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| **Dated**:       2023   1. **[Fire and Rescue Authority 1]** 2. **[Fire and Rescue Authority 2]** |
| **Data Sharing Agreement** |
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**THIS AGREEMENT** is made on 2024

**BETWEEN:**

1. **[Fire and Rescue Authority 1]** whose registered address is [**X**] [(**“FRA 1”**)]; and
2. **[Fire and Rescue Authority 2]** whose registered address is at [**X**] [(“**FRA 2**”)][[1]](#footnote-2)

each a **“Party”**,together the **“Parties”**.

**RECITALS:**

1. In December 2018 the Court of Appeal ruled in the McCloud and Sargeant cases that the ‘transitional protection’ offered to some members of the judges’ and firefighters’ schemes as part of the 2015 public sector pensions reforms gave rise to unlawful discrimination.
2. The Chief Secretary to the Treasury confirmed the requirement for a legal remedy across all public service pension schemes.
3. The Public Service Pensions and Judicial Offices Act (the ‘PSPJOA 2022’) came into force on 1 April 2022 and includes measures that address the discrimination that arose when legacy schemes were closed to certain members in 2015.
4. For the remedy period (i.e. the period of discrimination 1 April 2015 to 31 March 2022), eligible members will be able to choose to receive legacy pension scheme benefits or benefits equivalent to those available under the reformed pension scheme. This choice will be offered at retirement on what is known as Deferred Choice Underpin (DCU).
5. The DCU approach means the member does not need to make a choice until they reach retirement age.
6. Benefits accrued under the reformed scheme for all eligible members will be converted to legacy scheme benefits (their former final salary scheme) for the whole of their service in the remedy period.  The benefits accrued in the reformed scheme will be kept and treated as an underpinned record.
7. At retirement, members will be offered a choice of the legacy benefits or the reformed benefits for the remedied period.
8. From 1 April 2022 all those who continue in service do so as members of the reformed scheme (Firefighters’ Pension Scheme 2015 (“FPS 2015”)), regardless of age, meaning all members will be treated equally in terms of which pension scheme they are a member of.
9. Remedy for firefighters affected by the Sargeant judgment will be provided by way of a Remediable Service Statement (“RSS”) allowing individuals who have service between 1 April 2015 to 31 March 2022 (“the remedy period”) the opportunity to choose between their legacy scheme or FPS 2015 for the remedy period.

1. Where a firefighter is eligible under the remedy exercise, and has service for more than one FRA, the FRAs must share certain information with each other in order to calculate their entitlement. The first FRA would have to share information to allow the second FRA to identify them, this is usually their name, NI number and potentially DOB. The second FRA would then return the data and would also share this, along with the relevant service and pay information.
2. The Parties must share certain Agreement Personal Data as a result of being eligible for the remedy exercise who has had service with both Parties.
3. The Parties agree that they are each a Controller for the Agreement Personal Data shared between them for the Purpose (as defined below) and that whilst most of it will be shared by FRA 1 with FRA 2 it is possible that FRA 2 might share some or all of that same Agreement Personal Data back to FRA 1 and that is why this Agreement contains mutual promises.
4. Each of the Parties acknowledges and agrees that where either or both of them engages a scheme administrator (independently from the other), the scheme administrator acts as a processor on the appointing party’s behalf and is therefore not joined as party to this Agreement. [[2]](#footnote-3)

**OPERATIVE PROVISIONS**

**IT IS AGREED** as follows:

1. **DEFINITIONS AND INTERPRETATION**

In this Agreement:

* 1. the following words and expressions have the following meanings unless the context otherwise requires:

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| **“Adequacy Decision”** | means an adequacy decision or regulation under the Data Protection Laws as a result of which the transfer of Personal Data to a specified country or territory is not prohibited; |
| **“Agreement”** | means this agreement, including its schedules and appendices, as may be varied from time to time in accordance with its terms; |
| **“Agreement Personal Data”** | means Personal Data which is to be Processed under this Agreement as more particularly described in **Schedule ‎1**; |
| **“Applicable Laws”** | means any law and any legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body which relates to either party; |
| **“Commencement Date”** | means the date on which this Agreement is entered into by the parties; |
| **“Data Protection Laws”** | means any Applicable Laws in force in the United Kingdom from time to time as relate to the Parties that relate to data protection, the Processing of Personal Data, privacy and/or electronic communications, including in the UK the Data Protection Act 2018, the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018), and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and Regulation (EU) 2016/679 (General Data Protection Regulation); and references to **“Controller”**, **“Data Subjects”**, **“Personal Data”**, **“Process”**, **“Processed”**, **“Processing”** and **“Processor”** have the meanings set out in, and will be interpreted in accordance with such laws; |
| **“Data Security Incident”** | means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Agreement Personal Data transmitted, stored or otherwise Processed; |
| **“Data Subject Request”** | means any correspondence from a Data Subject exercising their rights under Data Protection Laws; |
| **“Purpose”** | the processing of Agreement Personal Data for the purpose as more particularly described in **Schedule ‎1**; |
| **“Restricted Transfer”** | means a transfer of Agreement Personal Data which is undergoing processing or which is intended to be Processed after transfer, to a country or territory to which such transfer is prohibited or subject to a requirement to take additional steps to adequately protect the Agreement Personal Data for the transfer to be lawful under the Data Protection Laws; |
| **“Supervisory Authority”** | means any regulatory authority responsible for the enforcement, regulation or governance of any Data Protection Laws and any replacement or successor body or person for any such authority from time to time, including as at the date of this Agreement the Information Commissioner in the UK; and |
| **“Supervisory Authority Correspondence”** | means any correspondence from a Supervisory Authority in connection with the Agreement Personal Data. |

