

TRANSPower NEW ZEALAND LIMITED

WAITAKERE CITY COUNCIL

**AGREEMENT FOR DEVIATION OF
ALB-HEN A 110 KV TRANSMISSION LINE**

A31

Initial

Initial

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1. Customer's Details

- 1.1 Full Name:** Waitakere City Council ("the Council")
- 1.2 Address:** Waitakere Central
6 Henderson Valley Road
Henderson
Auckland
- 1.3 Mailing Address:** Private Bag 93109
Henderson 0650
Auckland
- 1.4 Facsimile Number:** 09 836 8001
- 1.5 Contact Person:** Tony Miguel

2. Transpower's Details

- 2.1 Full Name:** Transpower New Zealand Limited ("Transpower")
- 2.2 Address:** Transpower House
96 The Terrace
Wellington
- 2.3 Mailing Address:** P O Box 1021
Wellington
- 2.4 Facsimile Number:** 04 495 7004
- 2.5 Contact Person:** Customer Services Manager

3. *Background*

3.1 **Transpower and the Council acknowledge the following:**

- (a) Transpower manages the New Zealand national electricity grid, which transmits electricity via transmission lines throughout New Zealand;
- (b) The Overhead Transmission Line (as defined in Clause 4.1) runs over the Development Land (as defined in Clause 4.1) as well as over the Third Party Land (as defined in Clause 4.1);
- (c) The Council wishes to undertake redevelopment of the Development Land (together with a third party, NZRPG Management Limited) for mixed use urban land. To enable the redevelopment to proceed, the Council has requested Transpower to underground the Overhead Transmission Line, and the Council and Transpower have agreed to enter into this Contract for the purpose of recording the terms and conditions of the agreement under which Transpower is to perform the Deviation (as defined in Clause 4.1) and remove the Overhead Transmission Line and by which the Council is to:
 - (i) grant access over any parts of the Land owned by the Council;
 - (ii) procure the right for Transpower to perform the Deviation on any parts of the Land which are not owned by the Council;
 - (iii) arrange for the transfer to Transpower of those parts of the Land upon which Transpower wishes to construct the CTSS;
 - (iv) grant or arrange to have granted to Transpower certain easements over certain parts of the Land;
 - (v) obtain, on Transpower's behalf, consents and a designation, as required in order for Transpower to perform the Deviation and to operate and maintain the Cable; and
 - (vi) pay the costs incurred by Transpower in performing the Deviation.

4. *Interpretation*

4.1 **Definitions:**

In this Contract, unless the context otherwise requires:

Associates

means in relation to either Transpower or the Council, as the case requires, their respective directors, officers, employees, authorised agents, contractors, subcontractors and professional advisors, surveyors, lessees, licensees and invitees;

Bank Bill Bid Rate

means the New Zealand dollar bank bill 3 month bid rate (rounded upwards to the nearest two decimal places) as appearing at 11.00 am or as soon as practicable thereafter on the relevant day in Wellington on page BKBM of the Reuters screen (or if for any reason that rate ceases to be published, a replacement rate agreed by the parties or, failing agreement, determined in accordance with Clause 13);

Budget

means the budget set out in Schedule 3 (being the total amount of expenditure which Transpower estimates will be incurred in performing the Deviation, as revised in accordance with Clause 6.3(c)(iii) from time to time);

Business Day

means any day of the week other than a Saturday, Sunday or a statutory holiday as observed in Wellington or Auckland;

Cable

means the ALB-HEN A 110 kV double circuit underground cable system between (approximately) the locations (as at the date of this Contract) of tower 6 and tower 12, including insulated power cable, cable joints, sheath bonding cable, link boxes, monitoring equipment, manhole covers, cable markers, CTSs, surge arrestors, current transformers, protection equipment, fibre optic cables, and all necessary structures and foundations which Transpower considers necessary or expedient for the support or protection of the cable system or to assist in the efficient and proper use of the cable system (but excluding any item which is part of the Ducting System);

Change of Law

means the introduction or repeal of, or any change in, or any change in interpretation of, any applicable law, regulation or regulatory requirement;

Charges

means the New Investment Charge and any other charge or amount payable by the Council to Transpower under this Contract (provided that any cost incurred by Transpower in relation to the operation or maintenance of the Cable after it has been commissioned will not constitute a charge payable by the Council under this Contract);

Commencement Date

means the date on which this Contract is signed by the second of the parties to sign it;

CTS

means cable transition station (being the interface between underground and overhead transmission lines);

Default Rate

means the Bank Bill Bid Rate plus five percent per annum;

Development Land

means the land described as such in Schedule 2;

Deviation

means the removal of the Overhead Transmission Line and the installation and commissioning, in place of the Overhead Transmission Line, of the Ducting System and Cable, as shown in the plan set out in Schedule 1: Part 1 and as more particularly described in Schedule 1: Part 2;

Ducting System

means all ducts constructed of PVC, HDPE, or other material, which Transpower considers necessary for the future installation of the Cable and associated auxiliary services and including (without limitation):

- (a) ducts intended for draw wires to assist cable pulling;
- (b) fibre optic cables;
- (c) spare ducts for any of these purposes;
- (d) the backfill material installed around the ducts within the trench, concrete cable covers and backfill material above concrete covers up to, but not including, the road sub base course; and
- (e) all cable pulling pits, cable jointing chambers and other structures and foundations which will be installed in advance of the Cable;

Due Date

has the meaning specified in Clause 7.3;

Expiry Date

means the date on which the Deviation is completed (the certificate of a duly authorised employee of Transpower as to the date the Deviation is completed shall, in the absence of manifest error, be final and binding);

Force Majeure

has the meaning set out in Clause 11;

GST

means Goods and Services Tax payable pursuant to the Goods and Services Tax Act 1985 (or any similar tax levied in substitution);

Land

means the Third Party Land and the Development Land;

New Investment Charge

means the charge provided for in Schedule 4, defined in and calculated as set out in Schedule 4;

Overhead Transmission Line

means that section of the existing ALB-HEN A 110kV double circuit overhead transmission line between (and including) tower 6 and tower 12;

Reasonable and Prudent Operator

means an operator whose standard of performance is equal to or better than good electricity transmission operating practice. The standard of good electricity transmission operating practice shall be determined by reference to proper and prudent engineering, economic management and safety practices which are generally recognised internationally as being applicable to an operator of a transmission network and by having regard to the steps which such an operator would take to perform the operations contemplated by this Contract in New Zealand;

RMA

means the Resource Management Act 1991;

RMA Approvals Agreement

means the agreement between Transpower and the Council dated 3 August 2010 which (among other things) requires the Council to obtain on Transpower's behalf all consents and other authorisations under the Resource Management Act 1991 necessary for the performance of the Deviation and ongoing operation and maintenance of the Cable and sets out the processes for obtaining such consents and authorisations on behalf of Transpower;

Site Management Protocol

has the meaning given to that term in clause (c); and

Third Party Land

means the land described as such in Schedule 2.

