

WEATHER STATION AGREEMENT

THIS Agreement is made on 26th April 2007

BETWEEN:

- (1) The Board of Trustees of the Royal Botanic Gardens Kew whose principal place of business is at Royal Botanic Gardens, Kew, Richmond, Surrey TW9 3AB (the "**RBG Kew**"); and
- (2) The Met Office a Trading Fund of the Ministry of Defence whose principal place of business is at FitzRoy Road, Exeter, Devon EX1 3PB (the "**Met Office**").

BACKGROUND:

- A. RBG Kew is proud of the exceptionally long history of meteorological recording at RBG Kew's Designated Premises. These records are of immense value for horticulture and estate management, are in daily use for visitor planning and are used in conjunction with other scientific observations e.g. phenology. As RBG Kew is increasingly being concerned with environmental issues, such as climate change the use of these observations is forecast to rise. It has always been RBG Kew's policy to release certain meteorological data to the Met Office and RBG Kew has previously received advice and support from the Met Office in return.
- B. RBG Kew now wishes to move from manual meteorological recording to a fully automatic digitised meteorological recording system which offers the advantages of reducing the time spent on meteorological recording, giving real-time access to data and providing the opportunity to make the meteorological recordings accessible to a much wider audience. RBG Kew's progress in moving to a digitised system has been slow due to IT communication difficulties.
- C. To assist RBG Kew and to recognise the importance of RBG Kew as a UK meteorological site, the Met Office has agreed to provide, install and maintain (at its own cost and expense) fully automatic digitised meteorological recording equipment at the Designated Premises of RBG Kew on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following words shall have the following meanings:

- | | |
|------------------------------|---|
| "Commencement Date" | means the date of this Agreement; |
| "Data" | means meteorological, environmental, hydrological (whether historical or otherwise) information and/or graphs, graphics, drawings, documents, know-how or any other material created by or via installation of the Weather Station; |
| "Designated Premises" | means the space at RBG Kew's premises that is designated by RBG Kew for siting of the Weather Station and access to and use of the Weather Station for the purposes of this |

Agreement (which as at the Commencement Date will be as shown on the plan attached at Schedule 1). In the event that, in accordance with Clause 4.1, the parties agree on an alternative siting of the Weather Station, such alternative siting shall from the date of such agreement be the "Designated Premises";

"Intellectual Property Rights" means patents, designs, trade marks, service marks, trade names, logos, get-up, domain names, copyright (including rights in computer software), database rights plant variety rights, rights in performances, moral rights, confidential information and know-how, whether registered or not including applications for registration and all similar forms of protection anywhere in the world;

"Weather Station" means a fully automatic digitised meteorological recording system that produces Data and all equipment needed to maintain and operate this system. The Weather Station at the Designated Premises shall be called the Kew Gardens Weather Station.

1.2 In this Agreement unless the context otherwise requires:

- (a) the headings are for convenience only and shall not affect its interpretation;
- (b) references to a clause, schedule or paragraph are to a clause, a schedule or a paragraph in this Agreement;
- (c) any reference to this Agreement shall include any permitted variation, amendment or supplement to such document;
- (d) the schedules to this Agreement shall have the same effect as if contained in the body of the Agreement, and any reference to this Agreement shall include the schedules provided that, in the event of any inconsistency, provisions set out in the body of the Agreement shall take precedence over schedules;
- (e) any reference to any statute shall include references to the same as it may have been, or may from time to time be consolidated or re-enacted and to any regulation or subordinate legislation made under it (or under such a consolidation or re-enactment);
- (f) reference to the plural shall include the singular and vice versa, and reference to one gender includes reference to all genders. Any reference to a person shall be to a legal person of whatever kind whether incorporated or unincorporated.

2 COMMENCEMENT AND DURATION

- 2.1** This Agreement shall come into effect on the Commencement Date and shall continue in force unless and until terminated in accordance with its terms.

