

Contract for Services

Contract Details

Powerswitch Contract

The Parties

The Buyer:

Electricity Authority, a Crown entity established under section 12 of the Electricity Industry Act 2010

NZBN 9429041901847

Level 7, ASB Bank Tower, 2 Hunter Street, Wellington 6011

and

The Supplier:

Consumer NZ Incorporated

NZBN 9429000014502

Level 5, 17 Whitmore Street, Wellington 6011
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The Contract

Agreement

The Buyer appoints the Supplier to deliver the Services described in this Contract and the Supplier accepts that appointment. This Contract sets out the Parties' rights and obligations.

Parts of this Contract

The documents forming this Contract are:

1. **Contract Details:** This section
2. **Schedule 1:** Description of Services
3. **Attachment 1 to Schedule 1:** Detailed Service Description
4. **Attachment 2 to Schedule 1:** KPIs
5. **Schedule 2:** Standard Terms and Conditions GMC Form 2 SERVICES | Schedule 2 (3rd Edition) available at: www.procurement.govt.nz
6. **Schedule 3:** Special Conditions
7. **Schedule 4:** Governance

How to read this Contract

- Together the above documents form the whole Contract
- Any Supplier terms and conditions do not apply
- Clause numbers refer to clauses in Schedule 2 unless otherwise indicated
- Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 17 (Schedule 2) or clause 1 (Schedule 3).

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Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.

Signed for and on behalf of the Buyer:

Signed for and on behalf of the Supplier:

Name: James Stevenson-Wallace

Position: Chief Executive

Date: Select date

30 June 2020

(sign)

Name: Jon Duddy

Position: Chief Executive

Date

Select date

30 June 2020

Schedule 1

Description of Services

Contract Management and Personnel

Start Date	1 July 2020	<i>Reference Schedule 2 clause 1</i>
End Date	30 June 2023	<i>Reference Schedule 2 clause 1</i>
Renewal	The Parties may agree to renew this Contract one time for an additional period of one year in accordance with clause 1.3 of Schedule 2.	<i>Reference Schedule 2 clause 1.3</i>

1. Contract Managers

Reference Schedule 2 clause 4

	Buyer's Contract Manager	Supplier's Contract Manager
Name:	s 9(2)(a)	s 9(2)(a)
Title / position:	Senior Advisor, Strategy	Deputy CEO
Address:	Level 7, ASB Bank Tower, 2 Hunter Street, Wellington 6011	Level 5, 17 Whitmore Street, Wellington 6011
Phone:	s 9(2)(a)	s 9(2)(a)
Email:		

2. Addresses for Notices

Reference Schedule 2 clause 14

	Buyer's address	Supplier's address
For the attention of:	s 9(2)(a)	s 9(2)(a)
c.c. Contract Manager		cc Name of contract manager if senior manager above
Delivery address:	Level 7, Asb Bank Tower, 2 Hunter Street, Wellington 6011	Level 5, 17 Whitmore Street, Wellington 6011
Postal address:	Level 7, Asb Bank Tower, 2 Hunter Street, Wellington 6011	P O Box 932, Wellington 6140
Email:	s 9(2)(a)	s 9(2)(a)

3. Supplier's Approved Personnel

Reference Schedule 2 clause 2.4

N/A

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4. Supplier's Approved Sub-contractor

Reference Schedule 2 clause 7

N/A

Description of Services

5. Introduction

5.1 The Buyer is a Crown entity whose:

- statutory objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers (refer section 15 of the Electricity Industry Act 2010); and
- statutory functions include to promote to consumers the benefits of comparing and switching retailers (refer section 16(10)(i) of the Electricity Industry Act 2010),
(the **Statutory Objectives**).

5.2 The Buyer has been conducting its "What's My Number Campaign" (**WMN**) since early 2011.

5.3 The Supplier is an independent non-profit organisation established in 1959 dedicated to getting consumers a fairer deal. Powerswitch has been provided by the Supplier since 1999. It aims to provide consumers with access to independent, trusted, accurate and easily understood energy price-comparison information so they can make informed choices between energy plans and energy providers.

5.4 Since 2010 Powerswitch has supported the Buyer's WMN campaign by providing the quick calculator for the WMN website and more detailed price comparison services through its own website <https://www.powerswitch.org.nz/> (the **Powerswitch Website**).

5.5 The WMN price comparison tool is no longer available on the Buyer's website and the Buyer now intends to progressively retire the WMN brand and quick calculator with the result that consumers wishing to check for estimated potential savings, compare electricity and gas retailers' pricing plans and initiate a switch will do so exclusively via the full calculator on the homepage of the Powerswitch Website.

5.6 The Buyer wishes to renew and extend its current funding support to the Supplier, and the Supplier wishes to provide the following services on the terms set out in this Contract.

6. Description of Services

The services, including associated Deliverables, are as further described in Attachment 1 to this Schedule 1, but by way of high level summary comprise:

- Powerswitch Services: operating, maintaining and enhancing the Powerswitch Website and Comparison Model, including maintaining generally available retail plan data for electricity and gas retailers' current and historic plans as much as reasonably practicable.
- Marketing services: digital campaign and marketing services to promote the Powerswitch Website and the potential benefits / savings a consumer can gain by shopping around / switching plans; and
- Development Services: designing and implementing enhancements to the Powerswitch Website and Comparison Model functionality (excluding standard service maintenance and development required to ensure that the Powerswitch Website and Comparison Model remain operational).

7. Milestones

Development Services: as specified in each statement of work entered into by the Parties in accordance with clause 4.5.5 of Attachment 1 to this Schedule 1.

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8. **Specific code of conduct / policies / health & safety / protective security / legislative requirement**

N/A.

