with the Board of Managers, on a form acceptable to it, no more than ninety (90) days before the Participant's termination of Employment. Subject to Section 12.3.09, and except as provided in Section 12.1.03 subd.(e)(i)(B), the Service Retirement Allowance shall be payable, if the Participant filed such application no later than thirty (30) days prior to such termination, beginning the first day of the month following such termination, otherwise, beginning the first day of the month following the thirtieth (30) day after the date the application is filed.

12.3.02 Early Retirement:

(a) Participant shall be eligible for an Early Retirement Allowance upon the Participant's termination of Employment if the Participant has attained age fifty-five (55) and completed at

least ten (10) years of Credited Service. Notwithstanding anything herein to the contrary, a Participant who incurs a termination of employment for Cause prior to becoming eligible for a Service Retirement Allowance shall forfeit his or her Early Retirement Allowance.

(b) The Early Retirement Allowance of such a Participant shall equal the Service Retirement Allowance of such Participant as computed in Section 12.3.01(b), reduced in accordance with the following schedule:

(i) for each of the first twenty-four full months that retirement predates age sixty-two, one-half of one per centum per month; and

ii) for each full month that retirement predates age sixty, one-quarter of one per centum per month.

(c) Filing Requirements:

A Participant shall file an application for an Early Retirement Benefit with the Board of Managers, on a form acceptable to it, no more than ninety (90) days before the date on which the Participant elects to have his or her Early Retirement Allowance commence which may be the first day of any month on or after the date specified in Section 12.3.02(a). Subject to

Section 12.3.09, and except as provided in Section 12.1.03 subd. (e)(i)(B), the Early Retirement Benefit shall be payable if the Participant filed such application no later than thirty (30) days prior to such Early Retirement Date, beginning the first day of the month following such Early Retirement Date, otherwise beginning the first day of the month following the thirtieth (30) day after the date the application is filed.

12.3.03 Vested Benefit

(a) A Participant who has five (5) or more years of Credited Service upon termination of Employment but who is not eligible for a Service Retirement Allowance, an Early Retirement Allowance or a Disability Retirement Allowance shall have a vested right to receive a deferred Vested Benefit. Notwithstanding anything herein to the contrary, a Participant who incurs a termination of employment for Cause prior to becoming eligible for a Service Retirement Allowance shall forfeit his or her Vested Benefit. A Vested Benefit shall become payable on the first day of the month the Participant attains age sixty-two (62), and shall be computed in the same manner as the Service Retirement Allowance pursuant to subsection (b) of Section 12.3.01 of the Plan. Alternatively, a

Participant who has ten (10) or more years of Credited Service upon termination of Employment but who is not eligible for a Service Retirement Allowance, an Early Retirement Allowance or a Disability Retirement Allowance shall be entitled to elect to receive payment on account of a deferred Vested Benefit prior to attainment of age sixty-two (62), but no earlier than attainment of age fifty-five (55), computed in accordance with the provisions of subsection (b) of Section 12.3.02, above.

(b) Filing Requirements:

A Participant shall file a notice that he or she intends to elect a Vested Benefit, no more than ninety (90) and at least thirty (30) days before such Participant 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 12.3.09, and except as provided in Section 12.1.03 subd. (e)(i)(B), the Participant's Vested Benefit shall be payable only as of the date specified in the Participant's application therefore.

12.3.04 <u>Disability Retirement</u>

(a) A Participant 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 12.3.04, makes a determination of disability, provided that the Medical Board determines that the Participant is disabled as described below. Notwithstanding anything herein to the contrary, a Participant 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 Participant may be made by:

(i) such Participant; 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 Participant was being paid on the payroll or (ii) twelve (12) months of the last date he/she was being paid on the payroll provided he/she was on a leave of absence for medical reasons without pay during such twelve (12) month period and provided further the Participant was disabled at the time the Participant ceased being paid.

(c) The following procedures and requirements shall apply with respect to an application for and

payment of a Disability Retirement Allowance pursuant to this Section 12.3.04 of the Plan:

(i) Effective date of disability retirement. The effective date of retirement for disability purposes shall be the first day of the month following the later of: (A) the date of the filing of the application for disability retirement; or (B) the date following the last date such Participant was being paid on the payroll.

(ii) Disability determination. With respect to disability retirement applications filed pursuant to this Section, a Participant shall be considered disabled if (A) he or she is physically or mentally incapacitated at the time he or she ceased performance of duties for his or her Employer, (B) the disability is anticipated to be permanent, (C) the Participant is incapable of performing the duties normally, ordinarily and reasonably expected of his or her position or a position of commensurate level for which he or she is qualified and (D) in the case of a Participant who has less than ten (10) years of Credited Service, the Participant's incapacity was the natural and proximate result of an accident (not caused by his or

her own willful act) sustained in the performance of his or her duties in active service while actually a Participant.

