

NIWA

CLIENT SERVICES AGREEMENT

Date:

Client:

Client Name and Address (for Notices:)

Term: The Institute shall provide the services from **01 July 20__ to 30 June 20__**

Payments: The Client will pay to the National Institute the Service Fee (exclusive of GST) as follows:

The Service Fee payable for the twelve months referred to in Paragraph 2 to be payable by four instalments on the 20th of the month following invoice as per instruments on Agreement first day of quarter.

The Client Services Agreement together with the Standard Terms and Conditions of Contract, on the reverse, and any Schedules shall constitute the Agreement between the parties.

Signed on behalf of the Client

Name: _____

Position: _____

Date: _____

Signed on behalf of NIWA

Name: Dr Charles Pearson

Position: Regional Manager, NIWA

Date: _____

SCHEDULE B
Parts and Accessories Not Covered in Agreement
STANDARD TERMS AND CONDITIONS

1. NIWA shall exercise reasonable skill, care and diligence in the performance of the Services described in this Agreement.
2. The Service Fee shall be payable by the 20th of the month following the month in which the Client was invoiced by NIWA. The Client will be invoiced by NIWA, unless otherwise agreed on the dates set forth on the front page of this Agreement. In the event that NIWA receives payment of the Service Fee, after the due date, NIWA shall be at Liberty to charge penalty interest at the rate of 15% per annum on all moneys which are owing by the Client to NIWA, as at that time.
3. The Services shall include:
 - 3.1 Maintenance of the Instruments set forth in the Schedule ("the Instruments") in normal working order. To maintain in normal working order shall mean the maintenance in normal working order for the purpose for which the instruments are designed having regard to the conditions in which they are required to be used.
 - 3.2 The replacement of defective parts, except those specified in Schedule B.
4. Replacement instruments will be supplied by NIWA where possible on request. NIWA takes no responsibility for any losses, costs or damages sustained by the Client in the event that such replacements are not available **PROVIDED THAT** where replacements are not available NIWA will give all possible priority to the service and return of the Clients existing instruments.
5. NIWA does not warrant that any replacement instruments will be new stock or equal to new stock. If NIWA replaces an instrument, which is not equal to but is equivalent to the existing instrument NIWA shall not be liable in any way for any losses, costs or damages sustained by the Client due to a failure of the instrument to perform its required function.
6. All servicing shall be undertaken at NIWA - Instrument Systems at 10 Kyle Street, Riccarton, Christchurch and all freight and transport costs to NIWA - Instrument Systems, and risk of damage to the instruments whilst in transit are the responsibility of the Client.
7. NIWA will undertake all maintenance and servicing obligations pursuant to the Contract during usual business hours namely 8am to 4.30pm daily Monday to Friday (except on Statutory Holidays and Public Holidays as observed by NIWA - Instrument Systems) and NIWA takes no responsibility for any loss, damage, action, claim, or claims that may arise or otherwise be caused by delays in the servicing or replacing of the Instruments. NIWA does however agree to use its best endeavours to minimise any such delay and effect any maintenance required promptly.
8. That where at the request of the Client NIWA undertakes any maintenance or servicing outside its usual business hours as referred to in Clause 7 NIWA shall be entitled to invoice the Client for any additional costs incurred thereby, **PROVIDED THAT** NIWA may exercise its discretion in deciding whether or not to accept such request, and on which (if any) terms it may accept such request.
9. That where NIWA shall be required to attend any site at which instruments are installed for the purposes of servicing or maintaining them provision of Clause 7 shall apply in respect of the times of servicing **PROVIDED THAT** NIWA shall be entitled to separately charge any additional costs incurred pursuant to NIWA undertaking such maintenance and servicing and without Limiting such term including travelling costs.
10. NIWA may cancel this Agreement in whole or in part at any time should any service attention be carried out by any person or body corporate other than NIWA - Instrument Systems or by any serviceman not employed by NIWA unless that work is first approved by NIWA **PROVIDED THAT** any such determination shall be without prejudice to any claim for any Service Fee outstanding or to any claim by either party in respect of any breach of this Agreement or in respect of any act or omission by either party.
11. Any damage that results in requirements for repairs which in the sole and absolute discretion of the Manager for the time being of NIWA - Instrument Systems which exceed the replacement value of the instrument or in the event of any loss due to fire, flood, tempest, earthquake, war (whether declared or not) riot, malicious damage, inevitable accident, Act of God, theft or burglary will not be covered by this Agreement and shall be the responsibility of the Client.
12. The Institute assumes no responsibility for, and the Client hereby indemnifies and holds NIWA harmless against any claims, actions, suits, demands, costs or expenses including any legal costs and expenses in any way arising out of the use of the equipment from the date of commencement of this Agreement whether caused by the negligence of the Client or by the act of any other person whosoever and arising out of the condition of the equipment or the use to which it is put or otherwise.
13. NIWA shall have no responsibility for, or liability for costs, losses or damages of whatever nature arising from any errors in or omissions from any services which are not provided by NIWA, or employees or other personnel not under the direct technical control of NIWA.
14. It is agreed that, in any event whatsoever NIWA's sole liability shall be for an amount equal to the total amount of the consideration payable by the Client pursuant to this Agreement. The Client agrees to indemnify NIWA against all claims made by third parties arising out of the performance of the Services.
15. Notwithstanding any recommendation or lack of recommendation by NIWA to the Client, NIWA shall not be held to have made any warranty, promise, or representation as to the suitability, competence or performance of any contractor, sub-contractor, supplier, professional adviser (other than NIWA) or other person engaged by the Client.
16. It is expressly agreed between the Client and NIWA that the relationship between the Client and NIWA is of a contractual nature and shall in no way be construed as being that of employee/employer or one of agency.

17. Notices shall be sent to the respective addresses set forth in this Agreement. If sent by pre-paid postage, they shall be deemed to be received the working day after they are sent. If transmitted by facsimile before 5 pm, they will be deemed to have been received on the same working day. If transmitted after 5 pm, they will be deemed to have been received the next working day. The working day is a day on which trading banks are open for business in Christchurch.
18. Neither party shall be liable for failure to perform its obligations if the failure results from force majeure, Act of God, fire or explosion.
19. The Parties acknowledge that they will use their best endeavours to effect an amicable and expeditious resolution of any dispute arising in respect of the Agreement or any agreements concurrently entered into but in the event that a decision cannot be effected the Parties agreed to submit the matter for resolution to an Expert who shall deliver a decision as an Expert, and in the event that Parties cannot agree on an Expert to be appointed then an Expert shall be appointed by the President for the time being of the New Zealand Society of Accountants and in the event of his being unwilling or unable to make an appointment by the President for the time being of the New Zealand Law Society whose appointee shall have power as an Expert to determine the matter and whose decision shall be final and binding.