9. **Supplier's Reporting Requirements**

Reference Schedule 2 clause 5.2

Report to:	Description of report	Due date
Buyer Contract Manager	Regular Quarterly Reports (Supplied together every 3 months)	The 4 th of the appropriate month
Buyer Contract Manager	Data accuracy assurance Written assurances via an authorised representative of the Supplier that the Retailer Plan Data is accurate, complete and up-to-date as much as reasonable practicable and the Comparison Model is generating robust and accurate results, particularly with respect to spot priced and time-of-use based products.	The 4 th of the appropriate month
Buyer Contract Manager	Aggregated complaints and feedback High-level aggregated summary of general complaints or communication received by Supplier about the Powerswitch Website / Comparison Tool functionality, limitations, accuracy, or suggested development opportunities, the Supplier will log the communication, and present a high-level aggregated summary report quarterly to the Buyer.	The 4 th of the appropriate month
Buyer Contract Manager	Regular Monthly Reports (Supplied together every month)	The 4 th of every month
Buyer Contract Manager	Marketing Effectiveness Track and report on effectiveness of the Buyer's spend on Marketing Services, as reasonably requested by the Buyer, including: • Sustained paid search + SEO (metrics to be defined, baseline and targets to be defined); ○ Estimated media performance ○ Actual performance (CPA, CTC etc) ○ Traffic to, conversions and action on Powerswitch (including % new users) • Impact on switches campaign marketing activity and results (metrics to be defined, targets defined per campaign) ○ Estimated media performance ○ Actual performance (CPA, CTC etc)	The 4 th of every month or at time of campaign if needed

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Report to:	Description of report	Due date
	○ Traffic to, conversions and action on Powerswitch (including % new users) • Impact on switches campaign progress and as completed, post-campaign analysis (including lessons learnt). • Adwords and search ranking rolling 12 month performance.	
Buyer Contract Manager	Powerswitch Services (rolling totals): • General website traffic ○ Total sessions ○ Users ○ % new users ○ Sessions by network regions • Specific Powerswitch Actions/activity ○ Total switches initiated ○ Switches initiated by network regions ○ Retailer ranking (plan views) ○ Retailer ranking (switches initiated) ○ Powerswitch process completion (user reaches results) ○ Average time for process completion ○ Number of calculations abandoned, and trend ○ Number of new Powerswitch user accounts created ○ Number of repeat users logging in • WMN quick calculator page usage ○ Number of WMN landing page sessions ○ % of traffic to page internal vs external ○ Total calculations completed ○ Total first-time calculations ○ Total repeat calculations • Impact on switching rates ○ Switches completed who interacted with Powerswitch (matching ICP address/registry data etc) ○ % new users ○ Switches completed by network region	The 4 th of every month

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Report to:	Description of report	Due date
Buyer Contract Manager	Powerswitch website availability To be measured monthly, and 12-month aggregate	The 4 th of every month
Buyer Contract Manager	Performance against KPIs over the preceding month.	The 4 th of every month
Buyer Contract Manager	Irregular reports (Supplied as needed / produced / requested)	As needed / produced / requested
Buyer Contract Manager	Notification and make-good of accuracy issues In accordance with clause 2.7 of Schedule 3, the Supplier must: - provide a data report (totals etc) detailing who has been affected (ICPs, losing retailers, gaining retailers, and network regions where available; - report back to the Authority on steps taken to remediate the Issue and to prevent recurrence	As needed / produced / requested
Buyer Contract Manager	Other reports (As reasonably requested)	As needed / produced / requested

Note: report formats to be agreed.

9.1 Allowance period for new report setup

Any new reporting to commence within a reasonable period from the Start Date as agreed by the parties to allow development of reporting functionality.

Charges

The following section sets out the Charges. Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include Fees, and where agreed, Expenses and Daily Allowances. The Charges for this Contract are set out below.

10. Fees

Reference Schedule 2 clause 3

The Supplier's Fees will be calculated as follows:

10.1 Powerswitch Services: Fixed Fee

A fixed Fee of s 9(2)(b)(ii) including GST per annum (payable in 12 equal monthly instalments).

10.2 Development Services: Variable Fee

- Up to s 9(2)(b)(ii) including GST per Contract Year, for design and implementation of Enhancements, provided that Fees will only become payable if:
 - the Supplier provides to the Buyer a Business Case outlining the proposed Enhancement(s) and associated benefits in accordance with clause 4.5.3 of Attachment 1 to this Schedule 1;
 - the [Governance Group] agrees to approve the Business Case in accordance with clause 4.5.4 of Attachment 1 to this Schedule 1 and recommends to the Buyer that funding be allocated for the implementation of the Enhancement(s); and

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- the Parties sign a statement of work in respect of the relevant Enhancement(s), with an initial instalment of 15-20% of the total agreed cost of the Enhancement(s) (as specified in the statement of work) to be payable upon execution of the statement of work and with each subsequent instalment to be invoiced on the completion of an agreed Milestone, as set out in the statement of work.
- The Supplier will be responsible for managing each project budget once funding has been agreed and allocated and the statement of work executed.
- For the avoidance of doubt:
 - If the full s 9(2)(b)(ii) not allocated to Enhancement projects in a particular Contract Year, such unallocated amount will not be available in the following Contract Year (i.e., any unallocated portion of the s 9(2)(b)(ii) will not be carried over into the following Contract Year); and
 - where a Milestone is scheduled for completion in a Contract Year (and funding has been allocated accordingly) and the Supplier fails to complete that Milestone in the Contract Year then the Supplier acknowledges that funding for the delayed Milestone will be allocated from the annual Development Services budget for the new Contract Year.

10.3 Marketing Services: Variable Fee

- Up to s 9(2)(b)(ii) funding GST per Contract Year for agreed marketing campaigns conducted by the Supplier in accordance with clause 3.4 of Attachment 1 to this Schedule 1:
 - provided that the parties have agreed the overarching strategy; and
 - based on agreed campaign requirements (including budgets) (refer clause 3.3 of Attachment 1 to this Schedule 1).

At the end of each marketing campaign the Supplier will refund to the Buyer any amounts paid by the Buyer to the Supplier in order to meet projected campaign costs and expenses but which were not actually applied by the Supplier to those campaign costs and expenses.

10.4 BAU Maintenance and Development

10.4.1 The Buyer acknowledges that:

- the Supplier is a non-profit organisation;
- the funding arrangement set out in this Contract is non-exclusive; and
- the Supplier receives and relies on additional funding from third-party sources in order to maintain the Powerswitch Website.

10.4.2 The Supplier acknowledges that the Fixed Fee for the Powerswitch Services (specified in clause 10.1 of this Schedule 1) is allocated to fund, amongst other things, the ongoing development of the Powerswitch Website during the Contract term (refer clause 2.2.1 and clause 4.5.1 of Attachment 1 to this Schedule 1) ("BAU Maintenance and Development").

10.4.3 If the amount of funding received by the Supplier from third-party sources during the Contract term, affects the ability of the Supplier to provide BAU Maintenance and Development and results in the Supplier forming the view, acting reasonably, that it is no longer financially viable for it to continue to provide the BAU Maintenance and Development, then the Supplier may notify the Buyer of such change in circumstances, with such notice to include:

- the reasons for the Supplier's view; and
- detail of the steps taken by the Supplier to mitigate the effect of the decrease in the funding received from third-party sources.

