

## **SCHEDULE 25**

### **EMPLOYEE MATTERS**

#### **PART 1**

### **EMPLOYEE TRANSFERS**

#### **TRANSFER OF EMPLOYEES ON TERMINATION**

1. In this Schedule 25, Liability or Liabilities includes all claims, demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or any other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from any such investigation); legal costs and expenses are assessed on an indemnity basis.
2. Nothing in this Schedule shall affect the Returning Employees' contractual rights.
3. The Authority may make a staff transfer scheme pursuant to Schedule 2 of the OMA or pursuant to any other power vested in him which will apply on termination of this Agreement, for whatever reason (a **Scheme**). The Employment Regulations may apply on termination of this Agreement for whatever reason, as well as or instead of a Scheme, and this Schedule 25 shall be read accordingly.
4. Paragraphs 4 to 11 apply where this Agreement is terminated, for whatever reason (and paragraph 12 also applies in the circumstances specified therein), and either the Authority and/or the New Contractor takes over provision of the Services (or services that are fundamentally or essentially the same as the services).
5. The Authority and the Contractor acknowledge and agree that under the Scheme (or the Employment Regulations, as the case may be) the contracts of employment between the Contractor and the Returning Employees and the relevant collective agreements as disclosed by the Contractor to the Authority and/or the New Contractor prior to the Exit Transfer Date shall have effect from the Exit Transfer Date as if originally made between the Authority and/or the New Contractor and the Returning Employees or between the Authority and/or the New Contractor and the other parties to the collective agreements (as the case may be), so far as may be consistent with the provisions of the Scheme and/or the Employment Regulations.
6. On or as soon as practicable after the Exit Transfer Date, the Authority and the Contractor shall, or the Authority shall procure that the New Contractor with the Contractor shall, together issue to each Returning Employee a notice of change of employer in a form to be agreed.
7. The Contractor shall perform and discharge all its obligations in respect of all the Returning Employees for its own account up to the Exit Transfer Date. The Contractor shall also pay to the Authority or, at the direction of the Authority, the New Contractor an amount in respect of any bonus and incentive payments, holiday pay and any other remuneration or Liability payable after the Exit Transfer Date in respect of an entitlement accrued to any extent for the period before the Exit Transfer Date. Subject to Clause 33.10 (Compensation on Voluntary Termination), the Contractor shall indemnify the Authority or, at the direction of the Authority, the New Contractor against all Liabilities arising from:
  - (a) the Contractor's failure to perform and discharge any such obligation;

