

Waterman Energy Environment Design Limited Terms of Appointment for EnviroRisk Wizard

- 1 Waterman ("Waterman") shall mean Waterman Energy Environment Design Limited of Pickfords Wharf, Clink Street, London SE1 9DG registered in England under number 06592213.
- 2 "Landmark" shall mean Landmark Information Group Ltd of 7 Abbey Court, Eagle Way, Sowton, Exeter, registered in England under number 06592213.
- 3 The Client shall mean HSBC Bank plc
- 4 The completed order form or on-line order submitted via the EnviroRisk Wizard website (which together are completed by the Client's appointed valuer), these terms of appointment, together with the User Guide referred to in clause 9 shall together constitute the contract between Waterman and the Client (the parties) ("this Appointment").
- 5 The EnviroRisk Wizard web-site and the User Guide referred to in clause 9 contain a description of the report to be provided by Waterman ("the Services"), confirm the data which will be provided by Landmark ("Landmark") and sets out a programme for the Services, the fee, a schedule of payment and, where applicable, additional fee charges for circumstances described in Clause 25.
- 6 "Landmark Report" shall mean any report prepared by Landmark under this appointment in respect of the Site using any information extracted from Landmark's database, which is subject to Landmark's terms and conditions.
- 7 "Report" shall mean the interpretative EnviroRisk Wizard report prepared by Waterman based on information provided by Landmark, together with any additional enquiries undertaken (on an hourly reimbursable basis).
- 8 "Data Supplier(s)" means collectively or severally, British Geological Survey, Environment Agency, Institute of Hydrology, Ordnance Survey, Scottish Environment Protection Agency and any other institutions listed in the relevant User Guide who have supplied data to Landmark for incorporation into its database.
- 9 "EnviroRisk Wizard User Guide" (herein referred to as "User Guide") means the document(s) with that title, which may be requested with the Report or downloaded from the EnviroRisk Wizard web site www.enviroriskwizard.com.
- 10 "Site" shall mean the site(s) or location(s) specified in the Order form sent by the Client's agent/valuer to Waterman.

The Agreement

11. Subject to receipt of a completed order form, Waterman agrees to supply to the Client the Report subject to these Terms and the Client agrees that by having instructed its agent/valuer to complete the order form accepts these Terms and Conditions, and to be bound by them. The User Guide applicable to the EnviroRisk Wizard should be read in conjunction with the Report and is incorporated into these Terms as if it were repeated herein.

Waterman obligations

12. Waterman shall exercise reasonable skill, care and diligence in the performance of the Services.

Client obligations

13. The Client and his/her agent/valuer is solely responsible for inputting data relevant to the site into the EnviroRisk Wizard and order form. Waterman shall not be liable (nor shall the Client's agent/valuer be entitled to any refund) in the event that such information is not provided correctly. The information will be provided by the agent/valuer without charge, and shall include a plan clearly indicating the boundary of the site.
14. The Client shall be responsible for using all reasonable means to ensure Waterman's fees charged to the Client's agent/valuer for providing the Report to the Client are paid by the Client's Agent/ Valuer, non payment for which may mean the Client removes the agent/valuer from the approved panel

The Report

15. Whilst Waterman will use reasonable care and skill in providing the Report to the Client as the circumstance shall indicate, the Report is provided to the Client on the express basis that the Client acknowledges and agrees to the following:-
 - a. The information and data supplied in the Landmark Report are derived from publicly available records and other third party sources and Waterman does not warrant the accuracy or completeness of such information or data; and
 - b. the information and data supplied in the Landmark Report are derived solely from those sources specifically cited in the User Guide and Landmark Report and Waterman does not claim that these sources represent an exhaustive or comprehensive list of all sources that might be consulted; and
 - c. Waterman does not guarantee that all past or current uses or features will be identified in the Landmark Report; and
 - d. the Reports and other services provided by Waterman are professional business to business services and not intended for use or interpretation by persons other than professional persons skilled in the use of property and environmental information; and
 - e. Waterman shall not be responsible for error or corruption in the Landmark Report resulting from inaccuracy or omission in primary or secondary information and data, inaccurate processing of information and data by third parties, computer malfunction or transmission by telephone or other communication link, or printing.
 - f. The Report does not give details about the actual state or condition of the Site nor should it be used or taken to indicate or exclude actual suitability or unsuitability of the Site for any particular purpose, or relied upon for determining saleability or value, or used as a substitute for any physical investigation or inspection.