10.4.4 Following the receipt by the Buyer of a notice issued in accordance with clause 10.4.3, the Buyer will commence good faith discussions with the Supplier and commits to considering whether to enable access by the Supplier to the annual Variable Fee amount for Development Services (specified in clause 10.2 of this Schedule 1) over the period of the Term still remaining or until such time as the Supplier is able to secure replacement third party funding (whichever comes first), in order to fund the ongoing provision by the Supplier of the BAU Maintenance and Development.

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- 10.4.5 If the Authority agrees to enable such access then the process set out at clause 4.5.3 of Attachment 1 to this Schedule 1 will apply to the allocation of funding by the Buyer from the annual Variable Fee amount for Development Services to fund BAU Maintenance and Development.

11. Expenses

Reference Schedule 2 clause 3

N/A.

12.11.1 Daily Allowance

Reference Schedule 2 clause 3

N/A.

Invoices

Reference Schedule 2 Subject to clauses 3 and 11.7

13. Timing of invoicing:

The Supplier must send the Buyer an invoice for the Charges at the following times:

- Powerswitch Services: monthly
- Development Services: on an instalment basis per project, with each instalment to be invoiced on the completion of a Milestone, in each case as specified in the relevant statement of work; and
- Marketing Services: in accordance with the agreed campaign schedule and budget, with each invoice to be issued so as to enable payment to occur on or prior to the commencement of the scheduled campaign activity to enable the Supplier to in turn pay its suppliers who it has engaged to carry out the relevant activity.

14. Address for invoices

Reference Schedule 2 clause 3

	Buyer's address
For the attention of:	The current Buyer Contract Manager.
Address:	Electricity Authority - Te Mana Hiko Level 7, Harbour Tower, 2 Hunter Street PO Box 10041, Wellington 6143 ,New Zealand Email invoice to: accounts@ea.govt.nz, and CC the Buyer Contract Manager

15. Other instructions about invoices

Include the Buyer's Project Code on the invoice as supplied by the Buyer's Contract Manager.

Insurance

Reference Schedule 2 Clause 8.1

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16. Specific insurance

The Buyer does not require any specific insurance under this Contract other than the requirements under clause 8.1 of Schedule 2.

Changes to Schedule 2 and attachments

17. Schedule 2 of this Contract is amended as follows:

As set out in Schedule 3 (Special Conditions).

18. Attachments

Reference 'Contract documents' described at Page 1

Attachment 1 to Schedule 1: Detailed Service Description

Attachment 2 to Schedule 1: KPIs

Schedule 3: Special Conditions

Schedule 4: Governance

Attachment 1: Detailed Service Description

1. Service Overview and Outcome

1.1 Overview

- 1.1.1. The Services comprise the Powerswitch Services, the Marketing Services and the Development Services, as detailed below.

1.2 Outcome

- 1.2.1. The Buyer will provide and promote web-based energy price comparison services – enabling consumers to:
- compare their existing Retail Plan with those Retail Plans currently available and on offer in the market;
 - calculate the savings that they could achieve by (i) switching retailers or (ii) staying with their existing retailer but changing the plan they are on;
 - estimate the annual cost they would pay should they switch to a selected plan; and
 - initiating that switch / plan change.

2. Powerswitch Services

2.1 Comparison Model

- 2.1.1. The Comparison Model will function to compare Retail Plans using price as a basis for comparison calculations. In order to qualify for inclusion in the price comparison, the relevant component of the Retail Plan must be widely available on an ongoing basis i.e.: not restricted to a short promotional sign-up period or a specific set of customers.
- 2.1.2. As at the Start Date, the Comparison Model does not support bundled plans.

2.2 Powerswitch Website

- 2.2.1. The Supplier will provide:
- website hosting;
 - technical support and maintenance;
 - ongoing development to adapt to changing market offers and maintain an optimal user experience;

and will otherwise ensure that the Powerswitch Website and Comparison Model is available, responsive and fully functional (on modern browser and operating system combinations).

2.3 Retail Plan Data

- 2.3.1. The Supplier will:
- maintain the generally available Retail Plan Data (for both historical plans and those plans on offer in the market at the relevant time) used as inputs into the Comparison Model (by ensuring that all Retail Plan Data as much as reasonably practicable is accurate, complete and up-to-date);

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- load new Retail Plans promptly upon receipt from the relevant Retailer with the objective of ensuring that Retail Plan Data has been loaded into the Comparison Model and is available to consumers on and from the time that the relevant retail plans become available /on offer in the market; and
- provide the Buyer with all Retail Plan Data (including gas and dual fuel) via a CSV file or other format agreed between the Parties (by the 4th business day of each month).

2.4 Out of scope

2.4.1. To avoid doubt, the following matters are outside the scope of the Powerswitch Services:

- C1 EPR Rec – enhanced Billing information; this recommendation suggests that customers find electricity bills confusing and want them simplified;
- C1 EPR Rec – Direct billing by distributors; there is one distributor (The Lines Company, in the King Country) who charges consumers directly (as opposed to the lines costs being included in the retailer bill); the rec suggest this should not be allowed.
- C1 EPR Rec – Annual plan reviews – customers on Low fixed charge tariffs require retailers to review customer consumption each year; the rec suggests that we consider a review of the annual price review.
- C1 EPR Rec – Disclosing headline prices; the rec suggests retailers disclose a price for their monthly or annual packages particularly on their websites.

3. Marketing Services

3.1 Marketing Services – platforms and channels

3.1.1. The Supplier will promote the Powerswitch Website to consumers via a mixed media approach (including communications and PR).

3.2 Marketing strategy

3.2.1. The Supplier will maintain a rolling 12-month marketing strategy plan for the Powerswitch Website, to be reviewed by the [Governance Group] and agreed by the Buyer every quarter.

3.2.2. The Supplier will scope and implement campaigns in accordance with clause 3.3 (below) and deliver campaigns via those media that will “work” to drive traffic and ROI at the time – dependent on the target audience and scale of campaign.

3.3 Campaign planning

3.3.1. The Parties to meet on a monthly basis (or as otherwise agreed) via [Governance Group] to review and consult on:

- campaign concepts, creative;
- target consumer groups;
- media plan (including communications and PR, SEO, SEM, display advertising, social media advertising etc as appropriate);
- budget and schedule per campaign (inclusive of the costs of advertising (creative and placement)); and
- campaign KPIs, e.g., site traffic targets by target group.