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- (b) any act or omission by the Contractor or any other event, matter or circumstance occurring or having its origin before the Exit Transfer Date including the fact of the parties proposing to enter into, or having entered into, this Agreement and/or the identity of the Contractor and/or the New Contractor save that this indemnity shall not apply where such Liabilities have arisen as a result of any measures or changes to working conditions which are proposed by the Authority or the New Contractor and subsequently made on or after the Exit Transfer Date which are to an employee's detriment (save to the extent any such measures are a result of a Default by the Contractor);
  - (c) a claim made by or in respect of any person employed or formerly employed by the Contractor other than a Returning Employee for which it may be alleged the Authority and/or the New Contractor is liable by virtue of the operation of this Agreement and/or the Scheme (or the Employment Regulations, as the case may be) save that this indemnity shall not apply where such Liabilities have arisen as a result of any measures or changes to working conditions which are proposed by the Authority or the New Contractor and subsequently made on or after the Exit Transfer Date which give rise to a claim under Regulation 4(9) of the Employment Regulations (save to the extent any such measures are a result of a Default by the Contractor); and
  - (d) a complaint of failure by the Contractor to comply with any requirement of the Scheme (or Regulations 11, 13 and 14 of the Employment Regulations, as the case may be) or in respect of an award of compensation under the Scheme (or Regulations 12 and 15 of the Employment Regulations, as the case may be) save where such complaint arises out of a failure by the Authority or any New Contractor to comply with Regulation 13(4) of the Employment Regulations (save to the extent resulting from a Default by the Contractor).
- 8. Subject to paragraph 12 below, the Authority shall, or shall procure that the New Contractor shall, assume responsibility as the employer of the Returning Employees for its own account from the Exit Transfer Date and the Authority shall indemnify, or shall procure that the New Contractor indemnifies, the Contractor against all Liabilities arising from the failure of the Authority and/or the New Contractor to discharge any liability relating to a Returning Employee arising from the Exit Transfer Date except for Liabilities which are the Contractor's responsibility as set out in paragraph 7.
- 9. If any contract of employment relating to a person employed by the Contractor other than a Returning Employee, or any collective agreement not disclosed, has effect as if originally made between the Authority and/or the New Contractor and that person, or between the Authority and/or the New Contractor and the relevant party to the collective agreement, the Authority may, on becoming aware of that effect, terminate, or may procure that the New Contractor terminates, the contract or collective agreement and the Contractor shall indemnify the Authority and/or, at the direction of the Authority, the New Contractor, against any Liabilities arising out of such termination and against any sum payable to or in respect of that person related to his employment following the Exit Transfer Date and any Liabilities incurred to or on behalf of the relevant party to the agreement (assuming that the person's terms of employment and the obligation giving rise to those Liabilities are not changed on or after the Exit Transfer Date).
- 10. If the Scheme (or the Employment Regulations, as the case may be) is found or alleged not to apply to a Returning Employee:
  - (a) the Authority shall, or shall procure that the New Contractor shall, make to each Returning Employee an offer in writing to employ him under a new contract of employment to take effect on the day after the termination referred to in subparagraph (b) below on the same

terms and conditions as apply to his employment with the Contractor, except in relation to occupational pension benefits, with continuity of employment preserved;

- (b) when the offer of employment has been made by the Authority and/or the New Contractor and accepted by the Returning Employee, the Contractor shall permit the Returning Employee to leave its employment, without having worked his full notice period, if the Returning Employee so requests; and
- (c) if a Returning Employee does not accept an offer of employment made by the Authority and/or the New Contractor, the Returning Employee's employment and all other Liabilities in relation to the Returning Employee shall remain with the Contractor, subject to Clause 33.10 (Compensation on Voluntary Termination).

11. The Contractor warrants to the Authority and/or the New Contractor that:

- (a) within 14 days after the receipt of an Authority Termination Notice or at least six months before the Expiry Date, it shall provide to the Authority or, at the direction of the Authority, the New Contractor a list of those individuals engaged by the Contractor or any subcontractor of the Contractor in the provision of the Services as at the date that the list is prepared;
- (b) as at one month prior to the Exit Transfer Date, it shall update the list supplied under subparagraph (a);
- (c) all the individuals named on the lists supplied under subparagraphs (a) and (b) above are employed by the Contractor and no other person employed by the Contractor works in or is assigned to the provision of the Services and the Contractor shall notify the Authority or, at the direction of the Authority, the New Contractor, in writing as soon as reasonably practicable of any changes to the lists supplied under subparagraphs (a) and (b) above;
- (d) within 14 days after the receipt of an Authority Termination Notice or at least six months before the Expiry Date, it shall disclose to the Authority or, at the direction of the Authority, the New Contractor, complete and accurate copies of all employment contracts of the individuals named on the list supplied under subparagraphs (a) and (b) above and all material matters relating to their employment (to the extent that this information is not disclosed in those employment contracts), including:
  - (i) their names and ages;
  - (ii) their employment particulars pursuant to section 1 of the Employment Rights Act 1996;
  - (iii) details of any disciplinary procedure taken against or grievance procedure taken by any of these employees within the 2 previous years;
  - (iv) details of any dispute, court or tribunal case, claim or action brought by any of those employees within the 2 previous years or that the Contractor has reasonable grounds to believe any of those employees may bring against the Authority and/or the New Contractor arising out of that person's employment with the Contractor;
  - (v) details of all collective bargaining and other agreements with trade unions; and