3 MET OFFICE'S OBLIGATIONS

- 3.1** The Met Office hereby agrees and undertakes with RBG Kew in addition to its other obligations under this Agreement as follows:

- (a) to effect and maintain during the subsistence of this Agreement (at the Met Office's cost and expense) insurance with full comprehensive cover on the following:
- (i) the Weather Station to its full value and against all normal risks; and
 - (ii) public and other third party liability and employee's liability both in respect of the use of the Weather Station and the Designated Premises (and the business of the Met Office carried on there).

All such insurance shall be effected with a reputable insurer and for amounts and on terms to be approved by RBG Kew (such approval not to be unreasonably withheld) and details of such insurances shall be available for inspection by RBG Kew and evidence of payment of current premiums shall be made available to RBG Kew within seven days following demand;

- (b) that it will (at the Met Office's cost and expense):
- (i) allocate a Weather Station at RBG Kew (to remain the property of the Met Office unless this Agreement is terminated early in accordance with its terms at which point ownership of the Weather Station shall transfer to RBG Kew). The Weather Station is for exclusive use by:
 - (A) RBG Kew (and its staff and contractors) both during and after any termination or expiry of this Agreement; and by
 - (B) the Met Office (and its staff) during the term of this Agreement;
 - (ii) install the Weather Station at the Designated Premises;
 - (iii) during the term of this Agreement, use its best endeavours to keep the Weather Station in a good state of general repair, well maintained and calibrated so that it is completely operational as a fully automatic digitised meteorological recording system;
 - (iv) replace the Weather Station when beyond repair;
 - (v) comply in all respects with:
 - (A) the provisions of all legislation for the time being in force;
 - (B) the requirements of any competent authority;
 - (C) the reasonable requirements of RBG Kew,
 which relate to the performance of its obligations under this Agreement, its use of the Designated Premises/ RBG Kew's premises generally or anything done on such premises by the Met Office;
 - (vi) use the Weather Station carefully and in accordance with relevant manufacturers operating instructions and the operating instructions to be agreed between RBG Kew and the Met Office to keep it in good repair and working order;
 - (vii) co-operate and comply with RBG Kew's reasonable requirements in connection with the day to day running of the Weather Station and

access to the Designated Premises and/or RBG Kew's premises generally;

- (viii) provide to RBG Kew promptly after the date of this Agreement a list of contractors and personnel who are authorised to attend to the Designated Premises and notify RBG Kew in advance of any changes to that list;
- (ix) notify RBG Kew in advance of any authorised contractors or personnel who are to attend to the Designated Premises, such notification to be by email to a distribution list which shall include such of the Met Office personnel as the Met Office considers appropriate and RBG Kew personnel as notified by RBG Kew to the Met Office, such distribution list to include [REDACTED] and [REDACTED], and also by telephone to [REDACTED] or, failing that, to RBG Kew Constabulary;

(c) that it will not:

- (i) authorise any person except a person appearing on the list referred to in Clause 3.1(b)(viii) above to attend to the whole or any part of the Designated Premises;
- (ii) alter or add to the Designated Premises in any way (except when given prior agreement in writing) nor cause any damage to the Designated Premises or the Weather Station;
- (iii) erect nor install in the Designated Premises any equipment or machinery except the Weather Station or such other items as shall first have been approved by RBG Kew;
- (iv) do anything whereby any policy of insurance relating to the Designated Premises or to the Weather Station may become void or voidable;
- (v) do on the Designated Premises or RBG Kew's premises generally anything which:
 - (A) may be or may become a nuisance, annoyance or disturbance or which may cause damage to the Designated Premises, the Weather Station or RBG Kew;
 - (B) is illegal or immoral;
- (vi) obstruct the use of the Designated Premises or RBG Kew's premises generally by others entitled to use them;
- (vii) without the prior written permission of RBG Kew, display any advertisement or signage of any description on the Weather Station, the Designated Premises or RBG Kew's premises generally;
- (viii) damage the Weather Station;
- (ix) hinder or obstruct RBG Kew in the day to day use of the Weather Station;