* 1. references to any statute, enactment, order, regulation or other similar instrument will be construed as references to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment, modification or statutory extension of the above;
  2. except where the context requires otherwise, the singular includes the plural and vice versa;
  3. a reference to one gender includes all genders;
  4. words denoting persons include firms and corporations and vice versa;
  5. headings are included in this Agreement for ease of reference only and will not affect interpretation or construction;
  6. references to clauses and schedules are, unless otherwise provided, references to clauses and schedules of this Agreement. In the event and to the extent only of any conflict between the clauses and the schedules, the clauses will take priority; and
  7. the words ‘include’ or ‘including’ will be construed without limitation to the words following.

1. **TERM**

This Agreement will commence on the Commencement Date and will continue in full force and effect until terminated in accordance with **clause ‎7.**

1. **DATA PROTECTION OBLIGATIONS**
2. 1. In consideration of the mutual obligations and undertakings included herein, each Party acknowledges and agrees that they are separate and distinct Controllers of the Agreement Personal Data in that each Party will Process the Agreement Personal Data in such a way as to mean that it determines for itself, without there being any joint decision making with the other Party, the purposes and means of the Processing of Agreement Personal Data.
   2. Each Party shall specifically in relation to Agreement Personal Data disclosed to it by or on behalf of the other Party (not in relation to Agreement Personal Data for which a Party is already a Controller and which originated from itself in the first place):
      1. comply with the Data Protection Laws in relation to its Processing of Agreement Personal Data;
      2. implement technical and organisational measures to ensure a level of security appropriate to the risk presented by processing the Agreement Personal Data, in particular from a Data Security Incident, including having regard to the risk of varying likelihood and severity for the rights and freedoms of Data Subjects and including as a minimum those measures more particularly described in **Schedule [2]**[[3]](#footnote-4);
      3. not by its act or omission cause the other Party to infringe the Data Protection Laws;
      4. Process the Agreement Personal Data only for the Purpose (provided that it may Process Agreement Personal Data for its own purposes where required for compliance with laws or regulatory obligations and for disclosures to regulators) and for the avoidance of doubt the disclosing Party may Process its own Agreement Personal Data for all relevant purposes outside of the subject matter of this Agreement;
      5. keep the Agreement Personal Data confidential and require that its employees keep the Agreement Personal Data confidential;
      6. only disclose the Agreement Personal Data to those individuals who are required to assist in processing the Agreement Personal Data for the Purpose and shall ensure that no other individuals have access to such Agreement Personal Data;
      7. notify the other Party of all Data Security Incidents without undue delay;
      8. maintain an up-to-date internal log of all Data Security Incidents (whether or not it has been necessary to report them to the supervisory authorities and/or Data Subjects) in accordance with the Data Protection Laws;
      9. not make any Restricted Transfer of any Agreement Personal Data unless the same is compliant with Data Protection Laws[[4]](#footnote-5);
      10. notify the other Party promptly following receipt of a Data Subject Request or Supervisory Authority Correspondence which relates in whole or in part to the Agreement Personal Data; and
      11. use best endeavours to notify the other Party if a Party is obliged to make a disclosure of the Agreement Personal Data under any statutory requirement, such notification to be made in advance of such disclosure or immediately thereafter unless prohibited by law.
   3. Promptly after the end of the period when the Purpose is relevant, the Parties shall delete all Agreement Personal Data (unless required to be retained by law or unless required to be retained for provision of a pension to the relevant data subjects).
   4. In relation to the Processing of Agreement Personal Data pursuant to this **clause ‎3**, each Party will nominate a contact person for data protection enquiries from the other Party, as follows[[5]](#footnote-6):
      * 1. [X]; and
        2. [X];
   5. [The Parties acknowledge and agree that the Article 6 UK GDPR processing justification for the disclosures between the Parties of the Agreement Personal Data for the Purpose under this Agreement is the legal obligation of the Parties in calculating the entitlement of the retained firefighter[s] to join the FPS 2006.]
3. **RIGHTS OF THIRD PARTIES**

The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999.