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- (vi) details of all agreements relating to pension, retirement, redundancy pay arrangements, bonuses, incentive schemes or similar arrangements of their employer;
  - (e) it shall notify the Authority or at the direction of the Authority, the New Contractor as soon as reasonably practicable of any changes to the lists provided under subparagraphs (a) and (b) above, to the extent that the information referred to in subparagraph (d) has not been previously disclosed to the Authority and/or the New Contractor in relation to any relevant individual, within seven days the Contractor shall disclose such information to the Authority or, at the direction of the Authority, the New Contractor;
  - (f) it shall notify the Authority, or at the direction of the Authority, the New Contractor, as soon as reasonably practicable, in writing, of any changes to the information referred to in subparagraph (d);
  - (g) as at one month prior to the Exit Transfer Date, the information referred to in subparagraph (d) shall be complete and accurate; and
  - (h) not less than one month prior to the Exit Transfer Date, it will provide to the Authority or, at the direction of the Authority, the New Contractor, complete and accurate job descriptions (where these are in place and to the extent that they have not already been provided under subparagraph (d)) in respect of each of the Returning Employees.
12. In the event that this Agreement is terminated in accordance with Clause 33.2 (Termination on Contractor Default), Clause 33.4 (Termination on Persistent Breach by Contractor), or Clause 33.8 (Termination on Corrupt Gifts and Fraud), the following provisions shall apply. The Contractor shall, notwithstanding the provisions of paragraph 8 above:
- (a) be liable for all Liabilities arising out of any termination by the Authority or a New Contractor of any Returning Employee within nine months of termination of this Agreement by reason of redundancy or as a direct result of the termination of this Agreement and shall indemnify the Authority (or, at the direction of the Authority, a New Contractor) on a continuing basis against all such Liabilities;
  - (b) in the event that the employment of any Returning Employee is terminated by the Authority or the New Contractor within nine months of termination of this Agreement by reason of redundancy or as a direct result of the termination of this Agreement, pay to the Authority or, at the direction of the Authority, a New Contractor, an amount equal to the redundancy payments, notice payments, pay in respect of accrued but untaken holiday and any other payments owed by the Authority or a New Contractor to such Returning Employee as shall be notified to the Contractor by the Authority (the **Termination Payments**) and the Contractor shall indemnify the Authority (or, at the direction of the Authority, a New Contractor) on a continuing basis against the Termination Payments; and
  - (c) comply with the relevant provisions of Schedule 22 (Pensions).

**PRE-EXIT TRANSFER DATE RESTRICTIONS**

13. From the earlier of the date of the receipt of an Authority Termination Notice or six months before the Expiry Date, the Contractor agrees that it shall not, other than in the ordinary course of business, assign any employee to the provision of the Services who is not, at the relevant date, already engaged in the provision of the Services and shall not, without the prior written consent of the Authority:
  - (a) increase the total number of individuals engaged in the provision of the Services; and
  - (b) make, propose or permit any changes to the terms and conditions of employment or working conditions of any of the individuals engaged in the provision of the Services.
14. At least one month before the expected Exit Transfer Date, the Contractor shall provide to the Authority or, at the direction of the Authority, the New Contractor, in respect of each Returning Employee:
  - (a) either the penultimate or final month's copy pay slip data;
  - (b) cumulative pay for tax and pension purposes;
  - (c) cumulative tax paid;
  - (d) tax code;
  - (e) voluntary deductions from pay; and
  - (f) bank/building society account details for payroll purposes.
15. The Contractor shall promptly notify the Authority or, at the direction of the Authority, the New Contractor of any notice of termination of employment given to or by any employee engaged in the provision of the Services at any time after the earlier of the date seven days after the receipt of an Authority Termination Notice and six months before the Expiry Date.