(d) on expiry or termination of this Agreement in accordance with its terms to vacate the Designated Premises leaving them in the condition required by this Agreement and to remove all of the Met Office's belongings except the Weather

Station which is to be owned by RBG Kew and shall remain on the Designated Premises in accordance with Clause 8.5 of this Agreement). If the Met Office leaves any belongings except the Weather Station in the Designated Premises for longer than one month following the expiry or termination of this Agreement RBG Kew may treat them as having been abandoned and may remove destroy or dispose of them as RBG Kew wishes and the Met Office shall pay to RBG Kew on demand the cost of this and the Met Office shall indemnify RBG Kew against any resulting liability;

- (e) the Met Office shall use its best endeavours to ensure that all persons working in the Designated Premises shall be efficient, capable and qualified for the work with which they are entrusted and shall be of good character and shall at all times conduct themselves in a courteous manner;
- (f) the Met Office shall undertake only to use competent Met Office staff (and/or contractors) to undertake routine and reactive maintenance to perform its obligations under this Agreement at the Designated Premises;
- (g) to observe and comply with and to ensure that its staff (and/or contractors) working at the Designated Premises observe and comply with all reasonable regulations and instructions given by or on behalf of RBG Kew (including without limitation in relation to: health and safety requirements, security procedures, emergency procedures and protection of RBG Kew's premises and possessions).

4 RBG KEW'S OBLIGATIONS AND CABLING

- 4.1 RBG Kew grants a licence to the Met Office during the term of this Agreement to use (in common with RBG Kew) the Designated Premises and the Weather Station for the purposes set out in this Agreement. If there are powerful reasons why RBG Kew considers it is no longer appropriate to maintain the Weather Station at the Designated Premises and so wishes to alter the siting of the Weather Station, RBG Kew agrees to consult in good faith with the Met Office with a view to agreeing such alternative siting of the Weather Station. If the parties are unable to agree alternative siting of the Weather Station, either party shall have the right to terminate this Agreement immediately by notice in writing to the other party.
- 4.2 RBG Kew permits the Met Office (including its staff and any contractors approved in advance in writing by RBG Kew) to access its premises (including vehicular access to the Designated Premises) at any reasonable time agreed in advance with RBG Kew solely for the purposes of performing its obligations under this Agreement.
- 4.3 RBG Kew agrees to carry out caretaker duties for the site as set out in Schedule 2.
- 4.4 Should the actions of any RBG Kew staff or contractors or members of the public cause the Weather Station to cease working, RBG Kew will inform the Met Office promptly on becoming aware of such damage/interruption to data transfer. RBG Kew will co-operate with the Met Office to ensure the Weather Station returns to operation as soon as reasonably possible.
- 4.5 RBG Kew agrees to maintain the enclosure fencing of the Weather Station and ensure access to the roof space constituting part of the Designated Premises is safe and accessible when reasonably required.
- 4.6 RBG Kew is the owner of and responsible for the maintenance of the communications cable that runs from the Weather Station enclosure to the BT-frame located within a

glasshouse adjacent to Aiton House. The Met Office will be responsible for the connection of this communications cable to the datalogger within the Weather Station enclosure, and for the connection of this communications cable to the BT-frame located within the glasshouse adjacent to Aiton House. However, for the avoidance of doubt, RBG Kew will be responsible for this communications cable between those two connections. If there are any faults with this communications cable, the parties agree to work together in good faith to rectify the problems as quickly as possible. If any faults occur with any cabling which is the responsibility of the Met Office (namely the cabling within the Designated Premises), the Met Office will liaise closely with RBG Kew to ensure that any solutions to problems or infrastructure changes are acceptable to both parties.