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3.4 Resources / production / approval

- 3.4.1. The Buyer may provide, and the Supplier will take into account, reasonable advice and feedback on campaign direction and content.
- 3.4.2. The Supplier acknowledges that the Buyer has the right to require the Supplier to halt and / or vary a campaign where the Buyer, acting reasonably, is concerned about mixed messaging (refer to clause 2.9.b of Schedule 2) and / or any potential for reputational damage.
- 3.4.3. The Supplier is autonomous in marketing and PR for the Powerswitch Website. All content, materials, creative will be created and provided by the Supplier, unless specifically agreed.
- 3.4.4. Campaign content, materials, creative created and provided by the Supplier are not subject to prior review or approval by the Buyer.

3.5 Sustained SEO and paid search:

- 3.5.1. The Supplier will provide as part of the 12 month marketing strategy:
 - search engine optimisation services: to provide the Powerswitch Website with improved positioning in selected search engines (including by building links from a variety of websites); and
 - search engine advertising.

4. Development Services

4.1 EPR Recommendations

- 4.1.1. The report from the Electricity Price Review (released May 2019) (EPR) contained a number of recommendations related to consumers. A copy of the EPR recommendations is appended to this Attachment 1 as Appendix A. The Buyer has developed an EPR Programme of Work based on the recommendations contained in the EPR.
- 4.1.2. The Supplier acknowledges and agrees:
 - that the direction of future development of the Powerswitch Website and Comparison Tool should take into account the EPR recommendations;
 - it will assume a leadership role in:
 - identifying and implementing improvement initiatives that are part of, or align with, the EPR recommendations and the Buyer's developing EPR Programme of Work (including seeking additional funding via the Business Case process (refer clause 4.5.3 below) where required); and
 - proactively reporting back on any decision not to implement identified improvement initiatives (and provide justifications for this).
- 4.1.3. The Buyer acknowledges that "larger functionality" will be implemented as an Enhancement (i.e., separately funded project – to be scoped and agreed in accordance with the process set out at clause 4.5 below).

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4.2 Project governance

- 4.2.1. The Enhancement Roadmap (refer clause 4.3 of this Attachment 1) and recommendations to the Buyer to fund, and implementation of, Enhancements will be overseen and administered by [Governance Group]

4.3 Roadmap

- 4.3.1. The Supplier will:

- review the EPR recommendations, and give consideration to the high level requirements outlined as improvements to the website (in this case the Powerswitch Website);
- actively consider the improvements referred to in the preceding bullet point during the design phase of the Enhancement Roadmap with the Buyer;
- develop an initial service improvement roadmap in consultation with the Buyer within [6] months of the Start Date that identifies and prioritises various service improvement initiatives and their primary drivers (e.g., usability, reliability, speed) (**Roadmap**); and
- maintain and update that Roadmap over the term of this Contract as technology changes, user / consumer behaviours change and as the retailers respond.

4.4 Development drivers / outcomes

- 4.4.1. The Parties agree that the following principles / outcomes should underpin the Roadmap contents and the selection of Enhancement projects:

- Accuracy - Enhancements should make the Powerswitch Website more accurate and always up to date.
- Trust and Confidence - Enhancements should increase stakeholder trust and confidence in the Powerswitch Website, its reliability and in how results are generated.
- Consumer centricity - Enhancements should reflect the needs to consumers in their various forms.
- Speed and ease of use - Enhancements should speed up the comparison process and make completion easier.
- Responsive - Enhancements should enable the site to respond to industry innovation to ensure consumers can compare new options.

4.5 Selection, planning and implementation of service improvement initiatives

- 4.5.1. General Service Improvements (BAU): The Supplier will schedule and implement general service improvement initiatives (in consultation with the Buyer) over the term of this Contract. These maintenance and development services form part of the Powerswitch Services and are included in the Fixed Fee (refer clause 10.1 of Schedule 1).
- 4.5.2. Development Enhancements & Upgrades: The Supplier may submit (on its own initiative or at the request of the Buyer) a proposal to [Governance Group] at any time for the planning and implementation of a service improvement initiative that is on the Roadmap.
- 4.5.3. In the case of service improvement initiatives that comprise material Enhancements (substantial change to process or adding new functionality) requiring additional funding from the Buyer to implement, the Supplier must develop and submit a business case to the Buyer for joint consideration that is appropriately detailed (taking into account the scale / complexity of the proposed enhancement) and that addresses:
- compelling justification for the Enhancement;
 - assurance that the Enhancement will achieve its desired outcomes;

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- assurance that the Enhancement (and the method of implementation) represents value for money in the use of public funds;
- more specifically:
 - primary objectives and driver(s);
 - scope and timeline for implementation;
 - tasks and activities to be performed, and deliverables to be provided, to implement the initiative;
 - costs (and the amount of funding required from the Buyer); and
 - constraints, assumptions, risks and dependencies,

(Business Case).

- 4.5.4. The Parties will jointly review each Business Case via [Governance Group] and may request further information, agree to approve (and recommend to the Buyer that funding be allocated for the implementation of the Enhancement) or reject the Business Case.
- 4.5.5. Each approved Business Case for an Enhancement that the Buyer then agrees to fund or part fund will be implemented as a discrete project pursuant to a signed statement of work between the parties.
- 4.5.6. [Governance Group] will provide guidance as and when requested by the parties on scope, delivery and quality aspects during implementation (including acting as a potential escalation point for issues)

Appendix A: Extract from EPR Report

Section C: Increasing retail competition

Introduction

Retail competition has grown in recent times. A lot of it has been in new products, plans and services, although there have also been better prices for those who shop around. And that is the nub of the problem, because a lot of consumers aren't switching retailer or plan to get better deals and are missing out on the benefits of competition. Indeed, many haven't changed retailer since records began. (We estimate the figure at somewhere between 23 per cent and

42 per cent of all consumers since 2002.)⁶⁷ Were all consumers to move to the cheapest plan available to them, they would save on average about \$240 each a year.⁶⁸

Since 2002, the difference in price between the cheapest retailer and the so-called incumbent retailer in each area has risen about 50 per cent.⁶⁹ Switchers hunt out keenly priced deals, while others stay put – usually with the incumbent. Lower-income households are especially likely to be among the non-moving customers who unwittingly pay too much in what has become an increasingly two-tier market.

A compounding factor is win-backs – counter-offers to entice back customers who intend moving retailer or have already done so. This practice is good for the individual consumer concerned, but not for competition generally if it eventually undermines choice. Win-backs are arguably one of the bigger barriers independent retailers face in expanding their market share, and we recommend they are banned. Many new retailers have entered the market (28 since 2005), but the five biggest generator-retailers continue to dominate, their 90 per cent market share hardly changed from a decade ago.

