



TERMS & CONDITIONS

1. INTERPRETATION

1.1. The Following Definitions and Rules of Interpretation Apply in These Conditions.

1.2. Definitions:

Business Day

a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date

has the meaning given in clause 2.1.

Conditions

these terms and conditions are amended from time to time in accordance with clause 19.

Contract

the contract between Moneypenny and the Customer for the supply of Services in accordance with these Conditions.

Customer

the person, company or organisation who purchases Services from Moneypenny.

Data Subject

an individual who is the subject of Personal Data.

Force Majeure Event

has the meaning set out in clause 16.

Moneypenny

Callitech Limited trading as Moneypenny registered in England and Wales with company number 03894972 whose registered office is at Western Gateway, Wrexham, Wales LL13 7ZB.

Retail Prices Index

the Retail Prices Index (all items, excluding mortgages) as published by the Office for National Statistics from time to time or failing such publication such other index as the parties may agree most closely resembles such index.

Services

any of the **live chat services** supplied by Moneypenny to the Customer to include the supply of a live chat communication platform and the fulfilment of text based communications via the platform on behalf of the Customer with the Customer's Visitors and as more particularly set out in the Specification.

Specification

the description or specification of the Services provided in writing by Moneypenny to the Customer.

1.3. Interpretation:

1.4. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.5. Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6. A reference to **writing** or **written** includes fax and email.

2. SCOPE OF CONDITIONS

2.1. The commencement of the provision of the Services by Moneypenny (including provision during any trial period) constitutes an offer by Moneypenny to supply the Services to the Customer in accordance with these Conditions, and the Customer agreeing to use the Services constitutes acceptance of these Conditions (**Commencement Date**).

2.2. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. MONEYPENNY'S DUTIES

3.1. Moneypenny shall supply the Services to the Customer in accordance with the Specification in all material respects, to include the supply of a live chat communication platform and the fulfilment of text based communications via the platform on behalf of the Customer with the Customer's Visitors. The number of live chats identified in the Specification are limited to the month in which they are allocated and cannot be rolled over into subsequent months. Any live chats over the amount identified in the Specification will be based upon available capacity.

3.2. In the event that items and/or materials other than agreed parcels/letters addressed to the Customer are delivered to Moneypenny's address, Moneypenny shall bear no responsibility to the sender, the Customer or any third party and Moneypenny reserve the right to dispose of such items and/or materials as it thinks fit.

3.3. Moneypenny shall not use the Customer's name, address or logo in publicity materials, publications

or products without the prior written consent of the Customer.

4. ADVERTISING

The Customer undertakes not to use Moneypenny's name, address or logo in publicity materials without the prior written consent of Moneypenny.

5. CUSTOMER'S OBLIGATIONS

5.1. The Customer shall:

5.1.1. provide Moneypenny with all information and co-operation that Moneypenny reasonably requires to enable Moneypenny to perform the Services to observe its obligation under the Contract;

5.1.2. provide Moneypenny, its employees, agents, consultants and subcontractors, with such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by Moneypenny and agreed with the Customer in writing in advance, for the purposes of the Services;

5.1.3. provide Moneypenny with such information and materials as Moneypenny may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

5.1.4. inform Moneypenny of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;

5.1.5. not use Moneypenny's name, address or logo in publicity materials, publications or product without the prior written consent of Moneypenny; and

5.1.6. at all times indemnify and hold harmless Moneypenny from and against any and all claims demands proceedings, damages, penalties, costs, losses, liabilities and expenses of any kind, threatened, claimed or awarded against or otherwise incurred by Moneypenny arising out of or in connection with the Transfer of Undertakings (Protection of Employment) Regulations 2006 as a result of the provision of the Services or otherwise.