4.2 Rules for Interpretation:

In this Contract, unless the context otherwise requires:

(a) Other Definitions:

Capitalised terms used in a Schedule but not defined in Clause 4.1 have the meanings ascribed to them by Paragraph 1.1 of that Schedule;

(b) Headings:

Clause headings and other headings are for ease of reference only and shall be deemed not to form any part of this Contract nor to affect the construction of this Contract;

(c) Plural and Singular:

Words importing the singular number shall include the plural and vice versa;

- (d) Parties:**
References to parties are references to Transpower and the Council and their respective successors and assignees;
- (e) Persons:**
References to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality;
- (f) Clauses, Schedules etc:**
References to Clauses and Schedules are references to Clauses and Schedules of this Contract. References to Paragraphs are references to Paragraphs of a Schedule;
- (g) Obligations:**
Any obligation not to do something shall be deemed to include an obligation not to suffer, permit or cause that thing to be done. An obligation to do something shall be deemed to include an obligation to cause that thing to be done;
- (h) Statutes and Regulations:**
References to a statute include references to regulations, orders, notices or codes of practice made under or pursuant to such statute, or regulations made under the statute, and references to a statute or regulation include references to all amendments to that statute or regulation (whether by subsequent statute or otherwise) and references to a statute or regulation passed in substitution for that statute or regulation;
- (i) Currency:**
All amounts referred to in this Contract are denominated in New Zealand dollars;
- (j) Rights may be exercised from time to time:**
A right conferred by this Contract to do any act or thing shall be capable of being exercised from time to time;
- (k) Transpower Discretions:**
Where this Contract confers on Transpower any discretion to determine any matter or to give any consent or approval (however described) or to determine the basis on which any such consent or approval is given, Transpower must act reasonably, having due regard to the provisions of this Contract and to the standards of a Reasonable and Prudent Operator.
- (l) Council Discretions:**
Where this Contract confers on the Council any discretion to determine any matter or to give any consent or approval (however described) or to determine the basis on which any such consent or approval is given, the Council must act reasonably, having due regard to the provisions of this Contract.

5. **Conditions/Consents**

5.1 **Conditions:**

This Contract is conditional on the following conditions being fulfilled:

(a) The Council Obtaining Consents:

the Council (or its consenting consultant) obtaining the following RMA resource consents and certificates of compliance on behalf of Transpower on terms and conditions satisfactory to Transpower, including as set out in the RMA Approvals Agreement, in each case within six months following the Commencement Date:

- (i) all RMA consents that are necessary for the Ducting System to be constructed and installed; and
- (ii) all RMA consents and/or certificates of compliance (as applicable) that are necessary for the removal of the Overhead Transmission Line; and
- (iii) all approvals under regional plan rules that are necessary for the construction, installation and commissioning of the Cable.

(b) Designation:

the Council (or its consenting consultant) obtaining a designation under the RMA for the installation of the Cable and for the protection, operation and maintenance of the Cable and the Ducting System, within 18 months following the commencement of construction of the Ducting System;

(c) Auckland Transition Agency Approval:

the Auckland Transition Agency confirming the decision of the Council to enter into this Contract, prior to 1 November 2010;

(d) Ownership of CTS Compounds:

the Council arranging the transfer, to Transpower, of the unencumbered freehold title to the land shown approximately as "I P" (being wholly contained within the property comprised in computer freehold register NA121B/623) and "I P" on the plans appearing as Schedule 1: Part 4 and Schedule 1: Part 5 (respectively) of this Contract, within 12 months following the commencement of construction works for the Ducting System;

(e) Easements:

the Council arranging within 12 months following the commencement of construction works for the Ducting System, the grant to Transpower and the registration of:

- (i) an access and services easement, in the form appearing as Schedule 7 of this Contract, over the land shown approximately as "I P" on the plan appearing as Schedule 1: Part 3 of this Contract;
- (ii) a cable easement, in the form appearing as Schedule 5 of this Contract, over the land shown approximately as "I P" on the plan appearing as Schedule 1: Part 3 of this Contract; and
- (iii) an EPR easement, in the form appearing as Schedule 8 of this Contract, over the land shown approximately as "I P" on the plan appearing as Schedule 1: Part 3 of this Contract;

(f) Consents to undertaking of Deviation:

the Council obtaining the following consents, in each case within two months following the Commencement Date:

- (i) the consent of the New Zealand Transport Agency under section 24 of the Electricity Act 1992 to the undertaking of the Deviation under or in the vicinity of any part of any road which is State highway on conditions which are satisfactory in all respects to Transpower;
- (ii) the consent of Watercare Services Limited (or its successor) to the undertaking of the Deviation in proximity to any of its water or sewage mains or works on terms which are satisfactory in all respects to Transpower;
- (iii) any affected party approvals or section 176(1)(b) RMA consents necessary for the resource consents required under clause 5.1(a)(i); and
- (iv) any affected party approvals or section 176(1)(b) RMA consents necessary for the resource consents, approvals under regional plan rules and designations required under clauses 5.1(a) and 5.1(b); and

(g) Ownership of Land:

the Council becoming the registered owner of all parts of the Land, except the property owned by Westgate Properties Limited comprised in computer freehold register NA121B/623, within six months following the Commencement Date;

(h) Access Deed:

Westgate Properties Limited and the Council executing and delivering to Transpower an Access Deed in the form appearing as Schedule 6 of this Contract, prior to or within six months following the Commencement Date.

5.2 Council Consent/Acknowledgment:

The Council:

- (a) consents, under section 24 of the Electricity Act 1992 to the undertaking of the Deviation on any part of any road which is not State highway and confirms that it imposes no conditions under section 24 of the Electricity Act 1992; and
- (b) acknowledges that Transpower:
 - (i) is entitled to, and to cause its contractors and consultants to, access and carry out works on, under and over any land owned by the Council, at all reasonable times and to the extent required in order to give effect to this Contract; and
 - (ii) will not be required to remove from any such land, at any time, any part of the Ducting System that Transpower has constructed in accordance with this Contract (notwithstanding the termination for any reason of this Contract).

5.3 Council's Regulatory Capacity:

To the extent that any application is made to the Council in its regulatory capacity or that the Council is required to take any steps in its regulatory capacity relating (in either case) to the Deviation, nothing in this Contract will limit the Council or fetter its discretion in any way, in the exercise by it of the relevant regulatory function.

5.4 Conditions:

In relation to each of the conditions in clause 5.1, the following shall apply:

- (a) Each condition in Clauses 5.1(a)(i), 5.1(a)(ii), 5.1(a)(iii), 5.1(b), 5.1(c), 5.1(d), 5.1(e)(i), 5.1(e)(ii), 5.1(e)(iii), 5.1(f)(i), 5.1(f)(ii), 5.1(f)(iii), 5.1(f)(iv), 5.1(g) and 5.1(h) is a separate condition.
- (b) If any such condition is not fulfilled by the date for fulfilment, then (unless Transpower has waived the relevant condition by the date for fulfilment of that condition), the Council may give written notice to Transpower within 5 Business Days from the date for fulfilment of the condition requesting that the date for satisfaction of the condition be extended by a period which is reasonable in the context of:
 - (i) the subject matter of the condition; and
 - (ii) what is required to satisfy the condition,

in order to enable satisfaction of the condition. If the period requested is not more than one month, the date for satisfaction of the condition shall be extended by that period. If the period requested is more than one month, the date for satisfaction of the condition shall be extended by 20 Business Days and the parties will forthwith enter into good faith discussions in order to agree whether the period requested is reasonable.