(iii) After the filing of such an application, such Participant shall be given one or more medical examinations by the Medical Board which shall determine whether the Participant is physically or mentally incapacitated for the performance of duty, and, in the case of a Participant who has less than ten (10) years of Credited Service, that the Participant's incapacity was the natural and proximate result of an accident (not caused by his or her own willful act) sustained in the performance of his or her duties in active service while actually a Participant and ought to be retired for disability. Upon a finding by the Medical Board that the Participant is so incapacitated, he or she shall be retired. Such retirement shall be effective as of a date approved by the Board of Managers.

(d) Recovery of Disability Retirees:

(a) The Board of Managers may, from time to time following the retirement of a Member on a Disability Retirement Allowance, require such Disability Retiree to undergo a medical

examination by the Medical Board at a place mutually agreed upon by the medical Board and such Disability Retiree. In the event that any such Disability Retiree shall refuse to submit to a medical examination, the payment of the Disability Retiree's Disability Retirement Allowance shall be discontinued until the Disability Retiree submits to such a medical examination. If such refusal continues for six months, the Disability Retiree's right to a Disability Retirement Allowance shall be forfeited.

(b) Following each examination or examinations, the Board of Managers, based upon the report of the Medical Board, shall render a determination as to whether the Disability Retiree's disability is continuing. Where the Board of Managers determines that a Disability Retiree is no longer incapacitated, as described above, the Board of Managers shall certify to such Disability Retiree's Employer that the Disability Retiree is eligible for reemployment in a position of commensurate level to the position he or she had immediately prior to termination of employment and the Participant's Disability Retirement Allowance shall continue until the earlier of the first day of the month

before the date the Participant is so reemployed or, the first day of the twelfth month after the Board of Managers' redetermination. A Disability Retiree who is not so reemployed shall, if vested at the time of retirement, be restored as a Participant and shall be eligible for any benefits he otherwise would have received under the Program had he not been a Disability Retiree.

(e) Reemployment of Disability Retirees:

(i) The Disability Retirement Allowance of a Disability Retiree shall be reduced in the event that the Disability Retiree is employed, whether or not with an Employer, in an occupation paying more than the difference between his or her Disability Retirement Allowance, as it would be without optional modification, and his or her final salary, as defined in (iv) below. The Disability Retirement Allowance shall be adjusted to a sum which, when added to the amount so earnable, shall equal the final salary. If the earnings subsequently change, the Disability Retirement Allowance shall be adjusted so that the sum of the Disability Retirement Allowance, as it would be without optional modification, when added to the amounts earned shall not exceed his or her final salary.

The Disability Retirement Allowance shall not be reduced after the Disability Retiree has attained age seventy (70), or shall have attained the age and the date such Disability Retiree would have been eligible for Service Retirement Allowance had he remained in continuous Employment from the date of retirement, whichever occurs first.

(ii) In the event that a Disability Retiree is restored to Employment with an Employer, at a salary equal to or in excess of his or her final salary, payment of his or her Disability Retirement Allowance shall cease. Thereafter, such Participant shall be restored as a Participant and shall to the extent required pursuant to the provisions of this Article 12, contribute to the Program. The total Credited Service which was credited at the time of such retirement shall be credited to the restored Participant. Upon subsequent retirement, additional Credited Service earned subsequent to his or her last restoration as a Participant will be credited.

(iii) A Disability Retiree who is receiving a Disability Retirement Allowance shall not become a Participant and shall not participate in the Program while he or she is receiving a Disability

Retirement Allowance. In the event that a Disability Retiree is restored to Employment with an Employer at a salary less than his or her final salary, such Disability Retiree, if he so elects, shall again become a Participant of the Plan and the payment of his or her Disability Retirement Allowance shall cease. If such an election is filed with the Board of Managers, such Participant shall, to the extent required pursuant to the terms of this Article 12, contribute to the Program. The total Credited Service which was credited at the time of such retirement shall be credited to the restored Participant. Upon subsequent retirement, additional Credited Service earned subsequent to the last restoration to membership will be credited.

(iv) Final salary. The term final salary as used in this Section 12.3.04 means the maximum salary or compensation which the Disability Retiree currently would be receiving, in the position from which he or she was last retired for disability, if he or she had not been so retired, unless that position has been abolished. Where such position has been abolished, the Board of Managers shall determine the maximum amount of salary or compensation

which such Disability Retiree currently would be receiving in such position, based on compensation currently paid by such Employer to persons in comparable positions.

(f) The Disability Retirement Allowance for a Participant who is a Disability Retiree shall equal the greater of:

(i) the percentages specified in subsection (b) of Section 12.3.01, as applicable, multiplied by the Final Average Compensation of the Participant; or

(ii) one-third (1/3) of the Participant's Final Average Compensation.