6. DURATION AND TERMINATION

6.1. The Contract shall commence on the Commencement Date and, unless otherwise agreed in writing and subject to clause 6.3, for any clients on or below a 150 scheme it shall be for a fixed period

of 3 months from the date specified as the service Commencement Date in the first invoice issued by Moneypenny. For any clients on or above a 250 scheme, the Contract shall be for a fixed period of 6 months. After the initial commitment period it may be terminated (on written notice by either party) for clients on all schemes on 1 month's notice prior to the Customer's next invoice due date.

6.2. The Customer may upgrade their specified scheme at any time. The Customer may only downgrade their scheme once they have been on a specified scheme for a minimum of 3 months.

6.3. Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

6.3.1. the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment; or

6.3.2. the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

6.3.3. the other party repeatedly breaches any of the terms of the Contract or conducts itself in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

6.3.4. the other party commences negotiations with its creditors, appoints an administrator or receiver or suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply.

7. CONSEQUENCES OF TERMINATION

7.1. On termination of the Contract for any reason:



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7.1.1. the Customer shall immediately pay to Moneypenny all of Moneypenny's outstanding unpaid invoices and interest and in respect of the Services supplied but for which no invoice has been submitted and Moneypenny may submit an invoice, which shall be payable immediately on receipt; and

7.1.2. the Customer shall within a reasonable time, where applicable, return all of Moneypenny's equipment. If the Customer fails to do so, Moneypenny may enter the Customer's premises and take possession of it. Until such equipment has been returned or repossessed, the Customer shall be responsible for its safe keeping.

7.2. Moneypenny shall be entitled to charge for the Services during the relevant notice period at the higher of the then current rate of fees payable by the Customer or a rate based on the average of the fees payable by the Customer during the previous 12 months.

7.3. The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

8. CHARGES AND PAYMENT

8.1. Unless otherwise agreed in writing by Moneypenny, all sums due to Moneypenny under the Contract shall be payable within 14 days of receipt of Moneypenny's invoice.

8.2. All invoices submitted by Moneypenny shall be treated as agreed unless the Customer notifies Moneypenny of any discrepancies within 7 days of the date of the invoice.

8.3. All charges under the Contract shall be subject to VAT at the prevailing rate.

8.4. Moneypenny, in consultation with the Customer, may at its discretion assign to the Customer a credit limit and shall notify the Customer of such limit in writing. In the event the aggregate value outstanding from the Customer exceeds this limit, Moneypenny reserve the right to terminate provision of the Services forthwith in accordance with clause 6.

8.5. Moneypenny may increase the charges for the Services on an annual basis. In the event of any increase over and above the percentage increase in the Retail Prices Index in the preceding 12 month

period, Moneypenny shall give the Customer 60 calendar day's written notice with the reasons for such increase.

8.6. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Moneypenny on the due date, Moneypenny may:

8.6.1. charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of RBS plc, accruing on a daily basis and compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. Moneypenny may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

8.6.2. suspend all Services until payment has been made in full.

9. LIVE CHAT

9.1. In the event that Services relating to Live Chat are specified in the Specification, or in the event that Moneypenny does provide any Live Chat services to the Customer, this clause 9 shall apply to the Contract.

9.2. Technical Setup

9.2.1. It is the Customer's responsibility to ensure that any technical instructions provided by Moneypenny are adequately adhered to, which can include but not limited to; adding live chat code to a Customer's website, or providing access to third party software which will enable Moneypenny to receive communications from our Customer's Visitors via the live chat communications platform.

9.2.2. It is the Customer's responsibility to ensure that all medium or means required to receive communications is fully operational.

9.3. Live Chat Monitoring

9.3.1. All information disclosed by and/or relating to:

9.3.1.1. the Customer and its directors, employees, contractors and consultants; and

9.3.1.2. any person or organisation from whom Moneypenny receives a text based message via the live chat platform for or on behalf of the Customer (a "Visitor") will be treated as strictly confidential and not disclosed to any person, except to such of the Customer's directors, employees, contractors and consultants as the Customer may notify to

Moneypenny from time to time.