Duration and termination

16. The effective date of the appointment of Waterman is the date when the order is received by Waterman.
17. This Appointment may be terminated in the event of insolvency by either party. Notice of termination shall be given in writing to the party which is insolvent by the other party. In this clause insolvency means either party becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme or reconstruction or amalgamation), being dissolved, compounding with its creditors, having a receiver or administrative receiver or administrator appointed of the whole or any part of its assets.
18. If circumstances arise for which Waterman is not responsible and which Waterman consider make it irresponsible to perform all or any part of the Services, Waterman shall be entitled to terminate this Appointment by two days' notice in writing in respect of all or such part of the Services.
19. Waterman may suspend or terminate the provision of the Services if any amount owing to Waterman from the Client becomes overdue.

Payment

20. Payment for the service shall be in accordance with the User Guide. Where additional enquires are required on a site to obtain the necessary comfort on environmental risks, these enquiries shall be undertaken on a time expended basis utilising the hourly rates agreed in communication with the Client and shall be payable directly by the Client upon completion of the enquires. Where a further environmental assessment of the site is required, this will be subject to a separate written proposal and associated terms and conditions to be agreed with the Client.
21. All sums due under this Appointment are exclusive of VAT, the amount of which shall be paid to Waterman by the Client's valuer or the Client at the rate and in the manner prescribed by law on a quarterly basis,
22. Payments due to Waterman under this Appointment shall become due on submission of Waterman's invoice therefore ("the Due Date") and the final date for payment shall be twenty eight days after the Due Date. Where payment is outstanding for more than 28 days from submission of the invoice, Waterman reserve the right to add

interest to all amounts remaining unpaid thereafter which shall be calculated in accordance with the Late of Commercial Debts (Interest) Act 1998 and at the relevant reference rate plus the statutory rate of interest.

23. Where time charge fees apply the amount due for each person at each payment interval shall be the sum calculated by multiplying the hourly or daily rates applicable to the person concerned by the number of hours or days spent by such person during the interval in question.
24. The Client or agent/valuer may not withhold any amount after the final date for payment unless the Client or agent/valuer gives Waterman not later than seven days before such final date a notice specifying the amount proposed to be withheld and the ground for withholding payment or if there is more than one ground each ground and the amount attributable to it.
25. If any work is carried out or additional costs are incurred by Waterman because of any variation to the Services or Works by the Client or as a result of any lack of or error in any information concerning the site of the Works or access thereto or because of delay by the Client or others or because of other reasons beyond the control of Waterman, Waterman shall be entitled to additional payment therefore calculated on the basis of Waterman's standard rates and clauses 22 to 25 inclusive shall apply thereto.

Copyright

26. The Client acknowledges that the copyright, design rights and any other intellectual property rights in the Services are and shall remain the property of Waterman, Landmark and/or its Data Suppliers and this agreement does not purport to grant, assign, or transfer any rights in respect thereof.
27. Report(s) may not be reproduced in whole or in part. They may be stored in an electronic retrieval system for archive purposes only. Additional copies of the Report(s) may only be commissioned from Waterman subject to Waterman's additional charges in force from time to time.
28. Data stored on the Client's network may be used on up to fifty (50) units (where a "Unit" means a single client personal computer or workstation). Data is deemed to be in use when it is loaded into the temporary memory (i.e. RAM) or installed onto the permanent memory (i.e. hard disc, CD-ROM) of that computer.
29. The Client agrees (and agrees that it will cause its employees and servants to agree):
 - a not to remove, suppress or modify any trade mark, copyright or other proprietary marking belonging to Waterman or Landmark and the Data Suppliers from the Services;
 - b not to create any product which is derived directly or indirectly from the data contained in the Services;
 - c not to combine the Services with or incorporate such Services into any other information data or service;
 - d not to re-format or otherwise change (whether by modification, addition or enhancement) data contained in the Services.
30. The Client entitled to make up to three printed copies only of any Report providing no additional charge is made for them to third parties. Further copies may not be made in whole or in part without the written permission of Waterman who shall be entitled to make a charge for each additional copy.
31. The mapping contained in any Services is protected by Crown Copyright and must not be used for any purpose outside the context of the Services.
32. The Client agrees to hold Waterman indemnified against any losses, costs, claims and damage suffered by Waterman as a result of any breach by any recipient of the Services of the terms of clauses 27 to 32 inclusive.