- (c) If the parties cannot reach agreement on an extension to a condition in accordance with Clause 5.4(b) then provided that 18 months or more have elapsed from the Commencement Date, this Contract will terminate (other than Clause 5.5 which will survive termination) without any liability on the part of either party (subject to accrued claims) and all parts of the Ducting System (but not the Cables) which have been constructed on the Land will be abandoned in situ and will thereafter form part of the Land. The Council agrees that from the date of such termination:
 - (i) the Council will take on all liability in respect of the Ducting System;
 - (ii) Transpower gives no warranty in respect of the state, quality, suitability or strength of the Ducting System; and (iii) the Council will make no claim against Transpower in respect of the state, quality, suitability, strength or any other aspect of the Ducting System.

5.5 Progress Payment:

If this Contract terminates pursuant to Clause 5.4, then Transpower will invoice the Council an amount equal to the actual costs (plus GST) incurred by Transpower, or otherwise committed by Transpower, in investigating and preparing for (and, to the extent relevant, performing) the Deviation (or any part of the Deviation) (such costs to include, but not be limited to, the cost of plant, materials and equipment, survey costs, design costs, tendering costs and legal costs, together with any cancellation costs arising under third party contracts which are cancelled as a result of termination under Clause 5.4) less any such costs which have previously been reimbursed to Transpower by the Council or any third party. The Council will pay to Transpower the amount invoiced by Transpower without any deduction, on or before the expiration of 20 Business Days from the date of the invoice.

6. Construction of Deviation

6.1 Designs:

Transpower will, as soon as reasonably possible following satisfaction of the condition in clause 5.1(c), take all reasonable steps to procure a detailed design and specification for the Cable. Transpower will ensure that the design provides for the foundations of the southernmost CTS to be wholly contained within the boundaries of the property comprised in computer freehold register NA121B/623.

6.2 Transpower's Construction Obligations:

(a) Construction of Ducting System:

- (i) Transpower will, as soon as is reasonably possible following the Commencement Date, issue a request for tenders, for the construction of the Ducting System. This request for tenders must state that the successful tenderer will be required to enter into a construction contract for the Ducting System, on terms consistent with the requirements of Schedule 9.
- (ii) Subject to clause 6.4(b), Transpower will appoint a contractor for the construction of the Ducting System, as soon as is reasonably possible after satisfaction of all the conditions in clauses 5.1(a)(i), 5.1(c), 5.1(f)(i), 5.1(f)(ii), 5.1(f)(iii), 5.1(g) and 5.1(h).
- (iii) Transpower will ensure that construction of the Ducting System is commenced as soon as is reasonably practicable after the appointment of the contractor pursuant to Paragraph (ii), and is carried out to the standard of a Reasonable and Prudent Operator.

(b) Construction and commissioning of Cable:

- (i) Transpower will, as soon as reasonably possible following the completion, to Transpower's satisfaction, of the detailed design and specification for the Cable under clause 6.1, issue one or more requests for tenders, which together cover the supply, construction and commissioning of the Cable. These requests for tender must state that the successful tenderer will be required to enter into a supply and/or installation contract (as applicable) for the Cable, on terms consistent with the requirements of Schedule 9. Transpower will use reasonable endeavours to issue a single request for tenders for the combined supply, construction and commissioning of the Cable, but if after consulting with the Council Transpower reasonably considers that (in the circumstances, and taking into account the requirements of clauses 6.3(a) and 6.6), a single request for tenders is not practicable or not prudent, Transpower may issue two or more separate requests for tenders for that work.
- (ii) Subject to clause 6.4(b), Transpower will appoint one or more contractors for the supply, construction and commissioning of the Cable as soon as is reasonably possible following the completion of the construction of the Ducting System and satisfaction of the conditions in clauses 5.1(a)(iii), 5.1(b), 5.1(d), 5.1(e) and 5.1(f)(iv).
- (iii) Transpower will ensure that the supply, construction and commissioning of the Cable is commenced as soon as is reasonably practicable after the appointment of the relevant contractor(s) pursuant to Paragraph (ii), and is carried out to the standard of a Reasonable and Prudent Operator.
- (iv) The Council acknowledges that the construction and commissioning of the Cable is dependent in part on Transpower's ability to arrange for suitable outages on the Overhead Transmission Line and that such outages may only be possible during periods of light loading patterns.

(c) Removal of Overhead Transmission Line:

- (i) Transpower will, as soon as reasonably practicable following the completion, to Transpower's satisfaction, of the detailed design and specification for the Cable under clause 6.1, issue a request for tenders, for the decommissioning and removal of the Overhead Transmission Line. This request for tenders must state that the successful tenderer will be required to enter into a contract for such works, on terms consistent with the requirements of Schedule 9.

- (ii) Subject to clause 6.4(b), Transpower will appoint a contractor for the decommissioning and removal of the Overhead Transmission Line, as soon as is reasonably practicable following satisfaction of the condition in clause 5.1(a)(ii) and following completion of the construction and commissioning (including testing) of the Cable, and subject to the Council having obtained all necessary RMA consents.
- (iii) As soon as is reasonably practicable after the appointment of the contractor pursuant to Paragraph (ii), Transpower will:
 - (A) ensure that the Overhead Transmission Line is permanently disconnected and isolated so as to ensure that it is rendered safe;
 - (B) remove the Overhead Transmission Line; and
 - (C) make good any damage caused by Transpower to any property in the course of removing the Overhead Transmission Line.

6.3 Reporting/Budget:

- (a) Transpower will use reasonable endeavours to construct, or arrange for the construction of, the Deviation within the Budget.
- (b) Until the Deviation has been completed, Transpower will report to the Council at monthly intervals on:
 - (i) the progress in carrying out the Deviation;
 - (ii) the total expenditure incurred as at the date of the report compared with the Budget; and
 - (iii) substantive reasons for any anticipated or actual delay or increase in costs, in excess of the Budget, together with Transpower's proposals for minimising and mitigating any such delay or increased costs.
- (c) In addition to the monthly reporting under clause 6.3(b), if, at any time Transpower becomes aware that any line item in the Budget will or is reasonably likely to be exceeded by 5% or more, ignoring any contingency amounts allocated to that line item (a "Budget over-run"), then:
 - (i) Transpower must notify the Council in writing as soon as reasonably practicable of this fact, and provide the Council with a revised estimate for the cost, to the Council, of that line item;
 - (ii) if the Council receives a notice pursuant to clause 6.3(c)(i) it may, by written notice to Transpower, request Transpower to either:
 - (A) suspend work on that part of the Deviation which is the subject of the Budget over-run. Transpower will comply promptly with any such request, to the extent to which it is practical for Transpower to do so. Any costs incurred by Transpower as a result of any such requested suspension (including any additional costs incurred by Transpower for the purpose of resuming work when the suspension is lifted) will constitute Charges; and/or
 - (B) provide further details of the Budget over-run; and
 - (iii) if the Council accepts the revised cost estimate, or if Transpower does not receive a notice from the Council pursuant to clause 6.3(c)(ii) within 10 Business Days of the notice given to the Council by Transpower pursuant to clause 6.3(c)(i), then the Council will be deemed to have agreed that the Budget is to be revised by substituting the relevant revised estimate

into the Budget (and Transpower will then send to the Council, at the earliest available opportunity, an updated Budget which includes that revision).

