

TERMS OF THE EXTENDED MILITARY BENEFITS PROGRAM

These terms shall govern the Extended Military Benefits Program (“EMBP”).

1.0 DEFINITIONS

- 1.1 “Employee” shall mean any individual employed by the City of New York. It shall include any individual appointed to a classified or unclassified position, and, in addition to employees permanently appointed to positions, includes employees serving by provisional and temporary appointments.
- 1.2 “Agency” shall mean the agency to which an employee is appointed.
- 1.3 “Covered Operation” shall mean Operation Enduring Freedom, Operation Iraqi Freedom, Operation Noble Eagle or operations specifically connected with Homeland Security.
- 1.4 “Ordered Military Duty” shall mean military duty performed as a member of the organized militia or reserve forces or reserve components of the armed forces of the United States with or without consent of that member.
- Enlisted military personnel and/or members on voluntary military duty are not eligible for participation in the Extended Military Benefits Program.
- 1.5 “Period of Coverage” shall mean the period during which an employee who is called up for Ordered Military Duty for a Covered Operation receives his or her differential pay under the Terms of the EMBP – Differential Pay Program (“EMBP – DP”). (See Sections 4.1 and 4.2 of these Terms.) It shall commence upon the expiration of the employee’s Statutory Entitlement (if the employee is entitled to one) as that term is defined in Section 1.8 of these Terms; or, if the employee so chooses, the use of any available Leave Balances, whichever is later. For a definition of Leave Balances, see Section 1.9 of these Terms. The Period of Coverage shall expire at the end of the next calendar day after Ordered Military Duty ceases.
- 1.6 “City Salary” shall mean gross City salary before taxes and other deductions are deducted.
- 1.7 “Military Pay” shall mean gross “base pay.”

Note: The City had earlier included allowances for food and housing in the definition of “Military Pay.” This is no longer the case.

1.8 “Statutory Entitlement” shall mean the City salary received by an employee called up for Ordered Military Duty for the first 30 regularly scheduled work days, as provided by New York State Military Law Section 242(5-a). Employees can use no more than 30 regularly scheduled work days in any single continuous period of Ordered Military Duty (even if the Ordered Military Duty extends to more than one year).

1.9 “Leave Balances” shall mean annual leave (including equivalent terms for annual leave as used by the uniformed agencies), compensatory time, vested annual leave or compensatory time balances. Vested balances may only be used after all other balances are exhausted. Leave Balances do not include sick leave balances, where sick leave is provided in leave regulations or pursuant to collective bargaining agreements.

2.0 ELIGIBILITY

2.1 Except as provided by Sections 2.2 of the Terms, an employee is eligible for the EMBP - DP if he or she has been called up for Ordered Military Duty in connection with a Covered Operation.

2.2 In order for an agency to evaluate whether the Ordered Military Duty is in connection with a Covered Operation, an employee must submit his or her military orders. Failure to provide military orders renders an employee ineligible to participate in the EMBP - DP.

Note: Although Section 4312(a)(1) of the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) requires, in almost all cases, an employee to provide his or her employer with advance notice of military service, USERRA does not require that the notice be in writing. USERRA permits oral notice. However, notwithstanding this provision of USERRA, in order to participate in the EMBP - DP, an employee must submit his or her military orders.

3.0 DECLINATION TO PARTICIPATE IN THE EMBP - DP

3.1 An employee who is otherwise eligible to participate in the EMBP – DP may decline to participate.

3.2 An employee who wishes to decline participation in the EMBP - DP shall be asked to sign and have notarized form DP-2531: Declination of the Extended Military Benefits Package (“Declination”), and should return such form to his or her agency representative authorized to accept such form.

3.3 In the event an employee does not submit a DP-2531, but has taken an action which is deemed a declination, or has failed to submit required documentation as listed in Section

4.0, an agency representative must note and retain in the records the basis for the agency's determination that the employee declined to participate in the EMBP - DP.