- 4.7 The wind system will be located on the roof of Aiton House. RBG Kew agrees to allow the wind system to be located in that position, and agrees to allow access for Met Office authorised personnel and contractors appearing on the list supplied in accordance with Clause 3.1(b)(viii) to the area of the roof on which the wind system is located. RBG Kew agrees in principle to the siting of further sensors on the roof in the future. The Met Office agrees to obtain the prior approval of RBG Kew to the addition of any further sensors on the roof. The Met Office will be responsible for the maintenance of the cables from the sensors on the roof into Aiton House.
- 4.8 RBG Kew will use its best endeavours to ensure that no new buildings, trees, bushes or other plants are positioned in such locations as will deteriorate the exposure of the Designated Premises to the horizon. If any building work or planting in proximity to the Designated Premises is considered unavoidable, RBG Kew will inform the Met Office of the proposed work or planting at the earliest opportunity.

5 SHARING OF DATA AND INTELLECTUAL PROPERTY RIGHTS

- 5.1 RBG Kew shall retain full rights to use the Data collected by the Weather Station for any of its legitimate business purposes (including without limitation: horticulture and estate management; visitor planning; in scientific observations (e.g. phenology); in climate change observations; in publications and for legitimate commercial purposes).
- 5.2 The Met Office shall retain full rights to use the Data collected by the Weather Station in connection with its business of providing services relating to weather forecasting and information about weather and for legitimate commercial purposes.
- 5.3 The Met Office will be responsible for collecting the Data. The Met Office agrees, promptly following its collection, to transmit all Data to RBG Kew in a form mutually acceptable to both the Met Office and RBG Kew.
- 5.4 Where either party creates any Intellectual Property Rights by interpreting Data produced by the Weather Station or by combining the interpretation of such Data with other results and/or observations made by that party, the party creating those Intellectual Property Rights shall own them. The parties shall not otherwise acquire any interest in any Intellectual Property Rights created as a result of the parties entering into this Agreement.
- 5.5 Neither party shall use the trade marks or brand names of the other party without the other party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed in relation to promotional releases and literature.
- 5.6 Neither party shall take any action which might invalidate the Intellectual Property Rights owned by or licensed to the other party.

- 5.7 The Met Office agrees that, when displaying or distributing Data collected from the Weather Station, it shall, provided it is reasonably possible to do so and there are no justifiable reasons for not doing so, make clear on the face of that Data or in any accompanying documentation that such Data was collected from the Kew Gardens Weather Station.

6 STATUS OF LICENCE

- 6.1 This Agreement constitutes a licence and confers no tenancy or right to exclusive possession upon the Met Office and possession of the Designated Premises is retained by RBG Kew and the Met Office shall not be entitled to use the Designated Premises (or RBG Kew's premises generally) to the exclusion of RBG Kew or any others from time to time entitled.

7 CONFIDENTIALITY

Neither party shall without the other's prior written consent use any confidential information in any medium whatsoever (including but not limited to documents, disks, information stored electronically or transmitted orally) relating to the other's business or affairs (save as is necessary to enable it to perform this Agreement), or disclose it to any third party except to the disclosing party's own professional representatives or advisers on a confidential basis or as required by law. The provisions of this clause shall survive any termination of this Agreement.

8 TERMINATION

- 8.1 Without prejudice to Clause 8.4 but subject to Clause 8.5:

- (a) RBG Kew may by written notice to the Met Office terminate this Agreement immediately if at any time the Weather Station shall be damaged to an extent which prevents full use of the Weather Station or the Data for the purposes contemplated by this Agreement or if the Designated Premises are damaged in a material way, provided that in either such case RBG Kew has allowed the Met Office a period of one month to rectify such damage and the Met Office has failed to do so;
- (b) either party may at any time by notice in writing to the other party terminate this Agreement by not less than six months prior notice.