## **PART 2**

### **VOLUNTARY REDUNDANCY TERMS**

#### **APPENDIX B TO THE NATIONAL AGREEMENT ON STAFF TRANSFER AND PROTECTIONS DATED 29 JANUARY 2014**

##### **REHABILITATION PROGRAMME: ENHANCED VOLUNTARY REDUNDANCY SCHEME**

1. This Appendix sets out the voluntary redundancy scheme which will apply to employees in a category where there is a potential oversupply post transfer. This is likely to apply initially primarily to Senior Management and Corporate Support staff posts. The provisions apply in all cases of voluntary redundancy arising as a direct consequence of the TR Programme and will remain in operation until 31 March 2015, last day of service agreed to be no later than 31 March 2016.
2. Additionally, the commercial contracts will specify that, other than where more beneficial terms exist, where voluntary redundancy is offered, these enhanced terms should apply to any member of staff employed by a Probation Trust on 31 May 2014.
3. The decision in respect of individual applications on whether to award voluntary redundancy is at the employer's absolute discretion and will include consideration of, amongst other things, the exigencies of the service, organisational issues and business needs. Whilst the decision as to which applications for voluntary redundancy should be agreed and at what date this will take effect will rest with the employing body, it is expected that, in reaching a decision, the employer (Trusts in the period up to 31 May 2014) will reach agreement with MoJ/NOMS in terms of future service delivery arrangements.

##### **Time Limited Roles to Support Transition**

4. A variety of time-limited roles and working arrangements may be agreed to support transition, for example to complete work connected with the dissolution of Trusts. Where possible, these roles will be undertaken by staff currently undertaking the work who have agreed, once those roles have been completed post-transition, to accept voluntary redundancy in line with the National Agreement.

##### **Calculation of Redundancy Payments for Staff**

5. **Qualifying Service** – For the purposes of establishing entitlement to, and the calculation of, a redundancy payment, continuous service will include service with any public authority to which The Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999 applies.
6. **Redundancy Pay** – Redundancy payments will be based on the employee's actual weekly pay and not the statutory rate.

##### **Voluntary Redundancy for those under age 55**

7. Redundancy compensation will be paid, subject to a maximum of 67.5 weeks' pay and reckonable service of 15 complete years, as follows:

Four and a half weeks' pay for each year of completed service

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8. Any statutory redundancy payment is included in the compensation payable.
9. A ready reckoner is set out at Annex A to this Appendix.

**Voluntary Redundancy for those aged 55 or over**

- Redundancy payment will be paid, subject to a maximum of 67.5 weeks' pay, in accordance with Paragraph 6 above.
  - Immediate payment of standard retirement pension and a standard retirement grant (i.e. pension lump sum).
10. Where existing local arrangements are more favourable in individual cases, they will supersede the provisions of this scheme.

ANNEX A (READY RECKONER) TO APPENDIX B TO THE NATIONAL AGREEMENT ON  
STAFF TRANSFER AND PROTECTIONS DATED 29 JANUARY 2014

Age	COMPLETED YEARS OF SERVICE														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
17	4.5														
18	4.5	9													
19	4.5	9	13.5												
20	4.5	9	13.5	18											
21	4.5	9	13.5	18	22.5										
22	4.5	9	13.5	18	22.5	27									
23	4.5	9	13.5	18	22.5	27	31.5								
24	4.5	9	13.5	18	22.5	27	31.5	36							
25	4.5	9	13.5	18	22.5	27	31.5	36	40.5						
26	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45					
27	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5				
28	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54			
29	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5		
30	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	
31	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
32	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
33	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
34	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
35	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
36	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
37	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
38	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
39	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
40	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
41	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
42	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
43	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
44	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
45	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
46	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
47	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
48	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
49	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
50	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
51	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
52	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
53	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
54	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
55	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
56	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
57	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
58	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
59	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
60	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
61	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
62	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
63	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
64	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5
65+	4.5	9	13.5	18	22.5	27	31.5	36	40.5	45	49.5	54	58.5	63	67.5