- (d) During the performance of the Deviation, Transpower will ensure that its project manager overseeing the Deviation uses reasonable endeavours to work in a consultative and open manner with the Council project manager overseeing the other Council works on the Land, in accordance with the Site Management Protocol.
- (e) If any contract awarded by Transpower under clause 6.2(b)(ii) includes a contract price expressed wholly or partially in any currency other than New Zealand dollars, then contemporaneously with the award of that contract, Transpower will enter into foreign exchange hedging arrangements in respect of the foreign currency component of the contract price, in accordance with its Treasury Policy CP.B.CS.005. Transpower will provide the Council with such information as the Council may reasonably request from time to time regarding those foreign exchange hedging arrangements.

6.4 Procurement:

(a) *Transpower's Procurement Obligations:*

Subject to clauses 6.2, Transpower undertakes that, in procuring the construction of the Deviation, it will:

- (i) Issue any request for tenders, required under clause 6.2, to not less than 3 pre-qualified bidders, and will include in the request for tender a requirement for bidders to submit their tenders within one month following the date of issue of the request for tenders (except where Transpower reasonably considers that, in the circumstances, a one month timeframe for submission of tenders would be inconsistent with its administrative law duties and/or the procurement practices expected of a Reasonable and Prudent Operator); and
- (ii) Comply with Transpower's standard procedures for the selection of contractors to perform the Deviation (including the tendering and appointment processes) as contained in Transpower's Procurement Policy CP.B.CS008 issue 27 February 2008; and
- (iii) Comply with the Procurement Guidance for Public Entities – A Good Practice Guide, June 2008 issued by the Office of the Auditor-General.

(b) *Acknowledgement:*

The Council acknowledges that:

- (i) Transpower does not give any warranty or representation as to the number of tenders that it will receive in response to the requests for tender issued under clause 6.2, or as to what those tenders will contain; and
- (ii) in endeavouring to appoint the contractors contemplated in clause 6.2, Transpower will be entitled to seek terms that are no less favourable in any material respect than those generally obtained by Transpower for other contracts that have comparable subject matter and a similar value and risk profile, and Transpower will not be responsible for any delay attributable to any contractor's refusal to agree to such terms.

(c) *Council to receive copies of requests for tenders:*

Transpower will ensure that it provides the Council with a copy of each request for tenders released pursuant to clause 6.2, contemporaneously with its release to

potential tenderers. The Council will promptly notify Transpower if it considers that the contents of any request for tenders falls short of the requirements of Schedule 9, in which case Transpower will consult with the Council and may issue a "notice to tenderers" updating the request for tenders accordingly.

6.5 Site Management Protocol:

- (a) Transpower and the Council will each co-operate in good faith and use all reasonable endeavours to agree, at the earliest practical opportunity following the Commencement Date, a site management protocol for the performance of the Deviation and of the Council's works (together, the "Works") on the Development Land ("Site Management Protocol").
- (b) The Site Management Protocol will:
 - (i) Identify each party's health and safety, access, site security, and environmental requirements and require each party (and their authorised agents, contractors and subcontractors) to comply with those requirements;
 - (ii) Identify each party's responsibilities for key elements of the Works;
 - (iii) Specify a process for the parties to coordinate their activities, including establishing a group comprising representatives from each party to meet regularly to co-ordinate, construction and (where relevant) commissioning activities over the duration of the Works; and
 - (iv) Ensure that the construction of the Works can be carried out with the practicable minimum risk of damage to, or adverse impact on, the operation, physical condition or rating of the Cable or the Ducting System, or any property or equipment forming part of the Deviation.
- (c) In the event that the parties fail to agree a Site Management Protocol prior to 1 December 2010, any matters in dispute shall be conclusively resolved by dispute resolution in accordance with Clause 13.

6.6 Target timeframes:

Subject to clause 6.4(b), Transpower will use reasonable endeavours to ensure that its obligations under clauses 6.1 and 6.2 are carried out in such a way that:

- (a) installation of the Ducting System is completed by the end of the 2010/11 summer construction season;
- (b) installation and commissioning of the Cable is completed by the end of the 2011/12 summer construction season; and
- (c) removal of the Overhead Transmission Line from towers 6 to 12 (including the removal of towers T6, T7, T8, T9, T10 and T11) is completed by the end of the 2011/2012 summer construction season.

6.7 Contract Management:

Transpower will use all reasonable endeavours to enforce each contract referred to in clause 6.2 in accordance with its terms, in a manner that is consistent with clauses 6.3(a) and (d). Without limiting the generality of this clause, Transpower will:

- (a) keep the Council informed, in the manner and to the extent reasonably required by the Council, as to progress with implementation of each such contract (including monitoring progress against timetables and budgets);
- (b) notify the Council in writing, promptly on becoming aware of any issue that arises in relation to any such contract, where Transpower has reasonable grounds to believe that the issue is likely to have a material adverse effect on the Council or the construction of the Deviation (including any cost increase, time delay, request

for any variation to any such contract, or material default by/insolvency of the relevant contractor);

- (c) vary any such contract (to the extent permitted and in the manner required by the contract) as requested by the Council in writing from time to time, provided that Transpower is not obliged to cause any such variation:
 - (i) where Transpower reasonably believes that the effects of that variation will create a material exposure for Transpower or have a material adverse effect on Transpower or its operations; and/or
 - (ii) without limiting the generality of Paragraph (i), where that variation would result in a departure from Transpower's then-current technical standards, or its policies and procedures relating to health and safety or the security or integrity of the national grid;
- (d) not instigate or approve any material variation to any such contract without the Council's prior written approval (not to be unreasonably withheld or delayed), except where Transpower reasonably considers such action necessary for reasons relating to health and safety or the security or integrity of the national grid;
- (e) not take or threaten to take any action to terminate or suspend any such contract, or to enforce any security available to Transpower under any such contract, or to enforce any step-in rights under any such contract, in each case without the Council's prior written approval (not to be unreasonably withheld or delayed), except where Transpower reasonably considers such action necessary for reasons relating to health and safety or the security or integrity of the national grid;
- (f) require the relevant contractors and their subcontractors to comply at all times with the Site Management Protocol (to the extent relevant);
- (g) not grant any waiver or release of any material liability or obligation of any such contractor under the relevant contract, without the Council's prior written approval (not to be unreasonably withheld or delayed);
- (h) copy to the Council promptly all formal notices which Transpower proposes to give to, or which Transpower receives from, any such contractor under the relevant contract; and
- (i) not act or purport to act as the agent of the Council.

6.8 Suspension Requested by Council:

Transpower will, if requested by the Council, suspend the performance of the Deviation, to the extent to which it is practical for Transpower to do so. Such requests may be made only to the extent that the Council (acting reasonably) determines that it would be exposed to a material financial or other risk if the undertaking of the Deviation were not suspended. Any costs incurred by Transpower as a result of such suspension (including any additional costs incurred for the purpose of resuming work when the suspension is lifted) will constitute Charges.

6.9 Agreement and Payment for any Required Acquisition of Land

Where an owner of any interest in any part of the Land that is subject to any designation or notice of requirement for the Deviation applies to the Environment Court under section 185 of the RMA 1991 for an order obliging Transpower to acquire or lease ("acquire") all or any part of their interest in the Land under the Public Works Act 1981:

- (a) Transpower and the Council agree that Transpower will enter into an agreement with the owner of the interest in the Land to acquire the interest in the Land on the basis that the application to the Environment Court for an order is withdrawn prior to the Environment Court hearing the application;
- (b) The Council will pay the charges to Transpower for the acquisition of the interest in the Land (including the compensation payable to the owner of the interest in the Land) and the cost of entering the agreement to acquire the Land; and

- (c) Transpower will transfer the Land to the Council immediately following the completion of the acquisition of the interest in the Land by Transpower.