12.3.05 Ordinary Death Benefit

(a) The following benefits shall be paid to the Participant's Beneficiary in the event of the Participant's death while in Employment after completion of one (1) year of Credited Service:

A benefit upon the death of the Participant while an Employee equal to the Member's annual salary upon his or her completion of one (1) year of Employment with an Employer, two (2) years' salary upon completion of two years of Employment, and three (3) years' salary upon completion of (3) or more years of Employment with an Employer. Commencing upon a Participant's attainment of age sixty-one (61), the Benefit otherwise provided pursuant to this paragraph (a) shall be reduced while the Participant

remains in Employment to ninety-six (96) percent of the benefit otherwise payable and each year thereafter the amount payable shall be reduced by an amount equal to four (4) percent per year of the original benefit otherwise payable, but not below sixty (60) percent of the original benefit otherwise payable. Upon retirement, the benefit in force shall be reduced by fifty (50) percent; upon completion of the first year of retirement, the benefit in force at the time of retirement shall be reduced by an additional twenty-five (25) percent, and upon commencement of the third year of retirement, the benefit shall be ten (10) percent of the benefit in force at age sixty (60), if any, or at the time of retirement, if retirement preceded such age; provided, however, the benefit in retirement shall not be reduced below ten (10) percent of the benefits in force at age sixty (60), if any, or at the time of retirement if retirement preceded such age. **[Note: These reductions are subject to review by the Actuary.]**

(b) For the purpose of this Section 12.3.05, salary shall equal the Participant's Compensation for his or her final calendar year of Employment (plus where the Participant terminates Employment other than at the end of a calendar year, the pro rata portion of the Participant's Compensation for the calendar year

prior to termination equal to such annual Compensation multiplied by the ratio of twelve minus the number of full and partial months of Employment (based on the number of days in Employment in such partial month to the number of days in such partial month) in the Participant's last year of Employment, divided by twelve); provided, however, for the purpose of this Section, salary shall exclude any Compensation used in the calculation for any calendar year (annualized in the case of a partial year of Employment) which exceeds 110 percent of the average of the Participant's Compensation for the two immediately preceding calendar years, or any lump sum payment for deferred compensation, sick leave, or accumulated vacation credit or any other payment for time not worked (other than Compensation received each pay period while on sick leave or authorized leave of absence).

(c) The Ordinary Death Benefit payable pursuant to this Section shall not be payable where an Accidental Death Benefit is payable pursuant to Section 12.3.06 of the Plan and the Participant's Eligible Beneficiary elects to receive such Accidental Death Benefit.

(d) For the purposes of this Section 12.3.05:

(i) A Participant who dies while off the payroll but prior to eligibility for

Benefits under Section 12.3.01, 12.3.02, 12.3.03 or 12.3.04 shall be considered to be an Employee provided he or she (A) was on the payroll while an Employee and paid within a period of twelve (12) months prior to his or her death, (B) had not been otherwise gainfully employed since he or she ceased to be on such payroll and (C) had credit for one (1) or more years of continuous Employment since he or she last entered or reentered Employment; and

(ii) The Benefit payable shall be in addition to any payment made on account of a Participant's accumulated contributions pursuant to Section 12.3.10.

(e) Subject to Section 12.3.09, the Ordinary Death Benefit payable under this Section 12.3.05 shall be payable as soon as practicable after the Participant's death and after the Beneficiary's written application on a form provided by the Board of Managers.

12.3.05.1 <u>Death Benefit for Participants With a Vested Benefit Who Die Prior to Retirement</u>

(a) A death benefit shall be payable upon the death of a Participant who has a vested right to receive a deferred Vested Benefit and who:

(i) died before the effective date of payment of his or her Vested Benefit;

(ii) had at least ten (10) years of Credited Service at the time of death; and

(iii) died at a time which did not result in the eligibility of the Participant's estate or any Beneficiary to receive any death benefits from the Plan on account of such death, other than the death benefit payable pursuant to this section.

(b) Benefits provided under this section shall be payable to the Participant's estate or Beneficiary.

(c) The amount of the benefit payable pursuant to this section shall be equal to one-half of the amount of the Ordinary Death Benefit which would have been payable had the Participant's death occurred on the last day of service upon which participation in this Program was based.

12.3.06 Accidental Death Benefit

(a) Subject to subsection (b) of this Section 12.3.06, an Accidental Death Benefit shall be payable to a Participant's Eligible Beneficiary where the Board of Managers determines that the Participant died while an Employee and a Participant of this Program and that the death was the result of an

accident (including a deliberate act by a person other than the Participant) incurred while in performance of Employment and was not the result of willful act on the Participant's part. Such Benefit shall be a payment in the form of a pension of an amount equal to fifty (50) percent of the Participant's Compensation during the last year of the Participant's Credited Service or fifty (50) percent of the Participant's annual rate of Compensation if the Participant is credited with less than one year of Credited Service since last becoming a Participant. The Ordinary Death Benefit payable pursuant to Section 12.3.05 shall not be payable where an Accidental Death Benefit is payable under this Section 12.3.06 and the Participant's Eligible Beneficiary elects to receive such Accidental Death Benefit.

