

Appendix 1- General interpretation

1. (1) In this Schedule-

"the 1991 Act" means the Water Industry Act 1991(a);

"the 2000 Regulations" means the Water Supply (Water Quality) Regulations 2000(b);

"the 2001 Regulations" means the Water Supply (Water Quality) Regulations 2001(c);

"adoption agreement" means an agreement made or to be made under Section 51A(1) or 104(1) of the 1991 Act (d);

"bond" means a surety granted by a developer who is a party to an adoption agreement;

"bond waiver" means an agreement with a developer for the provision of a form of financial security as a substitute for a bond;

"calendar year" means the twelve months ending with 31st December;

"discharge pipe" means a pipe from which discharges are made or are to be made under Section 165(1) of the 1991 Act;

"disposal main" means (subject to Section 219(2) of the 1991 Act) any outfall pipe or other pipe which-

- a) is a pipe for the conveyance of effluent to or from any sewage disposal works, whether of a sewerage undertaker or of any other person; and
- b) is not a public sewer;

"drain" means (subject to Section 219(2) of the 1991 Act) a drain used for the drainage of one building or any buildings or yards appurtenant to buildings within the same curtilage;

"effluent" means any liquid, including particles of matter and other substances in suspension in the liquid; "financial year" means the twelve months ending with 31st March;

"lateral drain" means-

- (a) that part of a drain which runs from the curtilage of a building (or buildings or yards within the same curtilage) to the sewer with which the drain communicates or is to communicate; or
- b) (if different and the context so requires) the part of a drain identified in a declaration of vesting made under Section 102 of the 1991 Act or in an agreement made under Section 104 of that Act (e);

"licensed water supplier" means a company which is the holder for the time being of a water supply licence under Section 17A(1) of the 1991 Act(f);

"maintenance period" means the period so specified in an adoption agreement as a period of time-

- (a) from the date of issue of a certificate by a Sewerage Undertaker to the effect that a developer has built (or substantially built) a private sewer or lateral drain to that undertaker's satisfaction; and
- (b) until the date that private sewer or lateral drain is vested in the Sewerage Undertaker;

"map of waterworks" means the map made available under Section 198(3) of the 1991 Act (g) in relation to the information specified in subsection (1A);

"private sewer" means a pipe or pipes which drain foul or surface water, or both, from premises, and are not vested in a Sewerage Undertaker;

"public sewer" means, subject to Section 106(1A) of the 1991 Act(h), a sewer for the time being vested in a Sewerage Undertaker in its capacity as such, whether vested in that undertaker-

- (a) by virtue of a scheme under Schedule 2 to the Water Act 1989(i);
- (b) by virtue of a scheme under Schedule 2 to the 1991 Act (j);

- (c) under Section 179 of the 1991 Act (k); or
- (d) otherwise;

"public sewer map" means the map made available under Section 199(5) of the 1991 Act (l);

"resource main" means (subject to Section 219(2) of the 1991 Act) any pipe, not being a trunk main, which is or is to be used for the purpose of-

- (a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or
- (b) giving or taking a supply of water in bulk;

"sewerage services" includes the collection and disposal of foul and surface water and any other services which are required to be provided by a Sewerage Undertaker for the purpose of carrying out its functions;

"Sewerage Undertaker" means the company appointed to be the Sewerage Undertaker under Section 6(1) of the 1991 Act for the area in which the property is or will be situated;

"surface water" includes water from roofs and other impermeable surfaces within the curtilage of the property;

"water main" means (subject to Section 219(2) of the 1991 Act) any pipe, not being a pipe for the time being vested in a person other than the water Undertaker, which is used or to be used by a Water Undertaker or licensed water supplier for the purpose of making a general supply of water available to customers or potential customers of the undertaker or supplier, as distinct from for the purpose of providing a supply to particular customers;

"water meter" means any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from any premises; "water supplier" means the company supplying water in the water supply zone, whether a water undertaker or licensed water supplier;

"water supply zone" means the names and areas designated by a Water Undertaker within its area of supply that are to be its water supply zones for that year; and

"Water Undertaker" means the company appointed to be the Water Undertaker under Section 6(1) of the 1991 Act for the area in which the property is or will be situated.

(2) In this Schedule, references to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe.

