

DATE:

Online Services Agreement for the Kiwi Kare Executive Pension Scheme

BETWEEN:

Keith Wright acting as Trustee of Kiwi Kare Executive Pension Scheme of 19 Surrey Drive, Tamworth, Staffordshire. B78 3XB (where there are one or more persons are collectively, the "**Trustees**" and each of them a "**Trustee**"); and

Kiwi Kare Limited (CRN: 10498774) whose registered office is situate at Aston Parish Church, Witton Lane, Birmingham, England, B6 6QA (the "**Employer**");

R C Client Services Ltd (CRN:15613650) whose registered office is situate at 128 City Road, London. EC1V 2NX (the "**Supplier**").

Role and Responsibilities in this Agreement:

Principal Employer Role: Functions as the main employer participating in the Scheme. Responsible for contributing to the Scheme as outlined in the rules and supporting its overall objectives.

Trustees Role: Act as custodians of the Scheme, its funds, assets and all powers exercised in their appointment.

(Supplier) Role: Provides online platform management, calculation systems, and processing of transactions, data management, mobile app enablement and data delivery. Email customer support, web support and telephone assistance. It uses the trade name Retirement Capital for delivery of it's services and is responsible for software and system maintenance.

Registered Administrator: Is responsible for tax compliance, TPR reporting, pension banking services, and all regulatory tax reporting. It uses the trade name Retirement Capital for delivery of its services. It can also act as a Practitioner where instructed to do so.

WHEREAS:

A. The Supplier provides services (the "**Services**") set out in this Agreement with effect from the date of this Agreement.

B. The Principal Employer and Trustees will jointly appoint the Supplier to carry out the services as set out in this agreement.

C. In consideration of the charges set out in Schedule 1 of this Agreement, the Trustees and Principal Employer agree to appoint the Supplier to provide the Services with effect from the date of this Agreement:

THE SERVICES

1. Online Requirements

A. The Trustees appoint The Supplier to assist the Trustees and Registered Administrator with online registration and delivery of statutory information requirements.

B. Where any Trustee is appointed as the Scheme Administrator under the Scheme Rules, the Trustees hereby authorise The Supplier to help facilitate the relevant Trustee's online registration as Scheme Administrator with HMRC including the following declarations:

- The Scheme meets all the criteria to be registered as a pension scheme under Finance Act 2004 and in particular, is established for the purpose of providing benefits in respect of persons listed at section 150 Finance Act 2004.

Each of the Trustees further declares that:

- To the best of my knowledge and belief, the information given in this application to register the pension scheme for the purposes of tax relief is correct and complete and I understand that I am responsible for providing any further information and declarations reasonably required by HMRC in order to consider the application.
- The instruments or agreements by which this pension scheme is constituted do not directly or indirectly entitle any person to unauthorised payments. In addition the way in which the pension scheme is to be administered will not knowingly entitle any person to unauthorised payments.
- I understand that as Scheme Administrator I am responsible for discharging the functions conferred or imposed on the Scheme Administrator of the pension scheme by Finance Act 2004, and I intend to discharge those functions at all times, whether resident in the United Kingdom or another EU member state or non-member EEA state. I understand that I may be liable to a penalty and the pension scheme may be de-registered if I fail properly to discharge those functions. I understand that I may be liable to a penalty and the pension scheme may be de-registered if a false statement is made on this application, or in any information I provide in connection with this application, and that false statements may also lead to prosecution.

2. Transfer Information

From time to time, the Supplier will provide system support and information for the delivery of transfer information to users who are migrating accrued rights from other providers.

3. Calculation of Benefits

The Supplier will provide online calculation functionality and will maintain the records and data attributed to each member's account.

4. Payment of Pensions

The Supplier shall provide system software support for the delivery of pension payroll facility. The Trustees shall be responsible for ensuring that the scheme bank account has sufficient funds to pay pensions and shall also be responsible for the payment of any taxes and interest on sums due to the relevant tax offices.

5. Online Platform

A. The Supplier grants to each member the following non-exclusive, non-transferable licence for the duration of this Agreement to access their information on a customer

relationship management system, known as "Retirement Capital" and its applications and use it subject to the terms and conditions of this Agreement.