7. *Payment of the Charges*

7.1 **Payment of the Charges:**

The Council shall pay the Charges to Transpower as provided in this Contract without any set-off, counterclaim or other deduction.

7.2 **GST:**

All Charges are stated exclusive of GST (if any). The Council will pay to Transpower at the time of payment for the supply an amount equal to all GST on supplies made under this Contract (subject to the Council receiving from Transpower a valid tax invoice for GST purposes).

7.3 **Due Date:**

The Charges payable by the Council will be paid by 2.00 pm on the 20th day of the month in which Transpower's invoice for such Charges is received (the "**Due Date**"), provided that where the invoice is received after the 15th of the month, the Due Date will be the 20th day of the next month. Where the Due Date is other than a Business Day, then the Charges will be due and payable by 2.00 pm on the first Business Day following (and such date shall be the Due Date).

7.4 **Invoices:**

Transpower will invoice the Council from time to time during the term of this Contract at the completion of significant steps in the performance of the Deviation (but no less frequently than once every month) based on a provisional calculation of the Charges accumulated up to the date of the invoice ("**Provisional Invoice**"). Once the Deviation has been completed, Transpower will issue an invoice reconciling all amounts paid pursuant to the Provisional Invoices with the amount for the Charges as finally calculated. If the Council has overpaid or underpaid Transpower pursuant to the Provisional Invoices, the provisions for overcharges or undercharges (as the case may be) in Clause 7.6 are to apply.

7.5 **Default Interest:**

Charges which remain unpaid after the Due Date as set out in Clause 7.3 will attract interest calculated daily at the Default Rate until the date payment is received, such interest to be capitalised daily and shall accrue after as well as before judgment.

7.6 **Undercharges or Overcharges:**

If pursuant to Clause 7.4, Transpower has undercharged or overcharged the Council (and such undercharge or overcharge has been paid), Transpower will:

- (a) In the case of an undercharge, invoice the Council for the amount of the undercharge together with interest at the Interest Rate calculated from the Due Date of the provisional invoice in question to the Due Date of the final invoice; and
- (b) In the case of an overcharge, pay to the Council the amount of the overcharge together with interest at the Interest Rate calculated from the Due Date of the provisional invoice in question to the Due Date of the final invoice.

8. *Term of the Contract*

8.1 **Term:**

This Contract will commence on the Commencement Date and (subject always to Clause 14.1 or any other provision providing for early expiry) will expire at midnight on the Expiry Date.

9. *[Not Used]*

10. *Exclusion and Limitation of Liability*

10.1 **Exclusion From Transpower's Liability:**

Transpower and its Associates will not in any circumstance be liable (whether in contract, tort or equity) to the Council for any loss, injury, damage (whether direct, indirect or consequential) or expense caused by an act or omission of Transpower or its Associates in relation to any matter contemplated by this Contract unless such act or omission constitutes a failure by Transpower to comply with a provision of this Contract.

10.2 **Limitation of Transpower's Liability:**

If there is any failure by Transpower to comply with a provision of this Contract, Transpower and its Associates will not be liable to the Council for such failure for anything whatsoever, other than:

(a) ***Direct Loss or Damage:***

the direct loss or damage to the Council (excluding any loss of use, revenue or profit by the Council or the amount of any damages awarded against the Council in favour of, or monies paid by the Council by way of settlement to, any third party and any costs or expenses of the Council in connection with the same) caused by Transpower's failure to comply with any provision of this Contract; and

(b) ***A Total Amount of Liability:***

in respect of such direct loss or damage to the Council, up to the maximum sum of \$2,000,000 for any single event or circumstance of failure described in Paragraph (a) (and a series of such failures arising from the same event or circumstance shall be a single event or circumstance of failure) and up to the maximum sum of \$5,000,000 in respect of all events or circumstances of failure described in Paragraph (a) occurring in any one year.

For the avoidance of doubt, if any act or omission of Transpower or its Associates which constitutes a failure by Transpower to comply with a provision of this Contract, is a negligent act or omission, the limitation on Transpower's and its Associates' liability as provided in this Clause 10.2 will apply to such negligent act or omission of Transpower or its Associates. The benefits of this Clause 10.2 are intended to extend to each of Transpower's Associates and to be enforceable by each of them pursuant to the Contracts (Privity) Act 1982.

10.3 **No Liability for Third Party Claims:**

Transpower will not by virtue of this Contract be liable for any claims against the Council by any third party.

11. *Force Majeure*

11.1 **Force Majeure**

If Transpower fails to comply with or observe any provision of this Contract (other than payment of any amount due) and such failure is caused by:

(a) ***Specific Event or Circumstances***

Any event or circumstance occasioned by, or in consequence of, any act of God (being an event or circumstance (i) due to natural causes, directly or indirectly and exclusively without human intervention, and (ii) which could not reasonably have been foreseen or, if foreseen, could not reasonably have been resisted), strikes, lockouts, other industrial disturbances, acts of public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, or civil disturbances;

(b) **Court Orders etc:**

The binding order of any court, government, regulatory body or a local authority beyond the control of Transpower; or

(c) **Other Event or Circumstance:**

Any other event of circumstance beyond the control of Transpower and being such that, by taking reasonable precautions, Transpower could not have avoided the effect of such event or circumstance,

(in each case, such events or circumstances being "**Force Majeure**") that failure does not give rise to any cause of action or liability based on default of the provision.

11.2 Notice:

If Transpower becomes aware of a serious prospect of a forthcoming Force Majeure, it must notify the Council as soon as reasonably practicable of the particulars of which it is aware. If Transpower invokes Clause 11.1, it must notify the Council as soon as reasonably practicable of full particulars of the Force Majeure relied on. Upon giving notice, Transpower will be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

11.3 Minimise Delays

Upon the occurrence of any circumstance of Force Majeure, Transpower shall endeavour to continue to perform its obligations under this Contract so far as reasonably practicable. Transpower shall use all reasonable endeavours to minimise any delay in the performance of its obligations under this Contract as a result of Force Majeure. Transpower shall give notice to the Council when it ceases to be affected by the Force Majeure. To avoid doubt, to the extent that any circumstances of Force Majeure result in Transpower incurring any increased or additional costs for the performance of the Deviation, those increased or additional costs will constitute Charges.

12. Confidentiality

12.1 Confidentiality:

All information in relation to or in respect of this Contract acquired or received by any one party (the receiving party) from the other (the disclosing party) will be held and kept confidential by the receiving party and will not be disclosed by the receiving party to any third party except with the prior consent of the disclosing party. However, the receiving party may, without such consent, disclose such matters or information:

(a) **Public Domain:**

to the extent that the same has become generally available to the public other than as a result of an unauthorised disclosure by either party, or any of its Associates; and

(b) **Legal Proceedings:**

in any mediation, adjudication, arbitration, litigation or legal proceeding of any kind arising out of or in connection with this Contract or otherwise in compliance with the order of any Court of competent jurisdiction; and

(c) **Statutes etc:**

to the extent that the receiving party's legal advisers advise (acting in good faith) that disclosure is required either by any relevant statute or the listing requirements of any Stock Exchange; and

(d) **Compliance with Contract:**

to the extent necessary in order to give effect to this Contract; and

(e) **Disclosure Permitted:**

to the extent that the disclosing party consents in writing to such disclosure.