Liability and insurance

33. Data and information interpreted by Waterman is supplied by Landmark and as such Waterman cannot control and takes no responsibility for the accuracy and completeness of the data provided. Verification of the data provided is outside the scope of the assessment and is not completed by Waterman. Accordingly, Waterman will only be liable to the Client for any loss or damage caused by its negligence or wilful default and neither Waterman, Landmark nor any person providing information contained in the Services shall in any other circumstances be liable for any inaccuracies, faults or omissions in the Services.
34. Waterman is not responsible under this Agreement or otherwise for advising on matters which wholly, partly, directly or indirectly arise out of or result from asbestos (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any asbestos or product or waste that contains asbestos) (herein called "asbestos matters") and the liability if any of Waterman under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim which may arise out of or in connection with asbestos matters is excluded.
35. The Client shall indemnify Waterman against liability for any claim for injury, death, loss or damage wholly, partly, directly or indirectly arising out of or resulting from or associated in any way with such asbestos matters.
36. Waterman accepts no responsibility for any resulting loss or damage from Waterman's assessment due to errors, faults, inaccuracies or omissions within the Landmark Report or data.
37. Waterman has no liability whatsoever for, under or in respect of any insurance policy purchased by the Client where insurance is made available to a Client following the provision of a Report by Waterman issued in accordance with these terms. Where such a policy has been purchased, all liability shall remain exclusively with the insurers. Waterman is not endorsing any policy recommended by the insurers and the Client is entirely responsible for ensuring the insurance policy offered is suitable for its needs and should seek independent advice.
38. Waterman does not guarantee that an insurance policy will be available on the property specified in the Report. All decisions with regard to the offer of insurance policies for any premises will be made solely at the discretion of the insurers and Waterman accepts no liability in this regard. The provision of a Report on a property does not constitute any indication by Waterman or otherwise that insurance will be available on the property.
39. In placing an order for insurance to the insurance company, the Client consents to allow Waterman to forward a copy of the Report to the insurers.
40. Waterman has undertaken the Services for use only by the persons referred to at clause 49 and for no other purpose whatsoever and the Services should not be relied upon by any other third party. Waterman can accept no responsibility and will not be liable to any third party for any loss caused as a result of reliance upon the Services. Any third party relying on the Services does so entirely at its own risk, including without limitation any insurers referred to in clauses 38, 39 and 40. Recipients of the Services are to rely on their own skill and judgement in determining the suitability of the Services for their own purpose and use and are advised to use the Services with caution and not base important business decisions solely on the same. Waterman Services are merely one of the tools available for the assessment of environmental, geological or other property or land-related risks and should be used in conjunction with other recognised methods of evaluation.
41. All representations, warranties, guarantees and conditions (whether express or implied, by statute, common law, collateral or otherwise) as to fitness for any particular purpose, satisfactory quality or otherwise are expressly excluded to the fullest extent permitted by law.
42. Nothing in this Agreement shall exclude or restrict Waterman's liability for death or personal injury resulting from the negligence of Waterman or its employees while acting in the course of their employment or arising from a breach of its statutory duty. Waterman shall not be liable to any recipient of the Service for loss of profits, loss of contracts, (or other indirect or consequential loss or damage) resulting from any event or default by Waterman in the provision of the Services to the fullest extent permitted by law. Time shall not be of the essence with respect to the provision of the Services. Waterman shall not be liable for any delay, interruption or failure in performance of its obligations hereunder which is caused or contributed to by any circumstance which is outside reasonable control, including (without limitation) war, flood, riot, Act of God, strike or other labour dispute (including those affecting Government officials), suspension or delay of service at public registries, change in the law, lack of power, telecommunications failure or overload, or computer malfunction.
43. The recipient of the Services shall on receipt of the Services make a reasonable inspection to satisfy itself that there are no apparent defects or failures.
44. No person may rely on the Report more than 6 years after its original date of issue.
45. Subject to clauses 33 to 45 inclusive, if applicable, but otherwise notwithstanding anything to the contrary contained in this Appointment the total liability of Waterman under or in connection with this Appointment whether in contract or in tort, in negligence, for breach of statutory duty or otherwise shall not exceed in aggregate the sum of £1,000,000; such liability as determined by the aggregate or balance thereof shall be further limited to the lesser of:

- (i) The direct costs reasonably incurred by the Client in cleaning up the site of the Works or any part thereof;
- (ii) The amount if any recoverable by Waterman under any professional indemnity insurance taken out by Waterman.