9.3.2. In this clause 9.3 information includes (without limitation):

9.3.2.1. the name, company, firm or organisation, telephone number and other personal and contact details of the Visitor;

9.3.2.2. the nature and content of the live chat message; and

9.3.2.3. the existence of the live chat message, whether disclosed, recorded or stored verbally, in writing, electronically, or by any other means.

9.3.3. Live chat messages may be monitored or recorded for training purposes.

9.4. Diversion Facility

9.4.1. It is the Customer's responsibility to ensure that the code is added correctly to the website to ensure that the respective Visitor traffic is directed to the appropriate Moneypenny Live Chat account.

9.4.2. It is the Customer's responsibility to ensure that all medium or means required to receive communications is fully operational.

10. EQUIPMENT AND SOFTWARE

10.1. All software and hardware in whatever form provided by Moneypenny for the purpose of providing the Services remains the property of Moneypenny. Moneypenny grants the Customer a non-exclusive, non-transferable licence to any such software for the purpose of using the Service and for no other purpose. The Customer shall not reproduce the software, shall keep it in confidence and shall not modify it.

10.2. The Customer acknowledges that, where Moneypenny does not own the software or hardware supplied, the Customer's use of rights is conditional on Moneypenny obtaining a written licence or sub-licence from the relevant licensor on such terms as will entitle Moneypenny to licence such rights to the Customer.

11. DATA PROTECTION AND CHAT MONITORING

11.1. Moneypenny and the Customer acknowledge that for the purposes of all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018 ("DPA"); the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive

2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, the Customer is the data controller and Moneypenny is the data processor in relation to personal data ("Personal Data").

11.2. Moneypenny shall process all Personal Data relating to the Customer, the Customer's directors, employees, contractors and consultants and any Visitor strictly in accordance with the DPA and on the written instructions of the Customer.

11.3. For the purposes of the Contract, "process" shall include (without limitation) the collection, recording, storage and disposal of Personal Data.

11.4. Moneypenny shall, having regard to the state of technological development and the cost of implementing any measures, take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

11.4.1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

11.4.2. take reasonable steps to ensure compliance with those measures.

11.5. Moneypenny shall ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.

11.6. Moneypenny shall assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the DPA.

11.7. At the written direction of the Customer, Moneypenny shall delete or return Personal Data and copies thereof to the Customer on termination of the Contract.

11.8. Moneypenny shall notify the Customer without undue delay upon becoming aware of any breach of the provisions of this clause 11.

11.9. In the event that Moneypenny breaches any or all of the above mentioned provisions of this clause 11, the Customer reserves the right to terminate the Contract forthwith without notice to Moneypenny.

11.10. The Customer acknowledges and agrees that



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details of the Customer's name, address and payment record may be submitted to a credit reference agency, and Personal Data will be processed by and on behalf of MoneyPenny in connection with the Services.

11.11. The Customer warrants that the Contract and the Services provided under it will not amount to any breach of any contract or arrangements it has with any of its clients or customers.

11.12. Without prejudice to the generality of the other provisions of this clause 11, the Customer warrants that it has and will have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to MoneyPenny and the provision of the Services by MoneyPenny for the duration and purposes of this agreement.

12. CONFIDENTIALITY

12.1. For the purpose of the Contract, "Confidential Information" is defined as:

12.1.1. the name, company, firm or organisation, telephone number and other personal and contact details of a Visitor (as defined at clause 9.3.1.2);

12.1.2. the nature and content of the fax, text based message or email including any attachments to the fax or email, and any messages left by the Visitor;

12.1.3. the existence of the fax, text based message or email; and

12.1.4. any information identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

12.2. MoneyPenny undertakes that it shall not at any time during the Contract, and for a period of 5 years after termination of the Contract, disclose to any person any Confidential Information (except as permitted by clause 12.3) relating to:

12.2.1. the Customer and its directors, employees, contractors and consultants; and

12.2.2. a Visitor.