- (a) 1991 c. 56
- (b) S.I. 2000/3184. These Regulations apply in relation to England.
- (c) S.I. 2001/3911. These Regulations apply in relation to Wales.
- (d) Section 51A was inserted by Section 92(2) of the Water Act 2003 (c. 37). Section 104(1) was amended by Section 96(4) of that Act.
- (e) Various amendments have been made to Sections 102 and 104 by Section 96 of the Water Act 2003.
- (f) Inserted by Section 56 of and Schedule 4 to the Water Act 2003.
- (g) Subsection (1A) was inserted by Section 92(5) of the Water Act 2003.
- (h) Section 106(1A) was inserted by Section 99 of the Water Act 2003.
- (i) 1989 c. 15.
- (j) To which there are various amendments made by Section 101(1) of and Schedule 8 to the Water Act 2003.
- (k) To which there are various amendments made by Section 101(1) of and Schedule 8 to the Water Act 2003.
- (l) Section 199 was amended by Section 97(1) and (8) of the Water Act 2003.

Appendix 2 - DRAINAGE AND WATER ENQUIRY (COMMERCIAL) AGREEMENT

The Customer and the Client are asked to note the provisions of this Agreement, which govern the basis on which this drainage and water report is supplied.

Definitions

'Client' means the person, company or body who is the intended recipient of the Report with an actual or potential interest in the Property (including, where relevant, their mortgage lender).

'Company' means United Utilities Water Limited who produce the Report; its registered office being at Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington WA5 3LP, company number 2366678.

'Customer' means the person, company, firm or other legal body placing the Order, either on their own behalf as Client, or, as an agent for a Client. 'Order' means any request completed by the Customer requesting the Report.

'Property' means the address or location supplied by the Customer in the Order.

'Report' means the drainage and water report prepared by the Company in respect of the Property.

Agreement

1.1 The Company agrees to supply the Report to the Customer and the Client subject to this Agreement. The scope and limitations of the Report are described in clauses 2 and 3 of this Agreement. Where the Customer is acting as an agent for the Client, the Customer shall be responsible for bringing this Agreement (including, without limitation, any limitations and exclusions contained in it) to the attention of the Client and ensuring their acceptance of it pursuant to clause 1.2.

1.2 The Customer and the Client agree that the placing of an Order for a Report and the subsequent provision of a copy of the Report to the Customer and/or the Client indicates their acceptance of this Agreement and the Company shall be entitled to rely on this notwithstanding the Customer's failure to comply with clause 1.1.

1.3 The Company's cancellation policy in relation to an Order shall form part of this Agreement and is detailed at <https://propertysearches.unitedutilities.com/cancellation/>

Report

2.1 Whilst the Company will use reasonable care and skill in producing the Report, it is provided to the Customer and the Client on the basis that they acknowledge and agree to the following:-

2.2 The information contained in the Report can change on a regular basis so the Company cannot be responsible to the Customer and/or the Client for any change in the information contained in the Report after the date on which the Report was produced.

2.3 The Report does not give details about the actual state or condition of the Property nor should it be used or taken to indicate or exclude actual suitability or unsuitability of the Property for any particular purpose, or relied upon for determining saleability or value, or used as a substitute for any physical investigation or inspection. Further advice and information from appropriate experts and professionals should always be obtained.

2.4 The information contained in the Report is based upon the accuracy, completeness and legibility of the address, drawn boundaries and/or plans supplied by the Customer in the Order.

2.5 The Report provides information as to the indicative location and connection status of existing services and other information in relation to drainage and water enquiries and should not be used or relied on for any other purpose. The Report may contain opinions or general advice to the Customer and the Client. The Company, subject to clauses 3.4 and 3.7 and without prejudice to the other provisions of this Agreement, accepts no liability in relation to any such opinion or general advice or any other information contained in the Report (including, without limitation, any inaccuracies, errors or omissions) unless and only to the extent that such liability arises as a direct result of the Company's negligence (if relevant).

2.6 The position and depth of apparatus shown on any maps attached to the Report are approximate, and are furnished as a general guide only, and no warranty as to its correctness is given or implied. The exact positions and depths should be obtained by excavation trial holes and the maps must not be relied on in the event of excavation or other works made at the Property and/or in the vicinity of the Company's apparatus and, subject to clause 3.7, the Company accepts no liability in relation to any such reliance.