Many consumers find it confusing to compare prices and plans, choose the best one for them, and make the switch. Several of our recommendations respond to this problem by making price comparisons easier and faster. Informed choice is also important, hence our recommendation about requests to retailers for consumption data. We also propose measures to raise awareness of the savings within consumers' reach right now. All these initiatives together should act as a real spur to greater competition.

We did not favour the option of price caps because it is hard to make them work. We also consider a better route is to strengthen competition, which increases pressure on retailers to minimise costs and promptly share savings (including from lower distribution charges) with consumers. That said, the three-year review may consider price caps if our recommendations prove unsuccessful.

⁶⁷ First report, pg36; and Electricity Authority Market Development Advisory Group, *Customer acquisition, saves and win-backs – issues paper*, May 2018, pg29.

⁶⁸ Our Initial Analysis of Retail Billing Data, *Table 1: Estimated average savings (\$/year) available to consumers from switching*, pg15. Excludes spot-price plans.

⁶⁹ First report, pg38. Adjusted for inflation. The unadjusted increase is higher than 50 per cent.

Recommendations

C1: Merge the Electricity Authority and Consumer NZ price comparison websites

The Electricity Authority and Consumer NZ should merge their price comparison websites, respectively Whatsmynumber and Powerswitch, to create a new and improved website that makes it easier for electricity consumers to shop around. Ideally, the new website should be able to:

- present information in more effective ways
- offer consumers easy access to their long-term usage data so they can compare prices more accurately, share it with other retailers and choose the best plan for their needs
- estimate the effect on consumers' bills of installing solar panels, storage batteries or using electric vehicle charging
- compare non-price aspects of retailers' plans, such as how much of the electricity supply is renewable and whether customers can smooth out payments between high-use and low-use months of the year
- notify consumers of new offers or opportunities to save money
- have a link to the government-run language line for consumers for whom English is a second language
- have an after-hours helpline and chatbot facility
- have more ability to analyse how visitors use the website
- make available data on all current and previous pricing plans, so as to help researchers and anyone seeking to develop consumer-switching tools.

A single website with more functions and features will improve consumers' ability to hunt out the best deals, and more effectively use the money the Electricity Authority currently spends running its website and partly funding the Powerswitch website. Consumer NZ said it supported a merger because consumers would be better served by a single, independent website.⁷⁰

The two organisations should therefore work together to develop the new website within six months, after which Consumer NZ would be contracted by the Electricity Authority to maintain, promote and further develop it. Enhancements could be added progressively, rather than attempting to launch a fully redeveloped website in one step. The Electricity Authority should consult the consumer advocacy council and industry stakeholders about these enhancements. The contract should provide stable and sufficient funding to ensure Powerswitch has no need to rely on retailers' commissions, which could undermine consumers' trust in the website. The contract should provide for periodic retendering to ensure efficiency.

Submitters generally supported a merger.⁷¹ Some emphasised the importance of ensuring consumers could trust the information on the website.⁷² One referred to a recent Australian

⁷⁰ Consumer NZ, pg3.

⁷¹ For example, David Riley, pg1; Electricity Authority, pg5-6; Electricity Networks Association, pg12; Electricity Retailers' Association of New Zealand, pp9-10; Grey Power, pg2; Ian McChesney, pg4; Jake Lilley, pg3; and Line Trust South Canterbury, pg2.

Energy Market Commission review that found customers were more likely to trust information from the government than commission-based sites. A few submitters suggested the contract should be put out to open tender, but this would, in our view, unduly delay the new website's launch.⁷³ And besides, we favour, as already noted, periodic retendering of the contract.

Another factor in our decision was Powerswitch's successful track record.

The Electricity Authority, in consultation with the consumer advocacy council, should also consider three other steps that could make it easier for customers to get the best deal possible. These options all look attractive at first sight, but require closer study to decide whether to proceed. They are:

Billing information: Many consumers find their bills confusing and want them simplified. As one resident at a workshop put it: "Consumers want a bill that is understandable to all – it's as simple as that!"⁷⁴ We strongly support this goal, but we recognise the devil is in the detail. For this reason, we propose the Electricity Authority should look at what can be done to make bills clearer, drawing particularly on advice from the consumer advocacy council.

Direct billing by distributors: The Electricity Authority should consider whether to ban distributors from directly billing their residential and small business consumers. The Lines Company is currently the only distributor that directly bills. Feedback from consumers about direct billing was overwhelmingly negative. Consumers in The Lines Company area told us it was hard enough budgeting for one power bill, let alone two. They also risked losing two prompt payment discounts if they paid late and risked disconnection by either the retailer or distributor. We think it increases costs and complexity for residential and small business consumers. We think it better for distributors to bill retailers, which then package those charges into their retail tariffs. This provides consumers with more scope to find the pricing plan covering both network and energy costs that best meets their need. The Lines Company is currently reviewing its practice of a separate bill, and we trust it will listen to the voices of its consumers. Other distributors could also bill directly, so the matter warrants attention.

Annual plan reviews: The current low fixed charge tariff regulations require retailers to review their customers' consumption each year and advise them whether their current plan best suits their needs or whether another is more suitable. One of our recommendations is to phase out these regulations. We recommend the Electricity Authority consider whether to retain the yearly review provision (coupled with more rigorous enforcement) as a prompt to customers to look more carefully at their plans.

Finally, one matter we raised at workshops was whether the Electricity Authority should require retailers to disclose a 'headline price' for their monthly or annual packages particularly on their websites. Packages would vary according to number and type of consumers in a household (such as singles, couples, four-person families) and perhaps home heating sources, insulation level and so on. This could stimulate competition by allowing easier comparison of retailers' prices. The details of such packages would be crucial. Australian authorities are looking at the concept. We consider efforts are better directed at beefing up Powerswitch so customers can more readily compare prices. Depending on what happens in Australia, the idea of headline prices could be reconsidered.⁷⁵

⁷² Electricity Retailers' Association of New Zealand, pg9-10; and Vector, pg10.

⁷³ Glimp, pp1-3; and Trustpower, pg6.

⁷⁴ Comment from consumer at workshop hosted by The Lines Company in Te Kuiti on 29 April 2019.

Extract from Government response (3 October 2019)

Section C: Increasing retail competition

1. Retail competition has grown in recent times however, many consumers are not getting the benefits from competition. More can be done to strengthen competition and ensure more consumers benefit from it. The Review makes six recommendations.