- 3.4 In the event that an employee otherwise eligible to participate in the EMBP - DP declines to participate, he or she is entitled but not required to use all or any portion of available Leave Balances upon the exhaustion of the Statutory Entitlement.
- 3.5 Upon the exhaustion of any Statutory Entitlement (and if requested, after using all or any portion of accumulated Leave Balances), an employee who declines to participate in the EMBP - DP shall be placed on "Military Leave Without Pay" status.
- 3.6 Placement on "Military Leave Without Pay" stops the generation of paychecks. All employee and employer contributions, including all voluntary contributions deducted from paychecks cease, such as contributions to the Deferred Compensation Plan and the Combined Municipal Campaign.

Note: In general, federal and State law provisions may permit an employee who was on Ordered Military Duty without pay to obtain pension credit and maintain pension rights for the period of military leave. An employee returning from Ordered Military Duty should contact his or her retirement system or pension fund for a complete explanation of available pension rights.

- 3.7 An employee who declines to participate in the EMBP - DP will not, after the exhaustion of any Statutory Entitlement, accumulate any Leave Balances, including leave types not included in the definition of Leave Balances in Section 1.9 of these Terms, such as sick leave.
- 3.8 Notwithstanding an employee's placement on "Military Leave Without Pay," an employee who declines to participate in the EMBP - DP will be granted Special Leave of Absence Coverage ("SLOAC"), which provides continuation of health plan coverage for up to four months for those on leave without pay.
- 3.9 Upon the conclusion of SLOAC, an employee who declines to participate in the EMBP - DP will be eligible for continuation of health insurance benefits for a period of time as provided by USERRA.

4.0 PARTICIPATION IN THE EMBP - DP

- 4.1 An employee who participates in the EMBP - DP shall continue to receive the difference between his or her City salary and military pay, where the military pay is less than the City salary, during the Period of Coverage. An employee whose military pay is greater than his or her City salary will not receive any differential pay, but, if such employee is serving in a Covered Operation, will continue to accrue leave balances and continue his or her preexisting healthcare benefits.

- 4.2 Notwithstanding Section 4.1, all deductions for federal, state and City taxes, FICA, and all other amounts which, by law and/or contract, are required to be deducted shall continue to be deducted from the City salary during the Period of Coverage. The employee is responsible for cancelling, if so desired, any voluntary deductions prior to being deployed as they will not automatically cease and will be deducted from the differential pay.
- 4.3 An employee who participates in the EMBP - DP shall continue to accrue annual leave (including equivalent terms for annual leave as used by the uniformed agencies) and, where applicable, sick leave during the Period of Coverage, as provided in the applicable time and leave regulations or applicable collective bargaining agreements.
- 4.4 An employee who participates in the EMBP - DP shall continue to receive the health insurance benefits he or she had been enrolled in prior to the Period of Coverage. Deductions from the employee for any premiums or optional health insurance coverage will continue to be made during the Period of Coverage. If the employee is enrolled in health insurance that requires the employee to pay a contribution out of his/her paycheck and the employee's differential pay does not fully cover this contribution, will be billed for the outstanding balance.
- 4.5 In order to participate in the EMBP - DP, an employee must sign and have notarized form DP-2520: Enrollment In the Extended Military Benefits Package ("Enrollment") and must return such form along with a recent Leave and Earnings Statement ("LES") to his or her agency representative authorized to accept such form. Only LESs for pay periods within 90 days of the execution date on the employee's Enrollment agreement will be accepted as proof of current military pay and used to calculate the employee's differential pay under the EMBP - DP.

An employee who fails to submit his or her military orders or fails to submit an LES with the Enrollment (and, therefore, does not allow the agency to determine whether the employee is serving in a Covered Operation or whether the employee is to receive any differential pay) shall be deemed to have declined participation in the EMBP - DP; therefore, he or she will not receive any differential pay or any additional benefits of the EMBP-DP.