2.7 In providing the Report the Company will comply with the Drainage & Water Searches Network (DWSN) Standards, <https://www.con29dw.co.uk/about-dwsn/#standards>

Liability

3.1 The Company shall not be liable to the Customer and/or the Client for any failure defect or non-performance of its obligations arising from any failure to provide or delay in providing the Report to the extent that such failure or delay is due to an event or circumstance beyond the reasonable control of the Company including but not limited to any delay, failure of or defect in any machine, processing system or transmission link or any failure or default of a supplier or sub-contractor of the Company or any provider of any third party information except to the extent that such failure or delay is directly caused by the negligence of the Company.

3.2 Where a Report is requested for an address falling within a geographical area where two different entities separately provide Water and Sewerage Services, then any liability imposed on the Company pursuant to this Agreement for information contained in the Report which has been provided by the other entity shall be subject to the provisions of this Agreement and shall, without prejudice to the other provisions of this Agreement (including without limitation clauses 3.3 to 3.7), not exceed the liability that would have been imposed on the other entity had it supplied that information directly to the Customer.

3.3 The Report is produced only for use in relation to individual commercial property transactions (i.e. single commercial units, mixed sales of a building or area of land used for non-residential purposes, dual use of a dwelling house, farms sold with agricultural land and/or buildings, a group of holiday homes or an entire new development or a plot of land/additional area with a single or no building) and which requires the provision of drainage and water information and cannot be used for residential properties (i.e. a single dwelling house together with any associated land). Subject to clauses 3.4 to 3.7, the Company's entire liability to the Client howsoever arising under or in connection with the Report and/or this Agreement and whether in contract, negligence or any other tort or for breach of statutory duty or otherwise shall not exceed £10,000,000 (ten million pounds). The Company shall not in any circumstances (whether for breach of contract, negligence or any other tort, under statute or statutory duty, restitution or otherwise at all) be liable to the Client for any indirect or consequential loss or damage whatsoever caused and howsoever arising under or in connection with the Report and/or this Agreement

3.4. The plans attached to the Report are provided pursuant to the Company's statutory duty to make such plans available for inspection (notwithstanding the provisions of this clause) and your attention is drawn to the notice on the plan(s) attached to the Report which applies to the plan(s) and its/their contents. For the avoidance of doubt, nothing in this Agreement shall be interpreted as, or deemed to be, in any way an acknowledgement or acceptance by the Company that a common law duty of care exists between the Company, the Customer and/or the Client in relation to those plans (including, without limitation, the provision of such plans and the information contained within them) and/or any other information contained in the Report.

3.5 Subject to clause 3.7, the Company's entire liability to the Customer howsoever arising under or in connection with this Agreement and whether in contract, negligence or any other tort or for breach of statutory duty or otherwise shall not exceed £5,000 (five thousand pounds) and the Company shall not in any circumstances (whether for breach of contract, negligence or any other tort, under statute or statutory duty, restitution or otherwise at all) be liable to the Customer for any indirect or consequential loss or damage whatsoever caused and howsoever arising under or in connection with this Agreement .

3.6 The Customer and the Client shall ensure that the Report is not accessed by, made available to, used by and/or relied on (in whole or in part) in any way by any other third party, and, subject to clause 3.7, the Company shall not in any circumstances (whether for breach of contract, negligence or any other tort, under statute or statutory duty, restitution or otherwise at all) be liable to any third party for any loss (whether direct, indirect or consequential loss (all three of which terms include without limitation, pure economic loss, loss of profit, loss of business depletion of goodwill and like loss)) or damage whatsoever caused and howsoever arising under or in connection with this Agreement and/or the Report and/or any use of or reliance placed upon the Report. The Customer and the Client agree to indemnify the Company against any losses, costs, claims and damage suffered by the Company as a result of any breach by either of them of the provisions of this clause 3.6.

3.7 Nothing in this Agreement shall exclude the Company's liability for death or personal injury arising from its negligence or for fraud or any other matter to the extent that such liability cannot be excluded or limited by law.

Copyright and Confidentiality

4.1 The Customer and the Client acknowledge that the Report is confidential and is intended for the personal use of the Client only and shall not be used (in whole or in part) for any commercial gain in any circumstances. The Customer and the Client shall ensure that the Report is not accessed by, made available to, used by and/or relied on (in whole or in part) in any way by any other third party. The copyright and any other intellectual property rights in the Report shall remain the property of the Company and its licensors. No intellectual or other property rights are transferred or licensed to the Customer or the Client except to the extent expressly provided herein.