12.3. MoneyPenny may disclose Confidential Information:

12.3.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out its obligations under or in connection with the Contract. MoneyPenny shall

ensure that its employees, officers, representatives or advisers to whom it discloses Confidential Information comply with this clause 12; and

12.3.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.4. The Customer undertakes that it shall not at any time during the Contract, and for a period of 5 years after termination of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of MoneyPenny, except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.5. For the purpose of clause 12.4, Confidential Information relating to MoneyPenny shall include any information supplied, whether in writing, orally or otherwise, to the Customer marked as "confidential", described as "confidential" or which might reasonably be assumed to be confidential.

12.6. MoneyPenny shall treat all messages as confidential. However, should MoneyPenny be served with an appropriate order or warrant, MoneyPenny shall disclose such information as required by law.

13. DAMAGES

13.1. This clause 13 sets out the entire financial liability of MoneyPenny (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

13.1.1. any breach of the Contract including any deliberate personal repudiatory breach or any deliberate breach of the Contract by MoneyPenny, or its employees, agents or subcontractors;

13.1.2. any use made by the Customer of the Services, or the equipment that has been supplied to the Customer under the terms of the Contract or any part of them; and

13.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

13.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.3. Nothing in these Conditions limits or excludes the liability of MoneyPenny:

13.3.1. for death or personal injury resulting from negligence; or

13.3.2. for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by MoneyPenny.

13.4. Subject to clauses 13.2 and 13.3, MoneyPenny shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss of information or any special, indirect, consequential or economic loss, costs, damages, charges or expenses.

13.5. MoneyPenny's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to an amount equal to the aggregate of the invoices for the Services used by the Customer over the previous 12 months.

14. NO OFFERS OF EMPLOYMENT

For the duration of the Contract and for a period of 6 months after its termination, neither party shall without the prior written consent of the other, solicit the employment of any person employed by the other party in the course of developing, supplying, maintaining or supporting the Services.

15. PROPRIETY

15.1. The Customer agrees that it will not use the Services for any matter which in the reasonable opinion of MoneyPenny constitutes any improper, immoral or illegal purpose and confirms that such use constitutes grounds for immediate termination of the Services by MoneyPenny.

15.2. The Customer undertakes not to send or deliver or cause to be delivered to MoneyPenny's premises any noxious, harmful, illegal, immoral, perishable, dangerous or bulky items or materials and in the event of such a delivery MoneyPenny reserves the right to refuse to accept the items or materials.

16. FORCE MAJEURE

16.1. Neither party shall be liable for failure to

perform obligations, if under the Contract, that failure results from any circumstances beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of MoneyPenny or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake or default of suppliers or subcontractors ("Force Majeure Event"), provided it:

16.1.1. has taken all reasonable steps to prevent and avoid the Force Majeure Event;

16.1.2. takes all reasonable steps to overcome and mitigate the effects of the Force Majeure Event as soon as reasonably practicable;

16.1.3. on becoming aware of the Force Majeure Event, promptly informs the other party in writing of the Force Majeure Event, the known or anticipated impact of the Force Majeure Event and with a reasonable estimate of the period during which the Force Majeure Event will continue;

16.1.4. as soon as is reasonably practicable after becoming aware of the Force Majeure Event, provides written confirmation and reasonable evidence of the Force Majeure Event to the other party; and

16.1.5. notifies the other party when the Force Majeure Event has concluded.

17. ASSIGNMENT

MoneyPenny may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

18. ENTIRE AGREEMENT

18.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation,



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assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18.3. Nothing in this clause shall limit or exclude any liability for fraud.

19. VARIATION

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. WAIVER

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21. SEVERANCE

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

22. NOTICES

22.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first class post or other next working day delivery

service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified by the relevant party.

22.2. Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.

22.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

23. THIRD PARTY RIGHTS

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

24. GOVERNING LAW AND JURISDICTION

24.1. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

24.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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