12.2 Associates:

Each party will be responsible for ensuring that each of its Associates who are at any time in possession of confidential information of a kind referred to in Clause 12.1 will observe and comply with Clause 12.1 and will accordingly be responsible for the acts or omissions of the same.

12.3 Survive Expiration:

The provisions of this Clause 12 will (notwithstanding any other provision of this Contract) survive expiration (for any reason) of this Contract.

13. Dispute Resolution

13.1 Management and resolution of disputes between the parties

The following provisions of this Clause 13.1 will apply to all disputes between the parties in relation to this Contract:

- (a) the parties will use all reasonable endeavours to resolve any dispute;
- (b) pending resolution of any dispute, the parties are to continue to perform their obligations under this Contract; and
- (c) any agreement to resolve any dispute is to be in writing and signed by each party.

13.2 Dispute notice and meeting

Subject to Clause 13.1, the following provisions of this Clause 13.2 will apply to any dispute in relation to this agreement:

- (a) the party claiming a dispute is to give prompt notice of the dispute to the other party containing the grounds and reasonable details of the dispute (dispute notice);
- (b) the parties are to use all reasonable endeavours to resolve any dispute within 20 Business Days from the date of receipt of the dispute notice;
- (c) if the parties fail to resolve the dispute within the 20 Business Day period contemplated by Paragraph (b) then the dispute shall be referred to the Chief Executive Officer of each of the parties (or other person having equivalent status within the organisation of either of the parties);
- (d) the persons referred to in Paragraph (c) shall meet and endeavour to resolve the dispute within 20 Business Days of the dispute being referred to them; and
- (e) if the people named in Paragraph (c) fail to resolve the dispute or one party fails to comply with Clause 13.1 or 13.2, then party who served the dispute notice shall be entitled to refer the matter to an expert in accordance with Clause 13.3 in order to resolve the dispute.

13.3 Expert determination

Where a dispute is to be referred to an expert, the following provisions of this Clause 13.3 will apply:

- (a) the expert shall be relevantly qualified and experienced, and recognised as an expert, in relation to the subject matter of the dispute;
- (b) the expert shall be appointed by agreement of the parties or, in the absence of agreement within a period of 10 Business Days, by the President of the Institution

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of Professional Engineers New Zealand (IPENZ) (or any successor organisation) upon the request of either party;

- (c) the expert shall act as an expert and not as an arbitrator;
- (d) the opinion of the expert shall be final and binding on the parties, except in the case of manifest error or fraud;
- (e) the parties shall each bear their own costs in respect of the matter referred to the expert for determination. The parties shall each pay one half of all costs incurred by the expert, unless the expert (at his or her discretion) determines otherwise. Any such determination as to costs shall be binding on the parties; and
- (f) the expert shall have due regard to the rights and/or obligations of the parties under this Contract.

14. Early Expiration

14.1 Circumstances of Early Expiration:

This Contract shall expire before the Expiry Date if:

- (a) the Council fails to make any payment due under this Contract within 10 Business Days of such payment having become due and that failure is not remedied within 10 Business Days of written notice to the Council requiring it to be remedied; or
- (b) the Council fails to perform or observe any provision of this Contract, where the effect of that failure is to create a material financial or other detriment or exposure for Transpower, and that failure is not remedied to the satisfaction of Transpower within 10 Business Days of written notice to the Council requiring it to be remedied.

14.2 Certain Provisions Survive Expiration:

Clauses 10, 12, 13 and 14, and Schedule 4, will survive the termination or expiration (for any reason) of this Contract. In addition, the termination or expiration of this Contract will not affect the terms of any easement granted to Transpower under this Contract.

15. Change of Law

15.1 Change of Law:

This Clause 15 shall apply in the event of a Change of Law, which has the result of materially affecting a party's obligations (including any liability a party may have as a consequence of performing, or exercising any right under this Contract) or the ability of a party to perform its obligations under this Contract.

15.2 Notice of Change of Law:

If an event as described in Clause 15.1 occurs, then either party may give notice to the other under this Clause 15.2 and the parties are to meet as soon as reasonably practicable after the giving of the notice and consider whether there is any practical basis on which the part of this Contract which is affected by the Change of Law may be varied.

15.3 No Agreement

If the parties cannot reach agreement under Clause 15.2 within 10 Business Days from the date the notice is received, either party may refer the matter to dispute resolution in accordance with Clause 13.

16. Miscellaneous

16.1 Assignment:

Neither party may assign or otherwise dispose of any part of its interest in this Contract without the prior written consent of the other party, not to be unreasonably withheld.

16.2 Notices:

Any notice or other communication required by this Contract to be given by any one party to the other, must be in writing and hand delivered or sent by fax or email to the recipient's Contact Person at the relevant address, fax number or email address specified below. A notice or other communication is deemed to have been given and received:

- (a) if hand delivered, on the day of delivery;
- (b) if sent by fax, on the date of successful transmission as indicated on the confirmation generated by the sender's machine (provided there is no manifest error in such date); or
- (c) if sent by email, on the date generated by the sender's machine as the date of sending of the email (provided there is no manifest error in such date).

If the date a notice or other communication is deemed to have been given and received under Clause 16.2(a), (b) or (c) is not a Business Day, the notice or other communication will be deemed to have been given and received at the start of the next Business Day.

For the Council:

Waitakere City Council
Waitakere Central
6 Henderson Valley Road
Private Bag 93109
Henderson 0650
Auckland

Attention: Tony Miguel

Facsimile: 09 836 8001

For Transpower:

Transpower New Zealand Limited
Transpower House
96 The Terrace
PO Box 1021
Wellington

Attention: Customer Services Manager

Facsimile: 04 495 7004

16.3 Entire Agreement:

Each party agrees that the terms and conditions of this Contract:

- (a) constitute the entire agreement between the parties and supersede and extinguish all earlier negotiations, understandings whether oral or written between the parties relating to the subject matter of this Contract (excluding the RMA Approvals Agreement and the agreements between the parties relating to the design of the Cable and/or Ducting System, dated 12 May 2010 and / J, the existence and terms of which are not affected by this Contract); and

(b) are reasonable.

Signatures of the Parties

Signed as an agreement by the parties.