(b) An application for an Accidental Death Benefit in respect of a Participant must be filed by the Participant's Eligible Beneficiary with and on a form acceptable to the Board of Managers within sixty (60) days after the death for such benefit to become payable. Provided, however, the Board of Managers in its sole discretion under uniform rules applicable to all Participants may accept an application for an Accidental Death Benefit after the expiration of the sixty (60) day filing

period, where, but only where, an Ordinary Death Benefit under Section 12.3.05 has not been previously paid.

12.3.07 Offset in Computing Retirement Benefits

(a)(i) Notwithstanding any provision of the Plan to the contrary, where any Benefit is payable under Sections 12.3.01, 12.3.02, 12.3.03 or 12.3.04 of the Plan and a "Tier II" Railroad Retirement Act benefit is payable to a Participant, the Benefits payable to the Participant shall be offset by the amount determined as in subsection (a), paragraph (ii) of this Section 12.3.07.

(ii) The offset provided for in this subsection (a), paragraph (ii) shall be the "Tier II" Railroad Retirement Act Benefit (hereinafter "Tier II Benefit") which would be payable to the Participant involved at age 62 under "Tier II" (assuming the Participant did not have 30 years of service covered by the Railroad Retirement Act, which would entitle him to unreduced Tier II benefits at age 60) and shall be computed before application of Section 12.3.08 of the Plan. Such offset shall commence when the Tier II Benefit becomes payable.

In each case, such offset shall be multiplied by a fraction, the numerator of which is the Participant's years of Credited Service covered by the Railroad Retirement Act rendered to an Employer or for which Credited Service is recognized under this program and the denominator of which is the Participant's total years of service covered by the Railroad Retirement Act regardless of whether the Participant was an Employee during the period involved.

The amount of the Tier II benefit shall be based on information supplied by the Railroad Retirement Board or, if such information is not available, on an estimated compensation history which is determined by projecting backwards from the calendar year preceding his or her date of termination of Employment his or her annualized compensation increased annually for each such year at the rate of increase in the average of the total wages reported by the Railroad Retirement Administration; provided, however, that his or her actual compensation history shall be used if (i) the Participant has supplied the Employer with a documented record of his or her actual compensation history from the Railroad Retirement

Administration not later than 120 days following the later of his or her date of termination of Employment and the date the Participant is notified that he or she is entitled to a benefit and of his or her right to submit his or her actual compensation record, and (ii) the use of his or her actual compensation history would produce a lower Tier II Benefit offset.

(b) There shall be offset from benefits under this Plan, to the extent years of Credited Service for matching periods are recognized under this Plan, benefits under the Metro-North Cash Balance Plan accrued for service with Metro-North from 1983 to 1989. The offset for the Metro-North Cash Balance Plan shall be calculated based on benefits payable thereunder as an annuity for the Participant's life only at age 62 or the Participant's actual retirement age, if later; provided that if the Participant's benefits commence before age 62, the actuarial reductions under 12.3.02(b) shall apply.

(c) For any Participant who receives Credited Service for Vested Past Service pursuant to subsection (d) of Section 12.1.03 of this Program for purposes of determining the amount of a Participant's benefit under Section 12.3.01 through 12.3.06, there shall be a one hundred percent (100%) offset from

benefits payable under this Program for the benefits payable on account of such Vested Past Service. Such offset shall commence when the benefits payable on account of such Vested Past Service become payable.

12.3.08 Payment Options for Retirement Benefits

(a) Unless the Participant shall elect an optional form of payment as provided in and subject to the terms and conditions provided in this Section 12.3.08 and Section 12.3.12, the normal form of payment of any Benefits including any Disability Retirement Allowance to which a Participant may be entitled under the Program, subject to making an application, except as otherwise required by Section 12.3.09, and to the other applicable provisions of the Plan, shall be as follows:

(i) If such Participant is not married on the effective date of retirement, his or her benefits shall be paid in monthly installments on the first day of each month during the Participant's life and ending with the month in which his or her death occurs.

(ii) If such Participant is married on the date Benefits are due to commence, the Participant shall receive a reduced pension in the form of a Joint and

Survivor Annuity which is the actuarial equivalent of the benefit payable according to the provisions of Section 3.08(a)(i). For purposes of this section, a Joint and Survivor Annuity is an annuity for the life of the Participant with an annuity for the life of the Participant's surviving spouse to whom he or she was married on the effective date of retirement continuing after the Participant's death at the rate of 50% of the amount of the annuity that is payable during the joint lives of the Participant and such spouse.

(b) Until the effective date of retirement, a Participant may elect to receive the actuarial equivalent of the retirement allowance at the time of retirement, in the form described in Section 12.3.08(a)(i) above or in the form of a smaller retirement allowance payable to such Participant for life and one of the following optional settlements:

Option one: Upon the Retired Participant's death, a retirement allowance in an amount equal to that paid to the Participant shall be paid for life to such person as he or she shall nominate by written designation duly

acknowledged and filed with the Board of Managers at the time of retirement.

Option two: Upon the Retired Participant's death, a retirement allowance of seventy-five (75) percent or less (measured in increments of twenty-five (25) percent) of the amount paid to such Retired Participant shall be paid for life to such person as he or she shall nominate by written designation duly acknowledged and filed with the Board of Managers at the time of retirement.