Merge the Electricity Authority and Consumer NZ price comparison websites

2. The Review recommended the current price comparison websites be merged to create a new and improved website to enable consumers to make more informed decisions. The Review set out a number of specific improvements to consider, including access to a consumer's historic consumption data, and estimating the effect on a consumer's bill due to the installation of solar panels or batteries.
3. I support this recommendation and will tell the Electricity Authority to work collaboratively with Consumer NZ to merge their price comparison websites, and action the improvements recommended by the Review.
4. Some additional funding may be required to develop some of the additional features suggested by the Review, such as access to historical consumption data. Any additional costs to the Electricity Authority will be funded from the industry levy, and can be considered as part of the Authority's budget setting process.

Extract from subsequent “progressing the EPR recommendations” cabinet paper. (13 February 2020)

No further reference of this initiative in this Cabinet paper.

Attachment 2: KPIs

1. Approach

KPIs ("what" will be measured) are set out below. The Supplier will measure and report on its actual performance against these measures from the Start Date. On or about month [7] of the Contract term, the Parties will (acting reasonably and in good faith) review the Supplier's performance against these measures over the preceding [6] month period and agree targets (including continuous improvement expectations) which the Supplier will then be required to meet (refer clause 2.3.a of Schedule 2).

2. Marketing effectiveness, Site traffic / user activities

2.1 Targets to be agreed by the Parties. Expected to include baseline metrics such as:

Theme	Goal	Period	Indicator	Desired Trend
Marketing	Sustained brand awareness and SEO performance	Measure Monthly	- Organic search impressions - Ranking in organic search of key brand terms - Number of click-throughs	Trending up
Marketing	Sustained paid search promotion	Measure Monthly	- Impressions - Number of click-throughs - Click through rate - Conversion rate	Trending up
			Cost per click	Trending Down
Marketing	Cost effective campaigns driving awareness, traffic and action on site. <i>(Not exhaustive. Targets values, and indicators should be defined per campaign and combined with site usage)</i>	Measure monthly / as campaign runs	- Reach - Impressions - Number of click-throughs - Click through rate	Trending up
			- Cost per milli - Cost per click - Cost per completion	Trending down
Site use	Increased number of people checking and accessing price comparison information	Measure monthly	- Total sessions - Sessions by network regions - Total users % new users - Powerswitch calculation process completions	Trending up
Site use	More people making informed decisions based on comparison information before switching retailers <i>(Requires EA comparison between CNZ numbers and retailer switches in registry)</i>	Measure monthly	- Total switches completed by users who interacted with Powerswitch - Total switches completed by network region	Trending up

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Site use	Improve site usability and speed	Measure monthly	• Bounce rate • Average time for calculation process completion • % of calculation processes abandoned before results	Trending down
Site use	Increased trust and confidence in website. (Is meeting user needs).	Measure quarterly	• Number of inbound complaints / suggestions about common problems or limitations	Trending down
		Measure annually?	• increased consumer perception of accuracy of information available to make a switching decision	Trending up

3. Powerswitch Website availability

- 3.1 Powerswitch Website and Comparison Model are available to consumers to access.
- 3.2 Measured monthly and aggregated over 12 months.
- 3.3 Regular maintenance down-time to be scheduled to occur during agreed periods of the day (and will not count as non-availability for the purposes of this KPI).

4. Accuracy of Retailer Plan Data

- 4.1 Retailer Plan Data is accurate, complete and up-to-date as much as reasonable practicable.

Schedule 3: Special Conditions

[Drafting Note: Where Schedule 3 deletes and replaces a clause of Schedule 2, the portion shaded in green represents new language (to reflect an agreed term from the Term Sheet). The unshaded portion represents the original language of the deleted Schedule 2 clause.]

1. Definitions

1.1 In the definitions section of Schedule 2, insert in the appropriate alphabetical order:

"Additional Period The meaning given to that term in clause 1.3 of Schedule 2."

"Business Case The meaning given to that term in clause 4.5.3 of Attachment 1 to Schedule 1."

"Code The Electricity Industry Participation Code 2010."

"Comparison Model The tool available on the Powerswitch Website that lets consumers compare generally available electricity and gas retailers' pricing plans [and special offers], calculate the savings that they could achieve by switching retailers, and initiate such a switch."

"Contract Year:

- The period commencing on the Start Date and ending on 30 June 2021;
- each subsequent 12 calendar month period until the End Date; and
- the period from the End Date to the end of the Additional Period.

"Development Services The services to be provided by the Supplier to design and implement the Enhancements, as further set out in Attachment 1 to Schedule 1."

"Enhancement A service improvement that is a material enhancement of the Powerswitch Website and Comparison Model functionality, excluding standard service maintenance and development required to ensure that the Powerswitch Website and Comparison Model remains operational)."

"Governance Group [define by reference to Attachment 1 to Schedule 1 (once complete)]"

"Issue The meaning given to that term in clause 2.11 of Schedule 2."

"KPIs" The key performance indicators described in Attachment 2 to Schedule 1."

"Marketing Services The campaign and marketing services to be provided by the Supplier to promote the Powerswitch Website to consumers, as further set out in Attachment 1 to Schedule 1."

"Non-Compliant Services The meaning given to that term in clause 6.4 of this Schedule 3."

"Participant The meaning given to that term in section 5 of the Electricity Industry Act 2010."

"Powerswitch Services The operation and maintenance of the Powerswitch Website, as further set out in Attachment 1 to Schedule 1."

"Powerswitch Website The meaning given to that term in Schedule 1."

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“Registry The national database that is maintained by the Buyer and contains information on every point of connection on local and embedded networks to which a consumer or embedded generator is connected.”

“Retail Plans Electricity and gas retailers’ pricing plans (including dual fuel and special offers) comprising:

- historical plans, i.e., plans no longer available and on offer in the market, but which a number of consumers remain on; and
- current plans, i.e., plans that are currently generally available and on offer in the market (and which consumers could choose to switch to from their existing plan).”

“Retailer Plan Data The data comprised in the Retail Plans.”

“Statutory Objectives The meaning given to that term in Schedule 1.”

“Utilities Disputes” The free and independent forum for resolving consumer complaints about electricity companies (established by the sector in 2001).”

“WMN The meaning given to that term in Schedule 1.”

- 1.2 The meaning of the following term in the definitions section of Schedule 2 is deleted and replaced with the meaning set out below:

“Milestones” The milestones specified in a statement of work executed by the parties for the provision of Development Services.”

2. The Services

- 2.1 Clause 1.3 of Schedule 2 is deleted and replaced with the following:

“Renewal:

- a. The Parties may agree to extend the End Date the number of times, and for the additional period (**Additional Period**), set out in Schedule 1 after [meeting through the Contract Managers and Governance Group] on or about the date that is 18 months after the Start Date to:
 - review the Parties’ performance to determine whether the funding approach provided for under this Contract is enabling both Parties’ needs and objectives to be met; and
 - consider alternative funding options that may be available.
- b. If the Parties agree to extend the End Date the Contract will be renewed for the Additional Period on the same terms, unless the Parties agree otherwise in a Variation.”