SIGNED by Transpower New Zealand Limited by:

Director/ Authorised Person

on _____
Date

Witness Signature

Name of Witness

Occupation of Witness

City of Residence of Witness

SIGNED by Waitakere City Council by:

Director/ Authorised Person

on _____
Date

Witness Signature

Name of Witness

Occupation of Witness

City of Residence of Witness

Director/ Authorised Person

on _____
Date

Witness Signature

Name of Witness

Occupation of Witness

City of Residence of Witness

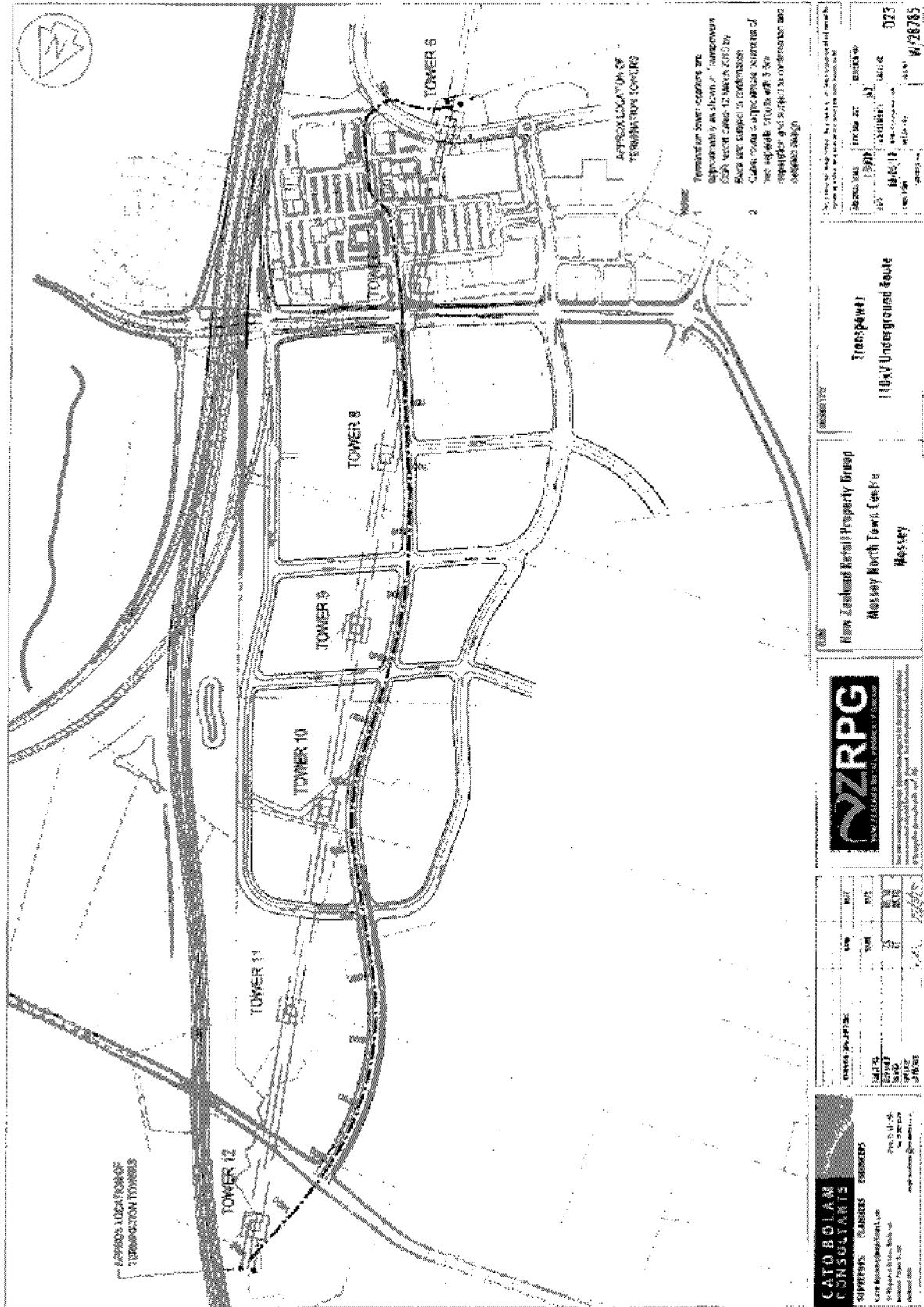
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SCHEDULE 1 PART 1: PLAN OF DEVIATION

[Drafting Note: To be replaced with more detailed plans before signing.]



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PART 2: SCOPE OF DEVIATION

[Drafting Note: To be replaced with more detailed description before signing, to the extent additional detail is available.]

- Design, co-ordination and installation of underground HV cable ducts in coordination with new and existing Civil works from existing Tower 6 to Tower 12, including:
 - Co-ordination and laying of ducts with existing services through the existing Westgate development
 - Road crossing of Hobsonville Road
 - Tahi Rd (new development) coordination with new civil works
 - Road crossing of Northside Drive
 - Open space and co-ordination with future stormwater retention pond 7
- Design, co-ordination and installation of jointing bays, cross bonding pits and pull-up pits as appropriate across length of underground HV cable duct.
- Design, co-ordination and construction of HV cable termination structures at Tower 6 and Tower 12. Location and Tower solution to be co-ordinated and agreed with council.
- Design, co-ordination and installation of two circuits of XLPE cu 400 MMR 110kv cables into the HV cable ducts.
- Design and installation of Distributing Temperature Sensing (DTS).
- Design and provision of cable fault and auto reclose blockup protection and associated telecommunication circuits between the cable section at both Albany and Henderson sub-stations.
- Testing and commissioning of underground HV cabling and cable termination structures at Tower 6 and 12.
- Disassembly, removal and make good of Tower 6, 7, 8, 9, 10 and 11 and associated aboveground HV cables.

PART 3: EASEMENTS

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PART 4: NORTHERN CTS COMPOUND

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PART 5: SOUTHERN CTS COMPOUND

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SCHEDULE 2

THE LAND

Title reference	Owner of Land	Description
Existing local roads	Waitakere City Council	Third Party Land
State Highway 16	Waitakere City Council, controlled by New Zealand Transport Agency	Third Party Land
NA121B/623	Westgate Properties Limited	Third Party Land
NA129C/492	Waitakere City Council	Third Party Land
NA74B/378	Cannuck Holdings Limited	Development Land
NA52C/1139 (fee simple in Lot 3 DP 96884)	Kedgley Investments Limited	Development Land
440302 (leasehold in Lot 3 DP 96884)	Cannuck Holdings Limited	Development Land
NA66D/591	Cannuck Holdings Limited	Development Land
NA66D/592	Cannuck Holdings Limited	Development Land
NA52C/1142	Cannuck Holdings Limited	Development Land
NA58B/120	Anthony George Garelja, John Kevin Garelja and Stephen Thomas Woodfield (1/2 share) and John Kevin Garelja, Sally Norma Garelja and Stephen Thomas Woodfield (1/2 share)	Third Party Land
NA58A/78	Anthony George Garelja, John Kevin Garelja and Stephen Thomas Woodfield (1/2 share) and John Kevin Garelja, Sally Norma Garelja and Stephen Thomas Woodfield (1/2 share)	Third Party Land
NA133D/812	Merlene Jeanette Cox	Third Party Land