4.2 The Customer or the Client is entitled to make copies of the Report but may only copy Ordnance Survey mapping or data contained in or attached to the Report, if they have an appropriate licence from the originating source of that mapping or data

4.3 The Customer and, the Client agree (in respect of both the original and any copies made) to respect and not to alter any part of the Report including but not limited to altering, removing or obscuring the trademark, logo, copyright notice or other property marking which appears on the Report.

4.4 The maps contained in the Report are protected by Crown Copyright and must not be used for any purpose outside the context of the Report.

4.5 The enquiries contained in the Report are protected by copyright by the Law Society of 113 Chancery Lane, London, WC2A 1PL and must not be used for any purpose outside the context of the Report

4.6 The Customer and the Client agree to indemnify the Company against any losses, costs, claims and damage suffered by the Company as a result of any breach by either of them of the provisions of clauses 4.1 to 4.5 inclusive.

Payment

5.1 Unless otherwise stated all prices are inclusive of VAT. The Customer shall pay the price of the Report specified by the Company, without any set off, deduction or counterclaim.

5.2 Payment must be received in advance unless an account has been set up with the Company. In these cases, payment terms will be as agreed with the Company, but in any event any invoice must be paid within 30 days of the date of its issue.

5.3 The Company reserves the right to increase fees on reasonable prior written notice at any time.

Data Protection

6.1 We will process any personal data you provide to us in accordance with applicable data protection laws and our Data Protection and Privacy Notice (<https://www.unitedutilities.com/privacy/>). In addition we will use your personal data to manage and administer the provision of the Report under this Agreement and to develop and improve the business and services we provide to our customers. We may also disclose it to other companies in the United Utilities group (being United Utilities Water Limited, its holding companies (and their subsidiary companies) and its subsidiary companies) and their sub-contractors in connection with those purposes, but it will not be processed for other purposes or disclosed to other third parties without your express permission or without lawful purpose under data protection law.

General

7.1 If any provision of this Agreement is or becomes invalid or unenforceable, it will be taken to be removed from the rest of this Agreement to the extent that it is invalid or unenforceable. No other provision of this Agreement shall be affected.

7.2 This Agreement shall be governed by English law and all parties submit to the exclusive jurisdiction of the English courts.

7.3 Nothing in this Agreement and conditions shall in any way restrict the Company's or the Customer's or the Client's statutory or any other rights in relation to the provision of and/or access to the information contained in the Report.

7.4 This Agreement and conditions may be enforced by the Customer and the Client but not by any other third party.

7.5 Before you agree to this Agreement, please note that where you are the Customer it is your responsibility to ensure your client/customer is aware of them and that any objections are raised accordingly.

Property Searches complaints procedure

In the event of any queries relating to this Report please e-mail, write or phone our customer team quoting the United Utilities reference detailed on the Report, We will endeavor to resolve any telephone contact or complaint at the time of the call.

Whilst we always try to resolve all complaints straight away, if this is not possible and you are not happy with the course of action taken by us you can ask us to escalate the issues internally via the complaints process detailed below.

We will listen to your complaint and do our best to deal with it immediately.

If we fail to give you a written substantive response within 5 working days the Company will compensate the Customer or the Client (as applicable) the amount of the original fee paid to the Company for the Report, regardless of the outcome of your complaint.

If it is a complex issue requiring more time, we will still get back to you within 5 working days and notify you of progress and update you with the new timescales.

If we consider your complaint to be justified or we have made any errors that substantially change the outcome of the search we will:

- Refund your Report fee
- Provide you with a revised Report (if requested)
- Take the necessary action within our power to put things right which may (where appropriate) include, at our complete discretion, financial compensation or the relocation/removal/installation of our affected water or sewerage assets.
- Keep you informed of any action required

If your complaint has gone through our full internal complaints procedure and you are not satisfied with the response or you believe that we have failed to comply with our internal complaints procedure you may be able to refer your complaint for consideration under The Property Ombudsman Scheme (TPOs). The maximum award available to TPO through their redress scheme is £25k. In addition to TPO's redress scheme covering consumers, TPO will also provide redress for small businesses (including charities and trusts) that meet the following criteria:

- a small business (or group of companies) with an annual turnover of less than £3 million;
- a charity with an annual income of less than £3 million; or
- a trust with a net asset value of less than £3 million.

You can obtain further information by visiting www.tpos.co.uk or email admin@tpos.co.uk