

10. Confidentiality

10.1 Each party shall treat as confidential information all information (including software) obtained from the other pursuant to this Agreement between them and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the order (and not subject to any confidentiality undertakings), which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach). Each party shall ensure that its employees are aware of and comply with the provisions of this condition and ensure that it is observed and performed by them.

11. Miscellaneous

11.1 The headings used in this Agreement are included for convenience only and are not to be used in construing or interpreting the Agreement.

11.2 The construction, performance and validity of this Agreement shall in all respects be governed by the laws of England and Wales.

11.3 The failure of a party to insist in any one or more instances on the performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment of that party's rights to future performance of such provision, and the other party's obligation in respect of such future performance shall continue in full force and effect.

11.4 In the event that any one or more of the provisions of this Agreement shall for any reason be held to be unenforceable, illegal or otherwise invalid in any respect under the law governing this Agreement or its performance, such unenforceability, illegality or invalidity shall not affect any other provisions of this Agreement and this Agreement shall then be construed as if such unenforceable, illegal or invalid provisions had never been contained herein.

11.5 Neither party shall be liable to the other for any failure to perform, or delay in performance of, its obligations hereunder, other than an obligation to pay monies caused by any circumstances beyond its reasonable control, including but not limited to defaults of suppliers or sub-contractors for any reason whatsoever and all types of industrial disputes, lockouts and strikes.

11.6 This Agreement sets forth and constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all promises, representations, warranties or other statements whether written or oral made by or on behalf of one party to the other of any nature whatsoever or contained in any leaflet, brochure or other document given by one party to the other concerning such subject matter.

11.7 This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties hereto.

11.8 This Agreement hereby cancels all prior agreements between the parties (if any) relating to the Services.

11.9 Any notice and any permission, consent, license or approval or other authorisation to be served upon or given or communicated to one party by the other shall be in the form of a document in writing. All such communications shall be made to Unity Trust Bank, Nine Brindleyplace, Birmingham, B1 2HB for the attention of the Operations Director. All such communications shall be made to the Customer at the address provided on the application form.

11.10 Communications between the Bank and the Customer may be monitored and/or recorded for security and/or training purposes.



0845 140 1000
www.unity.co.uk

Registered in England and Wales, no 1713124.
Registered office, Nine Brindleyplace, Birmingham B1 2HB

Code : EPAYT+C/UTB155
Date : AUGUST 06

Unity e-Payment Terms and Conditions

1. General

1.1 These terms and conditions shall apply to the contract between Unity Trust Bank ("the Bank") and the Customer to the exclusion of all others in relation to the provision the Bank's internet based BACSTEL-IP payment service ("Unity e-Payment"). Any terms and conditions presented by the Customer shall have no effect whatsoever.

1.2 No variation to these terms and conditions shall be valid unless agreed in writing by a duly authorised representative of the Bank.

2. Operational Limits

2.1 The Customer shall at all times follow the Banks policies in respect of the acceptable use of Unity e-Payment and any amended instructions issued by the Bank from time to time on correct usage.

2.2 The Customer acknowledges that it is responsible for the provision of all information necessary for the registration with BACS Payment Services Limited in order to obtain a BACS User Number.

2.3 The Customer will be responsible for ensuring that only Authorised Users with a user ID and password issued by Unity e-Payment are permitted to utilise the service and that all such information is kept strictly confidential.

2.4 The Customer shall not at any time exceed the limit on the value of payment files out of the Bank Account(s) as agreed between the Bank and the Customer from time to time.

3. Term

3.1 This Agreement shall take effect from the commencement date and shall continue until determined in the case of the Customer by the Customer, serving not less than 30 days notice in writing of its desire to terminate this Agreement and in the case of the Bank, upon the Bank serving written notice of termination on the customer EXCEPT in the case of the closure by either the Bank or the Customer of the Bank account(s) whereupon this Agreement shall terminate immediately.

3.2 Any termination shall be without prejudice to any right, or obligation to any party, which has accrued, prior to such termination and such termination shall not affect, or prejudice any provision of this Agreement which is expressly, or by implication, provided to come into effect on, or continue after, such termination.

4. Effect of Termination

4.1 On the termination of this Agreement from any cause whatsoever the Customer will pay all agreed outstanding monies due to the Bank within 10 days of the effective date of termination.

5. Charges

5.1 The Customer hereby authorises the Bank to debit the Customers Bank Account with the charges for the one off Set Up Fee and the monthly Transaction Charges, Template Charges, Subscription Charges and File Submission Charges (as applicable), under advice monthly in arrears on or after the first Business Day of each calendar month.

5.2 All the Charges payable under this Agreement shall (where appropriate) be subject to V.A.T. at the rate applicable from time to time.

6. Indemnity

6.1 The Customer shall indemnify, and keep the Bank indemnified against all costs (including legal costs), expenses, losses, claims, demands and liabilities sustained, suffered or incurred by the Bank by reason or in consequence of any failure by the Customer to perform, or any delay on the part of the Customer or its officers, servants or agents in performing any of the obligations of the Customer under this Agreement or the Customer mandate or as a result of the receipt by the Bank of any fraudulent or unauthorised instructions in relation to Unity e-Payment.

7. Limitation of Liability

7.1 The Bank utilise BACS Payment Services Limited on behalf of the Customer and shall not be liable to the Customer for any loss, damage, fraud, theft, misappropriation, duplication, delay or failure which may occur as a result of BACS Payment Services Limited actions.

7.2 The Bank shall not be liable or responsible to the Customer in respect of any actions, proceedings, losses, costs, expenses, claims or demands brought as a result of the Customer (or any of its officers, employees, servants or agents) exceeding the limits set out in clause 2.4 of this Agreement or issuing any fraudulent or other unauthorised instruction to the Bank in relation to Unity e-Payment.

7.3 The Bank will use maximum reasonable security, methods, devices and procedures, but shall not in any event be liable to the Customer in respect of any losses of whatever nature caused by fraudulent alteration, duplication or transmission which may occur to any transactions once issued from the Bank or by fraudulent transactions received from the Customer. In the event of any such fraudulent alteration, duplication or transmission Unity Trust Bank's sole obligation and liability will be to use its reasonable endeavours to assist the Customer to mitigate any losses.

7.4 The Bank will not be liable to the Customer for or in respect of any consequential loss of the Customer whether for or arising out of any breach of this Agreement or any error (whether negligent or not) or delay in the provision of the services to the Customer under this Agreement. Consequential loss shall include but not be limited to loss of profit, loss of information, business interruption, loss of goodwill (or any similar financial loss) or compensation for any damage suffered by a third party arising out of the provision of services under this Agreement and any other loss or damage caused by delay or failure in the provision of such services.

7.5 Save as provided in this clause 7, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from this Agreement.

7.6 Nothing in this Agreement excludes or limits the liability of the Bank: **(i)** for death or personal injury caused by Bank's negligence; or **(ii)** for any matter which would be illegal for the Bank to exclude or attempt to exclude its liability; or **(iii)** for fraud or fraudulent misrepresentation.

8. Intellectual Property Rights

8.1 All Intellectual Property Rights in the hardware or software utilised in the provision of Unity e-Payment will remain the exclusive property of the Bank or its own suppliers.

9. No Joint Venture or Partnership

9.1 Nothing in this Agreement shall create a joint venture or partnership between the parties, and (save as expressly provided in this Agreement) neither party shall have authority to enter into any engagement or make any representation or warranty on behalf of, pledge the credit of, or otherwise bind or oblige the other party.