- 2.2 Clause 2.1 of Schedule 2 is deleted and replaced with the following:

“Both Parties’ obligations: Both Parties agree to:

- a. act in good faith and honestly in their dealings with each other;
- b. discuss matters affecting this Contract or the delivery of the Services, whenever necessary;
- c. notify each other promptly of any actual or anticipated issues that could:

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- *significantly impact on the Services or the Charges; and/or*
- *receive media attention;*
- d. *comply with all applicable laws and regulations;*
- e. *promote the activities of the other, including:*
 - *in the case of the Buyer, by clearly profiling the Powerswitch Website on its website;*
 - *in the case of the Supplier, by clearly profiling the Buyer on the Powerswitch Website as the Powerswitch Website's primary funder (e.g., by displaying words to the effect of "Powerswitch is supported by the Electricity Authority" (while also acknowledging other funding sources)) with the specific manner in which the Buyer is profiled to be agreed with the Buyer); and*
 - *in the case of the Buyer and the Supplier, by profiling Utilities Disputes on their respective websites; and*
- f. *work together to actively promote to the electricity sector and other stakeholders, through the use of both parties existing channels, the Powerswitch Website as the independent switching tool."*

2.3 Clause 2.2 of Schedule 2 is deleted and replaced with the following:

"Buyer's obligations: The Buyer must:

- a. *provide the Supplier with any information and/or access to Buyer Personnel the Supplier has reasonably requested to enable the delivery of the Services;*
- b. *make decisions and give approvals reasonably required by the Supplier to enable delivery of the Services, within reasonable timeframes;*
- c. *pay the Supplier the Charges for the Services in accordance with this Contract;*
- d. *ensure that the Registry is live (so that the Powerswitch Website can function effectively). The Buyer acknowledges that the Supplier depends on the Registry for accuracy;*
- e. *notify and consult (via the Governance Group) with the Supplier in relation to any Code changes (including any such changes that relate to the Registry) that may adversely affect the Supplier's ability to operate the Powerswitch Website / keep the Powerswitch Website accurate. Consultation will include consideration of whether:*
 - *any consequential variations may be required to this Contract; and*
 - *and Enhancements may be required in order to accommodate the code change; and*
- f. *not conduct any WMN campaign, or other campaign that lets consumers compare electricity and gas retailers' pricing plans [and special offers], calculate the savings that they could achieve by switching retailers, and initiate such a switch, in competition with the Powerswitch Website during the term of the Contract.*

For the avoidance of doubt, nothing in this Contract prevents the Buyer from providing other consumer advice and education activities (e.g., its COVID talk to your retailer (in the 1st instance) campaign or check for way to save campaign), or otherwise from promoting or directing consumers to the Powerswitch Website."

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2.4 Clause 2.3 of Schedule 2 is deleted and replaced with the following:

“Supplier’s obligations: The Supplier must:

- a. *deliver the Services:*
 - *on time (including meeting all Milestones on time), except where delay is caused by the Buyer;*
 - *so as to meet or exceed the applicable KPIs, and otherwise to the required performance standards and quality set out in this Contract; and*
 - *with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry;*
- b. *ensure that its Personnel have the necessary skills, experience, training and resources to deliver the Services;*
- c. *provide all equipment and resources necessary to deliver the Services;*
- d. *comply with the Supplier Code of Conduct issued by the Procurement Functional Leader (see www.procurement.govt.nz).*
- e. *without limiting its obligations under clause 2.8b, comply with the Privacy Act 1993 and its own privacy notice (including in relation to profiles created by users of the Powerswitch Website); and*
- f. *must not at any time do anything that is likely to adversely affect the reputation, good standing or goodwill of the Buyer.*

2.5 The following new clause 2.9 is added to Schedule 2:

“Messaging: The Supplier will ensure all marketing and PR directly in relation to Powerswitch is:

- a. *directed at supporting the Buyer to discharge its statutory function and achieve the Statutory Objectives; and*
- b. *focussed on promoting to consumers the potential benefits of comparing Retail Plans and Powerswitch as the tool to help with that (i.e., as opposed to commenting on or being critical of the retailer market or participants (including retailers’ plan options or participants’ behaviours)).”*

2.6 The following new clause 2.10 is added to Schedule 2:

“Accuracy and assurance:

- a. *The Supplier will take reasonable steps, and implement reasonable measures, to ensure that Retailer Plan Data is accurate, complete and up-to-date and the Comparison Model is generating robust and accurate results.*
- b. *Upon request by the Buyer, the Supplier will outline to the Buyer the nature of those assurance steps and measures referred to in clause 2.10.a. above. The Supplier will take into account any reasonable suggestions made by the Buyer in relation to those assurance steps and measures.”*

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2.7 The following new clause 2.11 is added to Schedule 2:

"Notification and make good: *If (including as a result of a user or retailer complaints), the Supplier identifies an actual or suspected inaccuracy in the Retailer Plan Data (including in its interpretation and application of the Retailer Plan Data) that impacts the robustness and accuracy of the results generated by the Comparison Model (each an **Issue**) then the Supplier must:*

- a. *notify the Buyer's Contract Manager as soon as practicable of the Issue;*
- b. *provide a data report (totals etc.) detailing who has been affected (ICPs, losing retailers, gaining retailers, and network regions (where available));*
- c. *promptly take such steps as are reasonably available to it to identify the cause of the Issue and to remediate the Issue;*
- d. *communicate with consumers and Participants via appropriate channels to make them aware of the Issues and the steps that have been taken to remediate the Issue;*
- e. *report back to the Buyer on steps taken to remediate the Issue and to prevent recurrence; and*
- f. *otherwise comply with all reasonable requests of the Buyer."*

2.8 The following new clause 2.12 is added to Schedule 2:

"Audit: *Where the Buyer, acting reasonably, identifies an actual or suspected inaccuracy in the Retail Plan Data (including in its interpretation and application of the Retailer Plan Data), the Buyer will have the right to audit, or appoint a third party to audit, the Supplier to verify data accuracy and / or Comparison Tool functionality."*

3. Information management

3.1 Clause 5.2 of Schedule 2 is deleted and replaced with the following:

"Reports: *The Supplier must give the Buyer the reports, by the due dates stated in Schedule 1, with the format of such reports to be agreed by the Parties."*