B. The members shall use the Retirement Capital system and the information contained therein for the stated purposes only of administration and access to data appertaining to each member's account.

C. If the members believe that their data has been accessed by an unauthorised third party, they should inform the Supplier immediately whereupon the member's username and password will be revoked and the Trustees will be issued with a new username and password.

D. The Platform, its design and its applications are and shall remain the intellectual property of the Rights Holder and the member shall not replicate, copy or transfer to themselves or a third party for commercial use.

E. Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

F. The Supplier has made every reasonable effort to ensure the accuracy and completeness of the Platform, however no warranty, express or implied is given as to the accuracy and completeness of the Platform.

G. With the exception of death or personal injury caused by the negligence of the Supplier, the Supplier shall not be liable for any loss, damage or injury suffered by the Trustees howsoever arising from its use of the Platform.

F. The Supplier shall provide technical support to the Trustees from time to time necessary for the performance of their obligations.

6. Fees, and Charges

A. It is hereby agreed that the Principal Employer (or in the event of their dissolution the Trustees) shall be responsible for the payment of all professional fees, charges and costs charged or incurred by The Supplier in the performance of the Services (the "Fees") from the Scheme.

B. The Fees payable are set out in the Schedule 1 and form part of this Agreement. The Fees may be varied by The Supplier giving a minimum notice period of 3 months notice..

C. The Installation and Annual Operation Fee shall be charged to the Principal Employer and this will be invoiced and become due on signing of this Services Agreement.

D. Subject to (C), the Annual Operation Fee will be on each annual anniversary thereafter, following the date of tax registration.

F. In the event of that the Principal Employer does not settle the invoice due to the Scheme in respect of the services provided within 14 days on the date of the invoice, the Trustees consent that the Supplier may direct the Registered Administrator to meet the costs and disbursements directly from the fund and the Trustees shall recover those costs directly from the Principal Employer.

G. Where the fee is charged to the Principal Employer, the recovery of their costs from the Scheme shall be agreed between the Trustees and Principal Employer.

7. Scheme Bank Account

The Trustees authorise the Supplier to hold account information, including upload of account information onto its software applications necessary for the performance of online services delivery. The Supplier shall not be a signatory to the bank account.

8. Scheme Investment Information

The Trustees may open one or more investment accounts with the agreement of the registered administrator. The Trustees authorise the Supplier to hold investment account information, including upload of account information, API connection onto its software applications necessary for the performance of online services delivery. Investment accounts include all investment holdings permissible under the Rules of the Scheme. The Supplier shall not be a signatory or party to any investments undertaken by the Trustees.

9. Reporting Requirements

The Supplier shall provide and maintain a record of data held on its systems necessary for the reporting requirements imposed on the registered administrator and trustees. All Reporting requirements shall be the responsibility of the Scheme Administrator, unless otherwise agreed.

10. Data Protection

A. In accordance with Data Protection legislation, the Supplier processes this information lawfully and fairly, to which the Trustees consent, and the Supplier maintains procedures to protect it.

B. The Supplier and the Trustees agree to be bound by the GDPR Policy set out in Schedule 2.

11. Novation, Amendment and Termination

A. This Agreement shall come into force at the date of this Agreement and shall be automatically renewed on each anniversary, being the date of this agreement. It may be terminated by the Supplier or the Trustees jointly on giving 30 days written notice to the other parties in accordance with the terms of this Agreement.

B. The terms and conditions of this Agreement may be amended by The Supplier at any time provided that any such amendment is made with 30 days' written notice.

C. The Supplier reserves the right to novate any part of the service performed under this agreement to a third party at its sole discretion. The Supplier shall ensure that the novated services adhere to the standards and conditions set forth in this Agreement. Notwithstanding any such novation, the Supplier shall remain fully responsible for the costs and liabilities associated with the performance of such services, ensuring that the Trustees and Principal Employer are not financially impacted by such novation.

D. Termination of this Agreement for any reason shall be without prejudice to any accrued rights, existing commitments or any contractual provision intended to survive termination, including the Fees accrued and due to The Supplier.