- 8.2 A party (the "Non-defaulting Party") may by notice to the other party (the "Defaulting Party") terminate this Agreement with immediate effect if:

- (a) the Defaulting Party is in material breach of any provision of this Agreement which is not remediable or, if remediable, is not remedied within a period of 30 days after the Non-Defaulting Party has given notice to the Defaulting Party requiring such breach to be remedied;
- (b) the Defaulting Party persistently breaches any provisions of this Agreement and such breaches, if capable of remedy, are not remedied within 30 days of receipt by the Defaulting Party of notice from the Non-Defaulting Party requiring such remedy;
- (c) the Defaulting Party's financial position is such that either the Defaulting Party, its directors, shareholders or creditors take or are entitled to take steps to institute formal insolvency proceedings with respect to the Defaulting Party of a type provided for by the Insolvency Act 1986 (or any similar or analogous

legislation, whether under English law or otherwise), including without limitation administration, liquidation, administrative receivership, receivership, voluntary arrangement, scheme of arrangement or bankruptcy, or if the Defaulting Party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

- 8.3 Any termination or expiry of the licence granted by this Agreement shall be without prejudice to any claim by RBG Kew against the Met Office in respect of any breach of the Met Office's obligations in this Agreement.
- 8.4 Any termination or expiry of this Agreement shall not affect:
- (a) any accrued rights or liabilities of either party whether under statute, in contract tort or otherwise, nor prevent either party from pursuing other remedies available to it. Clause 21 shall continue to apply to rights, liabilities and remedies of the parties arising under this Agreement prior to termination;
 - (b) the coming into force or the continuance in force of Clauses 3.1(b)(i)(A), 7, 8.5 and any other provision of this Agreement which is intended to come into or continue in force on or after such termination or expiry;
- 8.5 Notwithstanding any other provision under this Agreement, upon termination or expiry of this Agreement for any reason (except termination by RBG Kew under Clause 8.1(b) above) the Met Office agrees that it will (at its cost and expense):
- (a) procure that full title in and ownership rights of the Weather Station shall be vested exclusively in RBG Kew;
 - (b) ensure that it leaves the Weather Station in a fully operational condition and in good working order for RBG Kew.

9 LIABILITY

- 9.1 The Met Office covenants to keep RBG Kew indemnified against all direct and indirect losses, costs, claims, expenses, liabilities and demands arising out of:
- (a) the breach or non-observance by the Met Office of any of its obligations in this Agreement;
 - (b) the use of the Designated Premises and the Weather Station by the Met Office or its invitees and any person using any of them with the consent of the Met Office,

AND ACCORDINGLY RBG Kew shall not be liable to the Met Office or any person as aforesaid for any personal injury, damage, loss or negligence howsoever caused (other than by default or negligence of RBG Kew or its employees or agents) to them or to any goods or chattels brought by any person upon the Designated Premises it being the intention of and agreed between RBG Kew and the Met Office that the Met Office and other persons as aforesaid shall use the Designated Premises and the Weather Station at the sole risk of the Met Office.

- 9.2 RBG Kew shall not be liable to the Met Office for any direct or indirect loss, damage or inconvenience which may be caused by reason of the failure of, stoppage of or defect in the Weather Station.

10 DATA PROTECTION

10.1 Each party agrees that it:

- (a) shall and shall procure that its employees, agents and sub-contractors shall, at all times, comply with the provisions of the Data Protection Act 1998 in relation to data received from the other party under this Agreement.
- (b) Indemnify the other party against all costs, legal costs, claims, damages, demands and all other expenses arising out of any breach of this clause.

11 FREEDOM OF INFORMATION

- 11.1 Both parties acknowledge that the the other party is legally obliged under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 to disclose certain information to the public. If either party receives a request for information relating to this Agreement or any of the affairs of the other party, or if it intends to publish any such information under its publication scheme (or otherwise), it shall promptly notify the other party in writing. In the case of a request for disclosure of information, a copy of such request shall be sent to the other party on receipt of the request and shall state the time within which a response is required.
- 11.2 Both parties shall give reasonable opportunity (and in the case of a request for information at least five (5) working days) to object or make representations regarding such disclosure, which shall be considered in good faith prior to responding to the request or otherwise publishing such information. Both parties shall also give due consideration to whether the information in question is subject to any exemptions.
- 11.3 If either party, acting properly, concludes that it is obliged to disclose some or all of the information in question, it shall give the other party notice in writing of its decision including the reasons for dismissing the objections (if any) made by the other party, such notice to be given prior to disclosure to the extent that this is practicable in all the circumstances.