- 4.6 In order to participate in the EMBP- DP, you must submit all of the following forms to the agency representative authorized to accept such forms:
- Military Orders for a covered operation
 - DP-2520: Enrollment In the Extended Military Benefits Package
 - Recent LES
 - Your contact information while deployed (Page 3 of DP-2520)

Failure to submit any of the above will be deemed a declination to participate in the EMBP-DP.

- 4.7 A copy of these Terms must be attached to an Enrollment when distributed to the employee.
- 4.8 Except as specified in Section 7 of these Terms, participation in the EMBP - DP expires at the conclusion of the Period of Coverage.
- 4.9 Any monies received after the conclusion of the Period of Coverage must be repaid in full according to the Terms of the EMBP – Full Pay/Repayment Plan¹ (“EMBP – FP/RP”), as specified in Section 6, below. Overpayments received under the EMBP – DP do not qualify for an administrative adjustment or early repayment incentive.

5.0 USE OF LEAVE BALANCES

- 5.1 Upon the exhaustion of any available Statutory Entitlement, an employee is entitled, but is not required, to use all or any portion of his or her Leave Balances in order to continue to receive his or her City salary. In addition to the Leave Balances as described in Section 1.9 of these Terms, an employee may also use, if he or she is entitled to it, a floating holiday.
- 5.2 The employee will receive his or her full City salary while using Leave Balance. There is no obligation to repay any salary received while using Leave Balances.
- 5.3 An employee is entitled to use all or any portion of his or her Leave Balances whether or not the employee participates in the EMBP - DP.
- 5.4 Where an employee elects to participate in the EMBP - DP, the employee’s Period of Coverage under the EMBP - DP will not commence until he or she has used the Leave Balances he or she has chosen to use.

Note: Because an employee will receive the difference between his or her City salary and Military Pay during the Period of Coverage, using Leave Balances will delay the commencement of the Period of Coverage.

6.0 REPAYMENT

- 6.1 An employee who was previously enrolled in the EMBP – FP/RP, or who received pay under the EMBP – DP to which he/she was not entitled, will be subject to repayment conditions under these Terms; repayment cannot be made in any other manner unless specifically authorized by the Commissioner of the Department of Citywide Administrative Services (“DCAS”).

¹ The Extended Military Benefits Program promulgated by the City from October 2001 until November 4, 2008, was a “full pay/repayment plan” program. That program is no longer being offered for new periods of military service. However, **except as otherwise noted in these terms**, the repayment terms governing repayments under the EMBP – FP/RP will govern repayments required under the EMBP – DP.

6.2 The amount to be reimbursed to the City by an employee must be determined by using the formula approved by DCAS. No agency is authorized to use a different formula for determining the amount to be reimbursed unless specifically authorized by the Commissioner of DCAS.

A 7.65% adjustment for Social Security and Medicare and a 15% administrative adjustment will be deducted from the repayment obligation of all enrollees on the EMBP – FP/RP. No adjustments will be applied towards those making repayment for overpayments made under the EMBP – DP plan.

Any EMBP-FP/RP participant who repays his or her debt amount before his or her last scheduled payment will receive a 5% discount off the remaining amount owed at the time of full repayment. This early repayment incentive does not apply to repayment made for overpayments on the EMBP - DP.

6.3 Except where an employee is called up for subsequent Ordered Military Duty, if the employee elected to participate in the EMBP – FP/RP and, in having done so, incurred a repayment obligation, the reimbursement must be fully effectuated within ten years of the date of return from ordered military duty according to the terms and conditions as specified in New York State Military Law Section 242(5-a).

6.4 An employee to whom this Section 6.0 applies must be provided with form DP-2541: Employee Repayment Plan Selection and Agreement for EMBP Enrollees. Upon receiving the form, the employee will have fourteen (14) calendar days in which to select a repayment method.

6.4(a) If the employee chooses to reimburse the full amount within thirty (30) days of completing and returning to the agency the DP-2541, the employee may pay by certified check or money order; or by applying any Leave Balances to the remaining amount; or by a combination of these methods.