or

46. Subject to clauses 33 to 45 inclusive, if applicable and to clause 47 and notwithstanding anything to the contrary contained in this Agreement and without prejudice to any provision in this Agreement whereby liability is excluded or limited to a lesser amount, the liability of Waterman if any for any loss or damage ("the loss and damage") shall not exceed such sum as it would be just and equitable for Waterman to pay having regard to the extent of its responsibility for the loss or damage and on the assumptions that:
- (i) all other consultants and all contractors and all sub-contractors involved in the production of the Report shall have provided contractual undertakings on terms no less onerous than those set out in clause 12 to the Client in respect of the carrying out of their obligations in connection with the Report;
 - (ii) there are no exclusions of or limitations of liability nor joint or co-insurance provisions between the Client and any other party referred to in this clause and any other party who is responsible to any extent for the loss and damage is contractually liable to the Client for the loss and damage; and
 - (iii) all the parties referred to in this clause have paid to the Client such proportion of the loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.
47. Waterman is not responsible under this Agreement or otherwise for designing or advising on or otherwise taking measures to prevent or mitigate the effect of any act of terrorism or any action that may be taken in controlling, preventing, suppressing or in any way relating to an act of terrorism (herein called "terrorism matters") and the liability if any of Waterman under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim which may arise out of or in connection with terrorism matters is excluded.
48. Where Waterman procures for the Client as part of a Report or otherwise, any third party service, including but not limited to, environmental reports, risk models, risk assessments, professional opinions, or any other service, Waterman shall accept no liability whatsoever for the information contained therein.
49. The Report is to be used solely for the benefit of the Client. For the avoidance of doubt, the Agent or Valuer may not rely on any of the contents of the report and Waterman excludes all liability to all other persons unless Waterman has expressly agreed in writing to the assignment of the benefit of the Report and Waterman has been paid reasonable fees for so doing. The limitations of Waterman's liability as set out in Clauses 33 to 48 inclusive shall apply.
50. All parties given access to the Services agree that they will treat as strictly private and confidential the Services and all information which they obtain from the Services and shall restrict any disclosure to employees or professional advisors to enable the relevant party to conduct its internal business. The requirement in this clause to treat the Services as confidential shall include a requirement to maintain adequate security measures to safeguard the Services from unauthorised access, use or copying.

General

51. These Terms, the User Guide, together with the Offer and written acceptance from the Client constitute the entire agreement ("Agreement") between the parties and no statement given orally or in writing should be deemed incorporated therein unless executed in writing by a director of Waterman. Promotional materials or samples supplied by Waterman or Landmark do not form part of this Agreement. Each of the clauses and sub-clauses of these Terms is distinct and severable. If any provision of these Terms shall be determined to be invalid, illegal or unenforceable, the remainder of these Terms shall continue to be valid, legal and enforceable to the fullest extent of the law. From time to time Waterman reserves the right to revise its Terms.
52. Any time or indulgence granted by Waterman or delay in exercising any of its rights under the Agreement shall not prejudice or affect Waterman's rights or operate as a waiver of the same.
53. Waterman reserves the right to refuse to supply the Services to a Client.
54. Waterman shall maintain professional indemnity insurance from the commencement of the Services until six years from the date of completion of the Services in an amount sufficient to cover Waterman's liabilities under this Appointment and provided always that such insurance is available at commercially reasonable rates and subject to all exceptions, exclusions and limitation to the scope of cover that are commonly included in such insurance at the time the insurance is taken out or renewed as the case may be. Waterman shall immediately inform the Client if such professional indemnity insurance ceases to be available on the terms required by this clause at commercially reasonable rates in order that Waterman and the Client can discuss means of best protecting their respective positions in the absence of such professional indemnity insurance.
55. As and when reasonably requested to do so by the Client Waterman shall produce for inspection brokers' certificates to show that the insurance cover required under Clause 54 is maintained.
56. No action or proceedings under or in respect of this Appointment, whether in contract or in tort, in negligence or for breach of statutory duty or otherwise, shall be commenced against Waterman after the expiry of six years from the date of completion of the Services or such earlier date as may be prescribed by law.
57. Neither the Client nor Waterman shall without the consent of the other party assign the benefit or in any way transfer the obligations of this Appointment or any part thereof.
58. Termination of this Appointment shall not prejudice or affect the accrued rights or claims of either party to this Appointment.
59. Nothing in this Appointment confers or purports to confer on any third party any benefit or any right to enforce any term of this Appointment under the Contracts (Rights of Third Parties) Act 1999.
60. Any notice in writing shall be deemed to be duly given if it is delivered by hand, by facsimile transmission (fax) or sent by registered post or recorded delivery.
61. The Appointment shall be governed by English law, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.
62. Waterman and Landmark reserve the right to monitor or record telephone calls for training purposes.