12 WAIVER

- 12.1 The failure or delay by either party in any one or more instances to insist upon strict performance or observance of any one or more of the terms of this Agreement or to exercise any remedy, privilege or right provided by law or under this Agreement shall not be construed as a waiver of any breach or right to enforcement of such terms or to exercise such remedy, privilege or right.

13 FORCE MAJEURE

- 13.1 Neither party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party, such as lightning strikes or flood. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

14 ASSIGNMENT, SUB-CONTRACTING AND TRANSFER

- 14.1 The Met Office may not assign or charge any of its rights or the benefit of all or part of this Agreement or transfer, delegate or sub-contract any of its duties or obligations without the prior written consent of RBG Kew.

15 VARIATION

- 15.1 No variation or purported variation of any provision of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each party.

16 NO AGENCY OR PARTNERSHIP

- 16.1 Nothing in this Agreement shall be deemed to constitute a partnership or joint venture or contract of employment between the parties nor constitute either party the agent of the other. Neither party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf, including but not limited to the making of any representation or warranty and the exercise of any right or power.

17 INVALID CLAUSES

- 17.1 If a provision of this Agreement is adjudged by any court or tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall, to the extent so adjudged, be deemed not to form part of this Agreement, but that shall not affect:

- (a) the legality, validity or enforceability in the jurisdiction in question of any other provision of this Agreement; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other provisions of this Agreement,

and the parties shall negotiate in good faith and in a reasonable manner to agree the terms of a mutually acceptable and satisfactory alternative for that provision.

18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 18.1 The parties do not intend that any term of this Agreement should be enforceable by any third party as provided by the Contracts (Rights of Third Parties) Act 1999 but any third party right which exists or is available independently of that Act is preserved.

19 NOTICES

- 19.1 Any notice or other communication to be given by one party to another under this Agreement shall:

- (a) be given in writing in English and, unless otherwise provided, shall be made by hand or letter;
- (b) (unless one party has by no less than 5 business days' notice to the other party specified another address) be given to that other party at the address set out at the head of this Agreement.

- 19.2 Any notice or other communication given by any party shall be deemed to have been received:

- (a) in the case of a notice given by hand, at the time of day of actual delivery;
- (b) if posted, by 10am on the second business day following the day on which it was despatched by first class mail postage prepaid,

provided that a notice given in accordance with the above but received on a day which is not a business day or after normal business hours in the place of receipt shall be deemed to have been received on the next business day.