6.4(b) If an employee opts to not pay the entire amount within thirty (30) calendar days of completing and returning to the agency the DP-2541, the employee may elect to reduce the total amount owed by certified check or money order; or by applying any Leave Balances to the remaining amount; or by a combination of these methods. After these adjustments are made, the employee will be entered into a repayment plan for payroll deductions in the amount of 7.5% of his or her base pay of City salary on the effective date of New York State Military Law Section 242(5a) or on the date of return to City service, whichever is later. Deductions will be taken out of the employee's weekly or bi-weekly paycheck.

6.5 Any amount owed at the conclusion of the ten years will be payable in one lump sum, either by certified check or money order, and/or by applying any Leave Balances.

6.6 Where an employee does not cooperate in good faith to reach a repayment plan or refuses to sign a form DP-2541: Employee Repayment Plan Selection and Agreement for EMBP Enrollees, the agency shall start payroll deductions in the amount of 7.5% of the

employee's base pay of City salary on the effective date of New York State Military Law Section 242(5-a) or on the date of return to City service.

- 6.7 Reimbursements shall cease, and an agreed-upon repayment plan deadline shall no longer be effective, in the event that an employee is called-up for a subsequent period of Ordered Military Duty (whether or not in connection with a Covered Operation), unless the employee specifically requests otherwise. A new repayment plan deadline must be devised upon the employee's return from the subsequent period of Ordered Military Duty. The employee will be allotted the balance of the ten years remaining for repayment upon return from his or her subsequent period of Ordered Military Duty.
- 6.8 When an employee separates from City service, the employee will be entered into a repayment plan for monthly payments in the amount of 7.5% of his or her gross monthly base pay of City salary on the effective date of New York State Military Law Section 242(5-a) or on the date of separation from City service, whichever is later; or for a retired City employee, an amount equal to 7.5% of the employee's gross monthly pension check.
- 6.9 The full remaining balance owed must be repaid within the same amount of time that he/she would have had, had he/she not separated from City service. Any amount owed at the conclusion of the repayment period will be payable in one lump sum, either by certified check or money order. Monthly payments may be made by certified check or money order; or by applying any Leave Balances to the remaining amount; or by a combination of these methods. In addition, eligible employees may also use managerial lump sum or separation leave for this purpose (as appropriate).

7.0 SUBSEQUENT CALL-UPS FOR ORDERED MILITARY DUTY

- 7.1 Participation in the EMBP - DP will be deemed to have expired at the conclusion of a Period of Coverage. If the employee is to begin a subsequent period of Ordered Military Duty in connection with a Covered Operation a new Enrollment must be executed by the employee along with all forms referenced to in Section 4.6 above. An employee should contact his or her military liaison officer and submit the new military orders and paperwork as soon as reasonably possible after his or her receipt of such orders.
- 7.2 In the event that an employee is to begin a subsequent period of Ordered Military Duty in connection with a Covered Operation and the employee elects not to participate in the EMBP - DP in connection with this subsequent call-up, it is the responsibility of the employee to provide his or her agency with form DP-2531: Declination of the EMBP - DP prior to the commencement of the subsequent period of ordered military duty.

8.0 WITHDRAWAL FROM THE EMBP - DP

- 8.1 An employee who has enrolled in the EMBP - DP may withdraw his or her enrollment in the EMBP - DP at any time by submitting a notarized statement to that effect to his or her agency. The Period of Coverage shall be deemed to end upon receipt of such notarized statement by the agency.

9.0 REELECTION TO ACCEPT THE EMBP - DP

- 9.1 An employee who has withdrawn from the EMBP - DP and who otherwise meets the eligibility requirements, as specified in Section 2.1 of these Terms, may re-elect to accept the EMBP - DP at any time by executing a new Enrollment in the Extended Military Benefits Package, and by otherwise complying with these Terms.