Option three: A five-year certain option under which payment is made to the Retired Participant for life but is guaranteed for a minimum of five years following retirement. Such payments shall continue to a Beneficiary as he or she shall nominate by written designation, duly acknowledged and filed with the Board of Managers, for the unexpired balance of the five-year guaranteed period. If said Beneficiary should predecease him/her, the commuted value of any installments due during the unexpired balance of the five-year guaranteed period shall be paid in a single sum to a duly designated contingent Beneficiary, or if none exists, to the legal representative of the Participant.

Should a Beneficiary who has commenced receipt of the payments die before expiration of the said guaranteed minimum period, the commuted value of any installments due during the unexpired balance of the five-year guaranteed period shall be paid in a single sum to a duly designated contingent Beneficiary, or if none exists, to the legal representative of said deceased primary Beneficiary.

Option four: A ten-year certain option under which payment is made to the Retired Participant for life but is guaranteed for a minimum of ten years following retirement. Such payments shall continue to a Beneficiary as he shall nominate by written designation, duly acknowledged and filed with the Board of Managers, for the unexpired balance of the ten-year guaranteed period. If said Beneficiary should predecease him/her, the commuted value of any installments due during the unexpired balance of the ten-year guaranteed period shall be paid in a single sum to a duly designated contingent Beneficiary, or if none exists, to the legal representative of the Participant. Should a Beneficiary who has commenced receipt of the

payments die before expiration of the said guaranteed minimum period, the commuted value of any installments due during the unexpired balance of the ten-year guaranteed period shall be paid in a single sum to a duly designated contingent Beneficiary, or if none exists, to the legal representative of said deceased primary Beneficiary.

(c) An election by a married Participant not to receive the form of benefits described in Section 12.3.08(a)(ii) shall not be effective unless the spouse of the Participant has: (i) consented in writing to such election; (ii) consented in writing to the designation of another Beneficiary (including any class of Beneficiaries or contingent Beneficiaries) (where applicable) and to the form of benefits selected; and (iii) acknowledged the effect thereof, and such consent is witnessed by a Plan representative or a notary public. The form of benefits described in Section 12.3.08(a)(ii) shall not apply unless the Participant's spouse is alive at the date benefits hereunder are to commence. A Participant and his or her spouse may reject the form of benefits described in Section 12.3.08 (a)(ii)(or revoke a previous

rejection) at any time within the 90-day period ending on the date benefits under this Program commence. A Participant and his or her spouse shall in any event have the right to exercise this choice up to 90 days after the Participant has been advised by the Board of Managers of the effect of such choice upon his or her pension. Notwithstanding any other provisions of the Plan, a waiver of the form of benefits described in Section 12.3.08(a)(ii) shall be made in writing on such form or forms as may be prescribed by the Board of Managers and shall not be effective if given more than 90 days before the date benefits under the Plan commence and after a Participant has been advised of the choices of normal and optional forms of benefits and of the spousal consent requirements herein. A revocation of a prior waiver may be made by a Participant without the consent of the spouse at any time before the date benefits under the Plan commence. The number of revocations shall not be limited. A spouse may not revoke a consent. Notwithstanding any other provision of the Plan, spousal consent in accordance with this Section is not required if the Participant establishes to the satisfaction of the Board of Managers:

(i) that there is no spouse, (ii) that the spouse cannot be located, which shall be evidenced by a court order specifying that the Participant has been abandoned within the meaning of local law or by a qualified domestic relations order, or (iii) that the Participant and spouse are legally separated unless a domestic relations order otherwise provides. The spousal consent requirements herein shall not apply to the designation of a Beneficiary for death benefits under Section 12.3.05 hereof.

(d) The factors used in determining options under this Article shall be those attached as Table II hereto.

(e) Notwithstanding any other provision of this Section 12.3.08:

(i) The Board of Managers, for reasonable cause, shall have the power to extend the time for the election of a payment option, for a period or periods which shall expire not later than sixty (60) days immediately after the effective date of a Participant's retirement; and

(ii) If the Participant is incompetent, his or her spouse or the committee of his or

her property, or if he or she is a conservatee, his or her spouse or the conservator of his or her property, may select on the Participant's behalf a payment option as provided for in subsection (b) of this Section 12.3.08.

(f) All benefit payments hereunder shall be paid as of the first day of a month.

(g) When a Participant ceases to be employed by the MTA or any MTA-Affiliated Agency, the Board of Managers shall direct the Trustee to distribute the Participant's full vested benefit under the Plan to the Participant in an immediate lump sum payment if the value of such benefit does not exceed Five Thousand Dollars ($5,000).

12.3.09 Commencement of Payments

(a) Except as otherwise permitted by law, the payment of benefits to a Participant shall begin not later than the April 1st following the end of the calendar year in which the Participant attains age seventy and one-half (70½) or the Participant's status as an Employee terminates, whichever is later.