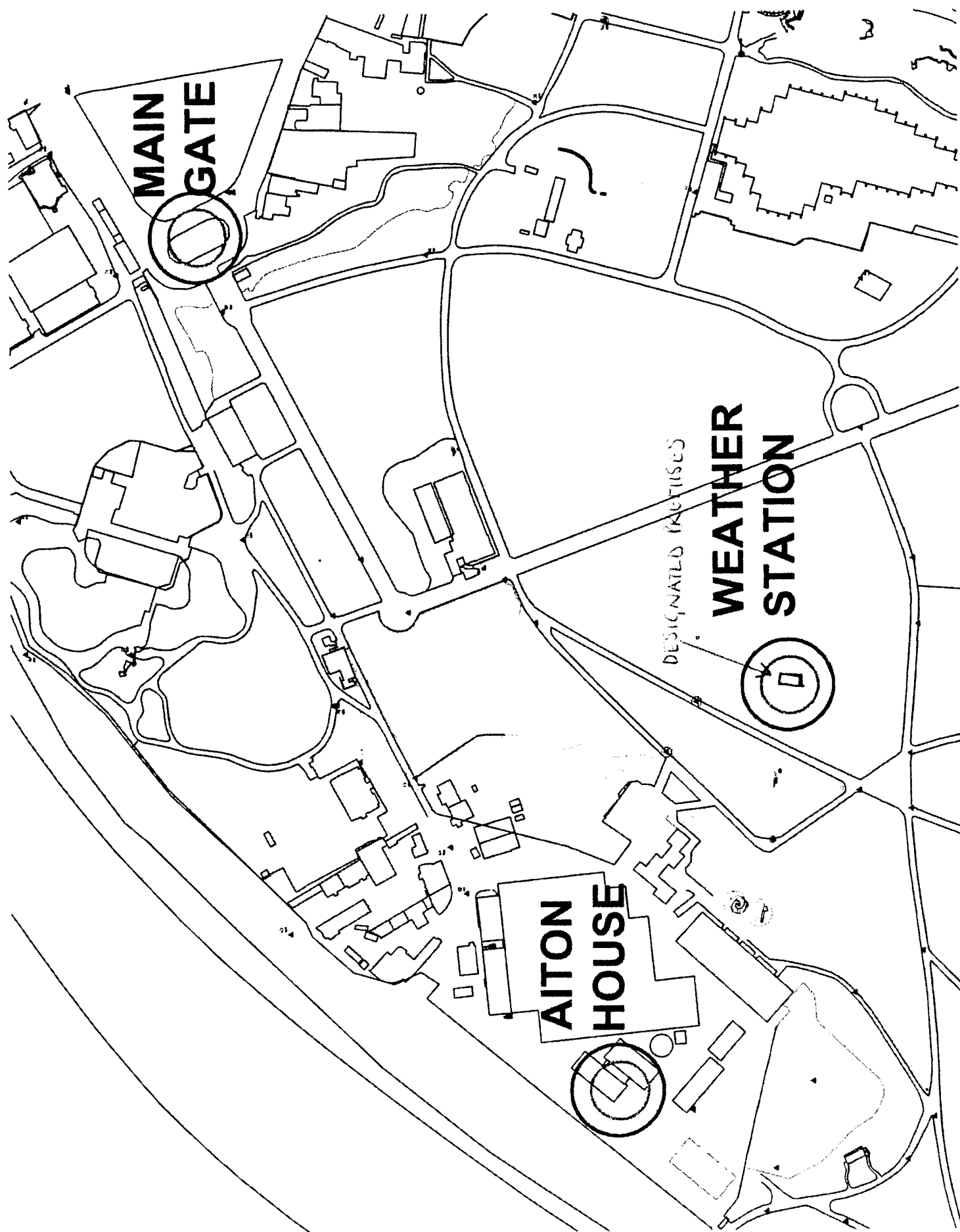
20 ENTIRE AGREEMENT

- 20.1 This Agreement and all documents which are required by its terms to be entered into by the Parties or any of them, sets out the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all prior oral or written agreements, arrangements or understandings between them. The parties acknowledge that they have not entered into this Agreement in reliance upon any warranty, representation, covenant, undertaking, agreement, term or condition which is not set out in this Agreement.