E. If this Agreement is terminated, each of the parties shall provide all reasonable assistance to the others to facilitate the orderly transfer of all relevant documentation in accordance with the instructions of the Trustees. The reasonable costs incurred by The Supplier in facilitating the transfer shall be met in accordance with Clause 8 of this Agreement.

12. Liability

A. The Supplier shall exercise reasonable skill and care in the performance of the Services subject to legislation applying to the Scheme.

B. The Supplier will not be liable for indirect or consequential losses. Direct liability will only be acknowledged in cases of proven gross negligence or willful misconduct, including but not limited to breaches of contract, breaches of statutory duty, or fraud. This includes negligence leading to data breaches, or misrepresentation of information critical to the operation of the Scheme.

13. Indemnification Boundaries:

The Trustees and Principal Employer shall indemnify the Supplier against claims arising from the breach of this Agreement, except where such claims result from the Supplier's proven gross negligence or willful misconduct. This indemnification covers claims made by persons entitled to the Scheme Funds or any part thereof and includes all related costs and expenses, except to the extent that such costs are due to the Supplier's aforementioned negligence or misconduct."

Any losses incurred under shall be limited to the amount paid under the professional indemnity insurance policy in force from time to time maintained by the Supplier.

14. Instructions

The Supplier is authorised to act on the instructions of the Trustees individually or jointly which shall be binding on all and be jointly and severally responsible for all duties, obligations and liabilities attaching to either of them under this Agreement.

15. General

A. The Trustees understand and accept that The Supplier is not providing any regulated activity within the scope of the FCA in relation to any transaction or service carried out under this Agreement and the Trustees agree that all requests, demands and instructions given to The Supplier under this Agreement are given in reliance of their own judgement.

B. This Agreement (or any of the arrangements contemplated hereby) shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. None of the parties shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

C. The Supplier is authorised to act on instructions of the Principal Employer and Trustees individually or jointly which shall be binding on all, unless otherwise stated in this Agreement, be jointly and severally responsible for all duties, obligations and liabilities attaching to either of them under this Agreement.

D. The parties to this Agreement will at all times maintain the confidentiality of all information acquired in consequence of it, except for information which they are bound to disclose under compulsion of law or regulatory authority or requested by their professional advisers.

E. Any notice or other communication given by The Supplier to any one of the Trustees shall for the purposes of this Agreement be deemed to be given to all.

F. Electronic signatures adopted in accordance with Electronic Signatures Regulation 2002 (SI 2002 No. 318), whether digital or encrypted, by any and all the parties included in this document are intended to authenticate this document and shall have the same force and effect as manual signatures.

G. Delivery of a copy of this document contemplated hereby bearing an original or electronic signature by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

Signed by the Trustee:

Signature: 

Keith Wright

Signed for an on behalf of the Principal Employer

Signature: 

Keith Wright

Signed for and on behalf of the Supplier:

Signature: 

Emily McAlister

Schedule 2 - GDPR Policy governing the obligations imposed by the Regulation (EU) 2016/679 (the 'Policy')

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BACKGROUND

(A) The Trustee (Controller) determines the processing of personal data as detailed in the Services Agreement with the Supplier.

(B) The Supplier (Processor) processes personal data on behalf of the Controller as detailed in the Services Agreement and required by HMRC and TPR.

(C) The Controller has engaged the Processor to process personal data on its behalf.

(D) Article 28 of Regulation 2016/679 requires Controllers to use Processors that provide guarantees for appropriate measures to protect data subjects' rights.

(E) Article 28(a) of Regulation 2016/679 stipulates that processing by a processor on behalf of a controller must be governed by a contract ensuring the processor acts only on the controller's instructions and implements necessary measures to protect personal data.

(F) In compliance with Regulation 2016/679, the Controller and Processor wish to enter this agreement.

(G) This Policy is part of the Services Agreement between the Trustee and the Supplier.

1. DEFINITIONS AND INTERPRETATION

1.1 Key terms are defined as follows:

- **GDPR:** Regulation 2016/679 on data protection and free movement.