(b) This Section and the Plan shall be interpreted and administered in accordance with Code Section 401(a)(9) and the regulations thereunder (including without limitation, Regulation Section

1.401(a)(9)-(2). All benefits payable under the Plan shall be subject to the limitations and rules contained in this Section.

(c) In no event shall the payment of benefits under any form of benefit elected by a Participant extend over a period which exceeds the longest of:

(i) the life of the Participant;

(ii) the lives of the Participant and the Participant's Beneficiary, if any;

(iii) the life expectancy of the Participant; or

(iv) the joint life expectancies of the Participant and the Participant's Beneficiary, if any.

(d) Notwithstanding anything else in this Plan to the contrary, the payment of any death benefit payable to any Beneficiary of a Participant shall be subject to the following rules:

(i) If the Participant dies after the Participant's required beginning date under Code Section 401(a)(9) and the regulations thereunder or after the Participant's benefits have irrevocably commenced (the "Commencement Date"), such death benefit must be distributed to the Beneficiary under a method that is at least as rapid as

the method under which distributions were being made to the Participant as of the date of the Participant's death;

(ii) If the Participant dies before the Participant's Commencement Date and the Beneficiary is not a designated Beneficiary, within the meaning of Code Section 401(a)(9), the entire interest of the Participant must be distributed over a period which does not exceed five (5) years from the date of such Participant's death;

(iii) Except as provided in (iv) below, if the Participant's interest is payable to, or for the benefit of, a designated Beneficiary (other than such Participant's spouse), such portion may be distributed over a period which does not exceed the life, or life expectancy, of such designated Beneficiary, provided that distribution of such portion must commence not later than the December 31st of the calendar year immediately following the calendar year of the Participant's death, or such later date as may be permitted under applicable Treasury regulations;

(iv) If the Participant dies before the Participant's Commencement Date and any

portion of such Participant's interest is payable to, or for the benefit of, such Participant's spouse as designated Beneficiary, distribution of such portion must commence not later than the later of the period specified in clause (iii) above or the December 31st of the calendar year in which the Participant would have attained age seventy and one-half (70½); and

(v) In the event that a Participant shall have designated his or her spouse as designated Beneficiary and such spouse shall die after the death of the Participant and before the commencement of distributions to such spouse is required, the Participant's spouse shall be substituted for the Participant in applying the provisions of subsection (iv) above, but only for the purpose of determining the period over which payment of benefits may be made.

(e) For purposes of this Section, the life expectancy of a Participant and a Beneficiary who is the Participant's spouse may be recalculated no more frequently than annually.

(f) For purposes of this Section, and in accordance with applicable Treasury regulations, any death benefit to a Participant's child shall be treated

if it had been paid to such Participant's surviving spouse if such amount will become payable to such surviving spouse upon such child's reaching the age of majority (or upon the occurrence of such other event as may be designated by applicable Treasury regulations).

12.3.10 Return of Participant Contributions in Certain Instances

Where a Participant terminates Employment other than by death prior to qualifying for benefit under Sections 12.3.01 through 12.3.04 hereof, the Participant may receive a refund of the Participant's contributions accumulated with interest at five (5) percent per annum to the date the Participant receives such refund, payable on the first day of the month as soon as practicable after the Participant's request but not later than 60 days after the Participant's application is filed. When a Participant (other than a Participant who receives an accidental death benefit under Section 12.3.06) terminates Employment by death and is eligible for a death benefit under Section 12.3.05 or where a Participant described in the immediately preceding sentence dies before receiving a refund of his or her accumulated contributions plus interest, the Participant's Beneficiary shall receive a refund of the Participant's contributions accumulated with interest at five (5) percent per annum to the date as of which the Beneficiary receives such refund, and such refund

shall be payable as of the first day of the month after such Participant's death and after the Beneficiary's written application therefor on a form provided by the Board of Managers. Notwithstanding the above, a Participant may, upon termination of Employment, withdraw his or her Participant's contributions pursuant to this section prior to the date such individual accrues ten (10) years of Credited Service. However, the withdrawal of contributions pursuant to this Section by an individual who has accrued at least five (5) years of Credited Service shall terminate his or her membership and all rights in this Plan in the same manner as withdrawal of contributions would terminate the membership of an individual who has not attained vested status. Nothing in this Section shall be construed as permitting an individual who has accrued at least ten years of Credited Service to withdraw Participant contributions.

12.3.11 Consideration of Cost-of-Living Increases

Whenever there is a cost-of-living increase given to retirees who are covered by Tier IV of NYSLERS, the Board of Managers shall consider recommending to the Board granting of a similar increase to Retired Participants in the same categories.

12.3.12 Minimum Benefits Attributable to the Metro-North Agreement Employees Plan

(a) Each Participant who had an account balance transferred from the Metro-North Agreement

Employees Plan to the Plan effective as of the applicable Program Effective Date shall be entitled to a minimum benefit from the Plan equal to such Participant's accrued benefit under the Metro-North Agreement Employees Plan as of January 1, 2004, converted to an annuity based on the 1983 Group Annuity Mortality Table and an interest rate equal to __ percent. **[Note: This interest rate is subject to review by the Actuary.]**

(b) A Participant described in subsection (a) above shall be entitled to elect commencement of the Participant's accrued benefit described in subsection (a) above on the April 1 following the year in which the Participant attains age 70½, whether or not the Participant is then retired.