21 PROPER LAW

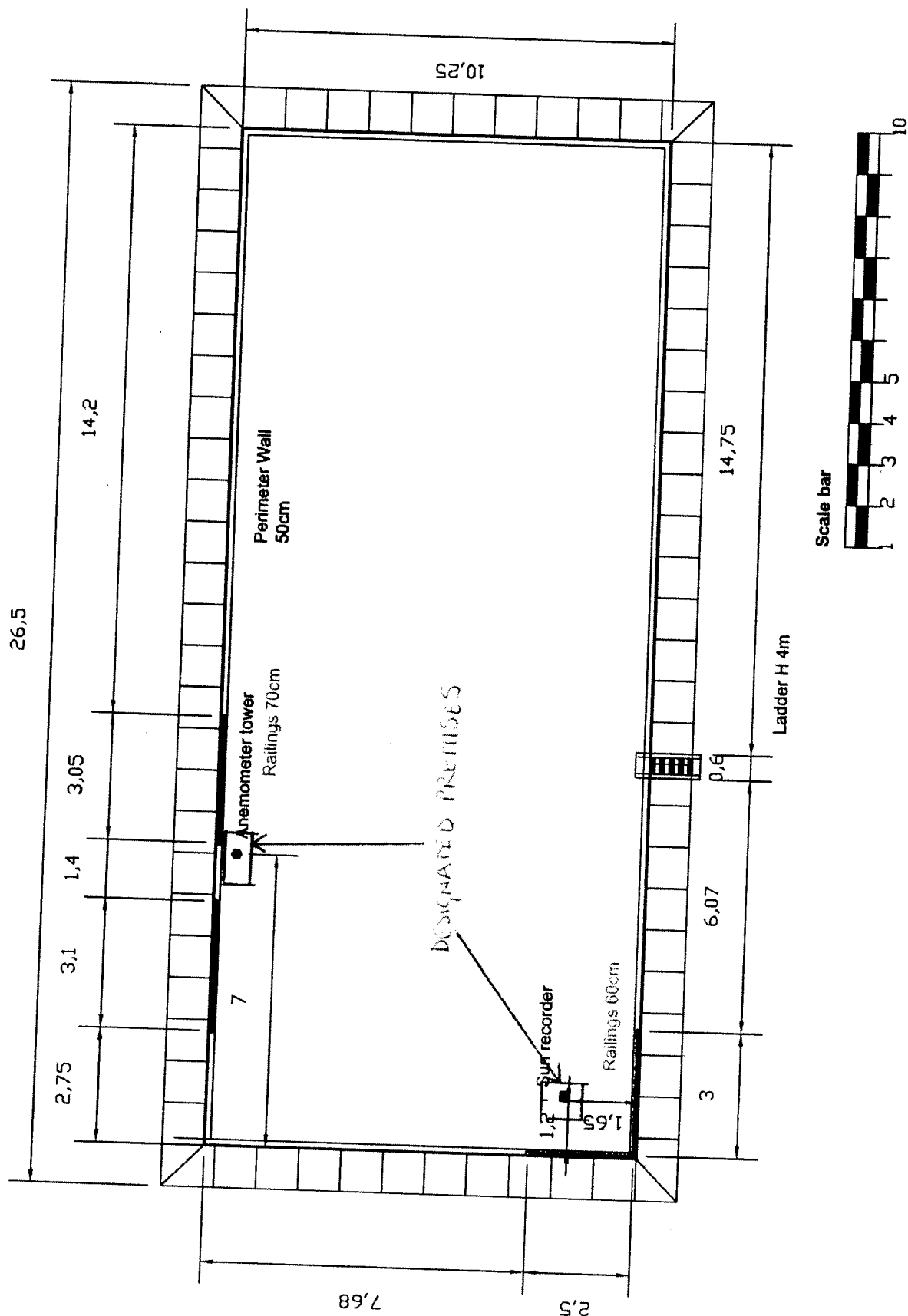
- 21.1 This Agreement shall be governed by and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.

SCHEDULE L : MAP OF DESIGNATED PREMISES AS AT THE COMMENCEMENT DATE



Aiton House Roof

SCHEDULE 1 CONTINUED: MAP OF DESIGNATED PREMISES AS AT THE CURRENT POINT DATE



Schedule 2**Weather Station Caretaker duties**

RBG Kew agrees to carry out the following caretaker duties:

- 1) Grass cutting on a regular basis to ensure cables and sensors are not obstructed, taking care to avoid damage.
- 2) Wiping sensors and cabinets and screen, keeping them clear of excessive dirt, bird-strikes and dust.
- 3) Keeping wet-bulb reservoir topped with distilled water.
- 4) Checking readings – twice per week (at times and days to suit RBG Kew), reading dry and wet-bulb thermometers, max and min check thermometers, resetting max and min check thermometers, reading rainfall check gauge and then emptying check gauge.
- 5) Reporting any damage or vandalism as soon as discovered.
- 6) Responding to occasional requests from the Met Office to carry out straightforward investigations of potential problems, looking at sensors or displays, turning power off/on etc.