- **National Law:** The law of the Processor's Member State.
- **Personal Information:** Identifiable information about a natural person.
- **Processing Personal Data:** Operations performed on data such as recording, altering, or deleting.
- **Sub-Contracting:** Arranging for a third party to fulfil obligations.
- **Security Measures:** Measures to protect personal data from breaches.
- **DPIA:** Assessment to identify risks to personal information.
- **DPO:** Data Protection Officer.

2. CONSIDERATION

2.1 The Processor shall comply with security, confidentiality, and other obligations under this Policy in return for processing data on behalf of the Controller.

3. SUBJECT MATTER AND DURATION OF THE PROCESSING

3.1 The Controller provides necessary data for the Processor's duties, including sensitive data, as specified in the Services Agreement and regulatory requirements.

3.2 The Processor ensures data is securely used for contractual duties and accessible only to authorised staff.

3.3 Specific consent is obtained for processing special category data, with measures to keep it secure.

3.4 Data is retained for the contract duration plus six years, or longer for special category data.

4. NATURE AND PURPOSE OF THE PROCESSING

4.1 Data processing is to fulfil the Supplier's duties as detailed in the Services Agreement and in accordance with applicable laws, including data sharing with HMRC and The Pensions Regulator.

5. TYPE AND CATEGORIES OF PERSONAL DATA BEING PROCESSED

5.1 Types of data include:

- Identification details (name, address, DOB, NI number).
- Proof of ID and address.
- Financial information.
- Personal details on dependents, marriages, divorces, and deaths.

5.2 No automated profiling is conducted.

6. OBLIGATIONS AND RIGHTS OF THE DATA CONTROLLER

6.1 The Data Controller determines the processing purpose and method, exercises overall control, and is accountable for breaches and GDPR compliance.

6.2 Responsibilities include:

- Complying with principles.

- Honouring data subjects' rights.
- Ensuring lawful processing.
- Appointing a DPO.
- Demonstrating compliance.
- Managing data processors.
- Record-keeping.
- Co-operating with authorities.
- Securing personal information.
- Ensuring breach transparency.
- Notifying safeguards for third-country data transfers.

7. OBLIGATIONS OF THE DATA PROCESSOR

7.1 The Data Processor performs processing as defined by the Controller and legal requirements.

7.2 Responsibilities include:

- Complying with principles.
- Honouring data subjects' rights.
- Appointing a DPO if necessary.
- Performing processing per agreements.
- Updating the Controller.
- Managing sub-processors.
- Keeping data confidential and secure.
- Co-operating with authorities.
- Notifying the Controller of breaches.

8. CONDITIONS FOR CONSENT

8.1 Consent is required from data subjects for specific processing areas, indicated by signatures.

9. SUBJECT ACCESS REQUESTS

9.1 Processors must respond to requests within one month, providing information on:

- Purpose of processing.
- Categories of data.
- Data recipients.
- Data retention period.
- Rights to rectification, restriction, and deletion.
- Data source if not collected from the subject.

9.2 Information must be provided simply and accessibly, with possible administrative costs for further copies.

10. RECORDS OF PROCESSING ACTIVITIES

10.1 Both Controller and Processor must maintain records of processing activities, including details of parties involved, activities, cross-border transfers, and security measures.

11. DATA PROTECTION IMPACT ASSESSMENTS

11.1 Processors must conduct DPIAs for new systems or processes affecting personal data and provide records to the Controller.

12. APPOINTING A DPO

12.1 The DPO, required under UK law, advises on GDPR compliance, liaises with authorities, monitors compliance, and advises on DPIAs.

13. CONFIDENTIALITY

13.1 Processors must maintain data confidentiality and use data only for service provision, continuing obligations as specified by law.

14. NOTIFICATION OF PERSONAL DATA BREACH

14.1 Breach notification obligations:

- Processor notifies Controller.
- Controller notifies authority and data subjects if rights and freedoms are affected.
- Notifications must be within 72 hours.

15. SUB-CONTRACTING

15.1 Processors need written consent from the Controller for sub-contracting, and sub-processors must adhere to this Policy's rules.