(c) Each Participant who terminates Employment by death shall have the right to receive a death benefit at least equal to the actuarial equivalent (based on the actuarial assumptions in Section 12.3.12(a)) of his or her accrued benefit transferred from the Metro-North Agreement Employees Plan to this Plan. Any designation of a Beneficiary other than the Participant's spouse for death benefits up to the amount in subsection (a) above shall require the consent of the Participant's spouse in the manner described in Section 12.3.08 (c) above.

12.3.13 Minimum Benefits Attributable to the LIRR Money Purchase Plan

(a) Each Participant who had an account balance transferred from the LIRR Money Purchase Plan to the Plan effective as of the applicable Program Effective Date shall be entitled to a minimum benefit from the Plan equal to such Participant's accrued benefit under the LIRR Money Purchase Plan as of January 1, 2004, converted to an annuity based on the 1983 Group Annuity Mortality Table and an interest rate equal to __ percent. **[Note: This interest rate is subject to review by the Actuary.]**

(b) A Participant described in subsection (a) above shall be entitled to elect commencement of the Participant's accrued benefit described in subsection (a) above on the April 1 following the year in which the Participant attains 70½, whether or not the Participant is then retired.

(e) Each Participant who terminates Employment by death shall have the right to receive a death benefit at least equal to the actuarial equivalent (based on the actuarial assumptions in Section 12.3.13 (a)) of his or her accrued benefit transferred from the LIRR Money Purchase Plan to this Plan. Any designation of a Beneficiary other than the Participant's spouse for such accrued

benefits up to the amount in subsection (a) above shall require the consent of the Participant's spouse in the manner described in Section 3.08(c) above. A Beneficiary shall have the right to elect optional forms of benefits described in the LIRR Money Purchase Plan for the Participant's death benefits up to the amount in subsection (a) above.

12.4 Member Contributions

12.4.01 Required Member Contributions

Members shall contribute under the Plan as follows:

(a) Current Employees:

(i) Except as provided in subsection (c) of this Section, each Participant referred to in subsection (a) of Section 12.2.01 of the Plan on January 1, 2004 shall be required to contribute under the Plan an amount equal to three (3) percent of the Participant's Compensation received on and after January 1, 2004, or such other later Effective Date relevant for the Participant under paragraph (i), (ii) or (iii) of subsection (a) of Section 2.01.

(ii) In the case of any current Employee who had not made the contributions required by subsection (a)(i) from the Effective Date, the full amount of any retroactive

contributions shall be deducted from the Participant's Compensation in equal installments for a period equal to the period during which such Participant has not made the required contributions and such deductions shall begin the first payroll following July 1, 2004. Notwithstanding the foregoing, the minimum payroll deduction shall equal $25 per weekly pay period or $50 per semimonthly or biweekly pay period, and $100 per monthly pay period, or the amount of the remaining deductions, if less, and such installments shall be withheld for as many payroll periods as is required to make up any retroactive contributions. If such Participant applies to retire pursuant to Sections 12.3.01, 12.3.02, 12.3.03 or 12.3.04 or terminates Employment prior to the end of such period, the amount then due must be paid in a lump sum prior to retirement or termination to receive Credited Service for such period. Where the Participant terminates employment and thereafter returns to employment and has not made up the required contributions, he or she

shall make up any required contributions by beginning payroll deductions the next payroll period following his or her return to employment.

(b) Future Employees:

Except as provided in subsection (c) of this Section, all other Participants shall be required to contribute under this Program an amount equal to three (3) percent of his Compensation in order to be entitled to any Benefit under this Program.

(c) Any participant who is an Employee of the LIRR and has completed ten (10) years of making contributions to this Program shall no longer be required to make the contributions provided by paragraph (i) of this subsection (a) effective the beginning date of the first payroll period commencing on or after the date as of which such Participant completes ten (10) years of making such contributions.

(d)(i) In the case of any Participant who is eligible under the provisions of Section 12.1.09, subject to the provisions of that Section, to purchase Credited Service under this Program, the full amount of any retroactive contributions plus, in the case of a Participant buying back Nonvested Past Service under NYCERS, NYSLERS, or any other State or City Plan or the SIRTOA or MaBSTOA

plans qualified or intended to qualify under Section 401(a) of the Code, interest at the rate of five (5) percent per annum compounded annually from the date the Participant's contributions to such Plan were refunded or available for refund to the date the Participant first commences payment of contributions hereunder, shall be deducted from the Participant's Compensation in equal installments for a period equal to the period during which such Participant has not made the required contributions in the case of a Participant purchasing past service with Metro-North or LIRR, and in the case of a Participant buying back Nonvested Past Service under any other plan, for the period such Participant was covered under the old plan, and such deductions shall begin the first payroll following the sixtieth (60th) day after the date such Participant's application for past service credit is accepted by the Board of Managers; provided that no interest shall be payable for a Participant who is buying back past service with Metro-North or LIRR. Notwithstanding the foregoing, the minimum payroll deduction shall equal $25 per weekly pay period or $50 per semimonthly or biweekly pay period, and $100 per