1. **AMENDMENT**

Any provision of this Agreement or its Schedules may be amended if the Parties so agree in writing.

1. **ENTIRE AGREEMENT, VARIATION AND CONFLICTS**
   1. This Agreement (including the Schedules) constitutes the whole and entire Agreement between the Parties covering the processing of Agreement Personal Data as shared by or on behalf of the Parties for the Purpose described in **Schedule ‎1.**
   2. It is expressly declared that no variation will be effective unless in writing and agreed to by the Parties to this Agreement.
   3. This Agreement is not intended by the Parties to govern the Processing of any Personal Data shared between them for any purpose other than that which is expressly referred to in **clause ‎6.1**.
2. **TERMINATION**
   1. This Agreement shall continue in full force and effect until this Agreement is terminated in accordance with the terms of this **clause ‎7** and the obligations on the Parties will continue to apply thereafter for as long as Agreement Personal Data is Processed.
   2. A Party may at any time terminate this Agreement by giving thirty (30) day’s written notice to the other Party.
   3. Termination or expiry of this Agreement is without prejudice to any rights, obligation, claims (including claims for damages for breach) and liabilities which have accrued prior to termination or expiry.
   4. This **clause ‎7** will survive termination or expiry of this Agreement.
3. **GOVERNING LAW**
   1. This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by and construed in all respects with the laws of England and Wales and the Parties hereby respectively agree to submit to the exclusive jurisdiction of the courts of England and Wales.
   2. Notwithstanding **clause ‎8.1** above, any Party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.
4. **SEVERABILITY**

The invalidity, illegality or unenforceability of any clause, sub-clause or other provision of this Agreement shall not affect or impact the continuation in force of the remainder of this Agreement.

1. **EXECUTION**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

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| **SIGNED** on behalf of  **[FIRE AND RESCUE AUTHORITY 1]**  By | )  )  )  ) |
| **SIGNED** on behalf of  **[FIRE AND RESCUE AUTHORITY 2]**  By | )  )  )  ) |

1. **schedule ‎1**

**DETAILS OF PROCESSING**

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| **Subject matter and purpose of processing (the “Purpose”)** | Processing of Personal Data in order for the Parties to accurately determine the entitlement of an eligible firefighter to choose which pension scheme (legacy or reformed) they wish their benefits to be calculated under the remedy period. |
| **Duration of processing** | Term of the Agreement |
| **Type of Personal Data**[[6]](#footnote-7) | * Firefighter name * Date of birth * National Insurance number * Past / current employment details, including job title, term of service, employment type (permanent/contractor/agency temp) and payroll information * Location |
| **Categories of Data Subject** | Firefighters (current or past/retired) who are or were employed by the Parties. |

1. **schedule 2**

**MINIMUM SECURITY MEASURES**

[TBD][[7]](#footnote-8)

1. **Note to Fire and Rescue Authorities**: Please fill in your details here as appropriate. [↑](#footnote-ref-2)
2. **Note to Fire and Rescue Authorities**: This Data Sharing Agreement has been drafted on the assumption that the data will be shared directly between your two organisations (or by your scheme administrator(s) on your behalf, where they act as your processor(s)). If your scheme administrator is a controller – this DSA is not suitable. [↑](#footnote-ref-3)
3. **Note to Fire and Rescue Authorities**: The ICO data sharing code encourages controllers to agree a minimum set of security measures for the data shared between them. Its key that data is shared securely. We recommend trying to agree a set of security measures that will be applied to the data shared between you in this Agreement if possible. [↑](#footnote-ref-4)
4. **Note to Fire and Rescue Authorities**: Where personal data is transferredoutside the EEA / UK the UK GDPR requires additional safeguards to be in place, including a risk assessment of thee receiving country’s laws and rights towards data subjects. We recommend the Parties discuss with each other ahead of any such transfer to ensure the correct safeguards are in place. We assumethat FRAs are unlikely to need to make any such transfers, so this may be a moot point, but we wanted to flag this requirement. [↑](#footnote-ref-5)
5. **Note to Fire and Rescue Authorities**: Please nominate a contact person for DP enquiries here. The ICO’s Data Sharing Code encourages controllers to do this in their written terms. [↑](#footnote-ref-6)
6. **Note to Fire and Rescue Authorities**: Please consider this list and amend/delete as accurate to the facts. This should document all the types of personal data that the parties will need to share with each other. [↑](#footnote-ref-7)
7. **Note to Fire and Rescue Authorities**: As per above, if you do agree a minimum set of security measures to be applied to the data that is shared, please include those here. [↑](#footnote-ref-8)