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SCHEDULE 3

BUDGET

DEVIATION		Breakdown by phase		
		Cable	Ducting System	Removal of Overhead Transmission Line
Description	Estimated Costs (NZ\$) (Total)	Estimated Costs (NZ\$)	Estimated Costs (NZ\$)	Estimated Costs (NZ\$)
CONSTRUCTION WORKS				
Overhead Lines	1,466,000	1,466,000		
Underground cables	10,111,000	6,111,000	4,000,000	
Civil Works	747,000	747,000		
Demolition	203,000			203,000
Primary Plant (excludes transformers & capacitor banks)	635,000	635,000		
Protection	334,000	334,000		
SCADA	21,000	21,000		
Secondary Equipment	127,000	127,000		
Communications	502,000	502,000		
	\$14,146,000			
TRANSPOWER OVERHEADS				
Transpower Costs - Construction Phase	520,250	260,125	260,125	
Consultants	13,000	13,000		
	\$533,250			
CONTRACTOR OVERHEADS				
Contractors P & G	116,000	32,480	83,520	
Contractors PM and Site Costs	155,000	43,400	111,600	
Contractors Establishment and Disestablishment	256,000	71,680	184,320	
Contractors Safety Compliance	393,000	110,040	282,960	
Contractors Travel and Accommodation	155,000	43,400	111,600	
	\$1,075,000			
Subtotal	\$15,754,250	10,517,125	5,034,125	203,000
Contingency	1,575,425	1,051,713	503,413	20,300
Interest During Construction	240,000	120,000	100,000	20,000
TOTAL ESTIMATED COST	\$17,329,675	11,568,838	5,537,538	243,300

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SCHEDULE 4

NEW INVESTMENT CHARGE

1. Interpretation

1.1 In this Schedule unless the context otherwise requires:

New Investment Charge

means the charge referred to in Paragraph 2 of this Schedule and calculated pursuant to Paragraph 3 of this Schedule.

2. New Investment Charge

2.1 The Council shall pay to Transpower the New Investment Charge as invoiced by Transpower (plus GST) in accordance with Paragraph 3 of this Schedule.

3. Calculation of New Investment Charge

3.1 The New Investment Charge will be:

(a) Following Completion:

A sum based on the actual costs of performing the Deviation together with all associated costs including, but not limited to, the cost of plant, materials and equipment, survey costs, design costs, procurement costs and legal costs; or

(b) If Uncompleted:

if this Contract expires pursuant to Clause 14.1, the amount (expressed in dollars) as calculated by Transpower which is equal to the sum of the capital expenditure incurred by Transpower in respect of the Deviation as at the date of such expiry together with all associated costs including, but not limited to, any cancellation costs arising under third party contracts as a result of the expiry, survey costs, design costs, procurement costs, and legal costs.

3.2 To avoid doubt, the New Investment Charge will accumulate throughout the term of this Contract as and when the underlying costs are incurred by Transpower, and accordingly will be invoiced no less frequently than once per month, in accordance with clause 7.4.

4. Certificate

4.1 For the purposes of Paragraph 3.1(b) of this Schedule, the certificate of a duly authorised employee of Transpower as to the sum of Transpower's capital expenditure and associated costs will, in the absence of manifest error, be final and conclusive as between the parties.

5. Request for Information

5.1 Where the New Investment Charge is calculated in accordance with Paragraph 3.1(b) of this Schedule, and if the Council by notice requests, Transpower shall within a reasonable time thereafter, provide to the Council a copy of the methodology used to calculate the dollar amount of the New Investment Charge.

Transpower's Internal Costs

- 6.1 To the extent that Transpower includes any of its internal costs in the Charges, these will be calculated based on the following hourly rates, multiplied by the time expended by Transpower personnel in arranging or performing the Deviation:

Description of Transpower Personnel	Hourly Rate (before addition of GST)
Project Manager	\$170
Development Engineer	\$160
Senior Development Engineer	\$230
Other Transpower Staff	\$110

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SCHEDULE 5
CABLE EASEMENT

[to be inserted]

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SCHEDULE 6
ACCESS DEED
[to be inserted]

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SCHEDULE 7
ACCESS AND SERVICES EASEMENT
[to be inserted]

SCHEDULE 8
EPR EASEMENT
[to be inserted]

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SCHEDULE 9

REQUIREMENTS FOR RFT CONTRACT TERMS

1 Form of contract

Except to the extent that Transpower and the Council agree otherwise, Transpower will ensure that each request for tenders issued by Transpower pursuant to clause 6.2 of this Contract requires respondents to tender on the basis of a form of contract which is consistent with the following requirements:

- (a) In the case of any construction contract (as distinct from a contract for supply of cable or electrical equipment), the contract must be based on Transpower's "Works4" standard form, or Transpower's NZS:3910 standard form, in each case with such modifications as Transpower may consider necessary or desirable in the circumstances, acting as a Reasonable and Prudent Operator.
- (b) If Transpower decides to issue a single request for tenders covering both the supply and the installation of the underground high voltage cable forming part of the Deviation, the associated form of contract will be based on Transpower's FIDIC standard form, with such modifications as Transpower may consider necessary or desirable in the circumstances, acting as a Reasonable and Prudent Operator.
- (c) As far as reasonably practicable, the contract must include a programme for the performance of the contracted works which reflects the target timeframes in clause 6.6 of this Contract.
- (d) The contract must provide for a "lump sum" or "fixed price" pricing model, as those terms are commonly understood in construction industry terminology, and the grounds on which the contractor is entitled to claim an increase in the contract price must be limited to those events and circumstances which in Transpower's view (acting as a Reasonable and Prudent Operator) cannot sensibly be factored into the contract price in advance by a reasonable and experienced contractor.
- (e) The contract price must be payable in instalments the relative value and timing of which reasonably reflect the contractor's progress in performing the works, subject to a retention payable on completion of the works and amounting to not less than 5% of the contract price. Each instalment of the contract price must be linked to a material, verifiable milestone in the performance of the works, and must be spread as near as possible at intervals of one month each, subject to there being suitable milestones available at such intervals for that purpose.
- (f) The terms of the contract which set out: (i) any limits on the types or amounts of loss for which the contractor may be liable to Transpower in the event of the contractor's breach or negligence; and (ii) the amount of liquidated damages (if any) payable by the contractor in the event of delays to the contracted works; must not, when taken together, be materially less favourable to Transpower overall than the equivalent terms generally obtained by Transpower in other contracts that have comparable subject matter and a similar value and risk profile.
- (g) During the period before Transpower has accepted and taken-over the contracted works, the Contractor must be obliged to remedy defects in the contracted works, entirely at the contractor's own cost, subject to exceptions for defects arising from events or circumstances beyond the contractor's reasonable control.
- (h) Where the contract includes a monetary limitation on the contractor's aggregate liability, the monetary limit specified will be not less than 200% of the contract price tendered.

- (i) The contractor will be required to provide an on-demand bond (on standard terms commonly utilised by Transpower for that purpose) for an amount not less than 5% of the contract price, which Transpower may call upon to satisfy any amount which becomes payable by the Contractor under the contract.

2 Scope of contract works

Except to the extent that Transpower and the Council agree otherwise, Transpower will ensure that each request for tenders issued by Transpower pursuant to clause 6.2 of this Contract requires respondents to tender on the basis of a description of a scope of works that is consistent with the following requirements:

- (a) In relation to the installation of the Ducting System:
 - (i) the works must be defined in a manner (and to a level of detail) consistent with the final detailed design and specification delivered under the agreement between Transpower and the Council dated on or about [*insert date of design agreement*]; and
 - (ii) the timeframes for the performance of the works must reflect the fact that the installation of the Ducting System will not necessarily be performed in a continuous or sequential manner along the route specified in Schedule 1, but will instead follow the progress of the Council's earthworks along that route, and.
- (b) In relation to the supply, installation and commissioning of the Cable, the works must be defined in a manner (and to a level of detail) consistent with the final detailed design and specification completed pursuant to clauses 6.1 of this Contract.