monthly pay period, or the amount of the remaining deductions, if less, and such installments shall be withheld for as many payroll periods as is required to make up any retroactive contributions or purchase Nonvested Past Service, along with interest thereon. If such Participant applies to retire pursuant to Sections 12.3.01, 12.3.02, 12.3.03 or 12.3.04 or terminates Employment prior to the end of the payroll deduction period or, in the case of a former Participant who is eligible to purchase past service credit under Section 12.1.09(f), the amount then due must be paid in a lump sum prior to retirement or termination to receive Credited Service for such period; provided, however, that in the case of former Metro-North or LIRR Employees who are buying back past service with Metro-North or LIRR, the actuarial equivalent of the amount then due shall be subtracted from the Participant's benefits under the Plan based on the actuarial assumptions contained in Table II hereof, and no further contributions or interest shall be required of the Participant following the Participant's retirement or termination of Employment. Where the Participant terminates Employment and thereafter returns to Employment and has not

made up the required contributions, he or she shall make up any required contributions by beginning payroll deductions the next payroll period following his or her return to employment.

(ii) Past service credit (only nonvested past service may be purchased) under any NYCERS, NYSLERS, SIRTOA or MaBSTOA retirement plan shall not be granted unless a Participant eligible to purchase such credit applies therefor and repays any amount refunded (or available for refund) on leaving such plan, together with interest pursuant to the provisions hereof.

12.4.02 No Loans Hereunder

A Participant shall not be permitted to borrow any portion of the contributions which are subject to Section 12.4.01.

12.4.03 Employer Pick-up of Member Contributions

(a) Notwithstanding any other provision of the Program to the contrary, on or after January 1, 2004, each Employer shall "pick up", within the meaning of Section 414(h)(2) of the Code, the Participant contributions described in Section 12.4.01(a) and (c) and eligible for pick up by such Employer which each Participant would otherwise be required to make on and after January 1, 2004.

(b) An amount equal to the amount of such picked up Employee contributions shall be deducted by such Employer from the compensation of such Participant which would otherwise be payable but for this Section, and the amount so deducted shall not be paid to such Participant. Such deductions shall be effected by means of subtraction from the Participant's current salary, or offset against future pay increases, or a combination of such methods.

(c)(i) The Participant contributions picked up pursuant to this Section for any Participant shall be paid to the trust fund by each Employer in lieu of an equal amount of the Participant contributions otherwise to be paid by such Participant under the Program and shall be deemed to be and treated as Employer contributions pursuant to Section 414(h)(2) of the Code. Subject to the provisions of subsection (b) of this Section, for all other purposes, including but not limited to: computation of retirement benefits and contributions by Employers and Participants, the amount of the Participant contributions picked up pursuant to this Section shall be deemed to be a part of the Compensation of each Participant, and such Participant's Compen-

sation as it would be but for this Section shall not be deemed to be changed by reason of this Section.

(ii) Nothing contained in paragraph (i) of this subsection (c), however, shall be construed as superseding any provision of the Plan which limits the Final Average Compensation of any Participant.

(d)(i) For the purposes of determining the Program and trust fund rights, benefits and privileges of any Participant whose Participant contributions eligible for pick up by an Employer are picked up pursuant to this Section, such picked up Participant contributions shall be treated as Participant contributions made by such Participant pursuant to the Program. Interest on such picked up Participant contributions shall accrue in favor of the Participant and be payable by each Employer at the same rate, for the same time periods, in the same manner and under the same circumstances as interest would accrue in favor of the Participant and be payable by such Employer on such picked up Participant contributions as if they were made by the Participant in the absence of an Employer pick up applicable to such Participant under this Section.

(ii) The picked up Participant contributions of any Participant paid by an Employer pursuant to this Section shall be credited to a separate account within the individual account of such Participant, and a separate record of the amount of such picked up contributions shall be maintained.

(iii) Nothing contained in this subsection (d) shall be construed as granting Participant contributions picked up under this Section any status under federal law other than as Employer contributions pursuant to Section 414(h) of the Code.

(e) No Participant whose Participant contributions are picked up pursuant to this Section shall have any right to elect that such Participant contributions, with the corresponding deduction from the Compensation of such Participant as prescribed by subsection (b) of this Section, shall not be effectuated and any contributions hereunder subject to pick up status shall be irrevocable.

(f) The starting date for the pick up of Participant contributions under Section 4.01 hereof (other than retroactive contributions under Section 12.4.01(a)(ii), which shall not be picked up) shall be January 1, 2004.

S:\LEGAL\pension\isteele\IS0421.DOC