4. The contractual relationship

4.1 The following new clause 6.4 is added to Schedule 2:

"Non-exclusive: *Without limiting the Supplier's obligations under clauses 9.1 and 9.3, each Party acknowledges and agrees that the arrangement under this Contract to fund the Powerswitch Services is non-exclusive and the Supplier may obtain funding for the Powerswitch Services from other sources.*

5. Conflicts of Interest

5.1 Clause 9.1 of Schedule 2 is deleted and replaced with the following:

"Avoiding conflicts of interest: *Subject to clause 9.3, the Supplier:*

- a. *warrants that as at the Start Date, it has no Conflict of Interest in providing the Services or entering into this Contract; and*

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- b. *must do its best to avoid situations that may lead to a Conflict of Interest arising.”*

5.2 The following new clause 9.3 is added to Schedule 2:

“Management of existing Conflict: *The Parties acknowledge that the Supplier has a perceived Conflict of Interest in providing the Services as at the Start Date due to the funding received by the Supplier from electricity and gas retailers. The Supplier must manage this Conflict of Interest as follows:*

- a. *the Supplier will ensure that the Powerswitch Website and Comparison Model is operated and functions in an impartial manner, so that it does not favour any particular retailer or other funder of the Powerswitch Website and / or Comparison Model, and otherwise so that users can have confidence in the results generated by the Comparison Model.*
- b. *the Supplier will provide such additional details as are reasonably requested by the Buyer regarding its funding sources and relative funding amounts for the Powerswitch Website and Comparison Model, and how it uses those income streams, ; and*
- c. *the Supplier will include an express statement on the Powerswitch Website disclosing its funding sources and undertaking to users that funding sources do not influence the results generated by the Comparison Model.”*

6. Ending this Contract

6.1 Clause 11.1 of Schedule 2 is deleted and replaced with the following:

“Supplier’s termination for cause: *The Supplier may terminate this Contract:*

- a. *by giving [20] Business Days’ Notice to the Buyer, if the Buyer fails to pay any Charges that are properly due, and are not in dispute under clause 3.4 of Schedule 2. The Charges must be overdue by [20] Business Days and the Supplier must have first brought this to the Buyer’s attention in writing within this period; or*
- b. *after at least 18 months from the Start Date, by giving 180 days’ Notice that includes proof to the reasonable satisfaction of the Buyer that the Supplier’s funding sources for the Powerswitch Website are, or are forecast to be, below viable levels.”*

6.2 Clause 11.2 of Schedule 2 is deleted and replaced with the following:

“Buyer’s termination for convenience:

- a. *The Buyer may terminate this Contract (in whole or in part) at any time by giving 90 days’ Notice to the Supplier.*
- b. *If the Buyer terminates the Contract (in whole or in part) under this clause then, subject to all other clauses of this Contract, the Buyer will pay the Supplier for all Services performed up to the End Date, or where the Services are terminated in part, for the terminated Services performed up to the effective date of termination of those Services.”*

6.3 Clause 11.3 of Schedule 2 is deleted and replaced with the following:

“Buyer’s termination for cause: *The Buyer may terminate this Contract (in whole or in part) immediately, by giving Notice, if the Supplier:*

- a. *becomes bankrupt or insolvent;*
- b. *has an administrator, receiver, liquidator, statutory manager, mortgagee’s or chargee’s agent appointed;*
- c. *becomes subject to any form of external administration;*
- d. *ceases for any reason to continue in business;*
- e. *does something or fails to do something that, in the Buyer’s reasonable opinion, results or is likely to result in damage to the Buyer’s reputation or business;*
- f. *has a Conflict of Interest that in the Buyer’s opinion is so material as to impact adversely on the delivery of the Services or the Buyer*
- g. *provides information to the Buyer that is misleading or innacurate in any material respect;*
- h. *commits a material breach of this Contract that is not rectifiable;*
- i. *fails to rectify a material breach of this Contract that is rectifiable within [20] Business Days after receiving Notice from the Buyer specifying the breach and requiring rectification;*
- j. *repeatedly fails to perform or comply with its obligations under this Contract, whether those obligations are minor or significant (including persistent data accuracy issues);*
- k. *fails to investigate user or retailer complaints or resolve issues in the Retailer Data Plan in accordance with Attachment 1 to Schedule 1 of this Contract;*
- l. *breaches any applicable law; or*
- m. *purports to assign or transfer this Contract or any part of this Contract without the Buyer’s prior approval in writing.”*

6.4 Clause 11.4 of Schedule 2 is deleted and replaced with the following:

“Non-Compliant Services: *If any Services are defective or partly or wholly unperformed by the relevant date for performance under this Contract (Non-Compliant Services) then, without limiting any other remedy the Buyer may have:*

- a. *the Buyer may require the Supplier to rectify, perform or re-perform the Non-Compliant Services at the Supplier’s own cost; and*
- b. *the Buyer will have no obligation to pay for Non-Compliant Services and, if and to the extent the Buyer has already paid for any Non-Compliant Services, the Buyer will be entitled to set off such amounts against future payments due and owing under this Contract.”*

6.5 Clause 11.5 of Schedule 2 is deleted and replaced with the following:

“Consequences of expiry or termination of Contract:

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- a. *Where the Supplier has given or received a Notice of termination, the Supplier must immediately do everything reasonably possible to reduce its losses, costs and expenses arising from termination of this Contract.*
- b. *Upon the expiry or termination of this Contract:*
 - *the licences granted under clause 12.2b and c will survive and the Buyer may continue to use Retailer Plan Data in its possession at the date of expiry or termination in accordance with the terms of that licence;*
 - *the Supplier agrees that it will continue to make the retail tariff data (as referenced in clause 2.3 of Attachment 1 to Schedule 1) available to the Buyer on the same terms as the Supplier makes such data available to the Ministry of Business Innovation and Employment and other public sector agencies, provided it is still producing such data;*
 - *the Supplier will refund any prepaid Charges for Services not performed; and*
 - *each Party will, if requested by the other Party, promptly return or securely destroy any property or Confidential Information of the other Party that is in its possession or control."*

7. Intellectual Property

7.1 Clauses 12.1 and 12.2 of Schedule 2 are deleted.

7.2 The following new clause 12.1 is added to Schedule 2:

"Ownership of Intellectual Property Rights:

- a. *Pre-existing Intellectual Property Rights remain the property of their owner.*
- b. *Without limiting clause 12.a, Intellectual Property Rights in:*
 - *the WMN brand, including the name, logo, any trademarks and the URL for the WMN website; and*
 - *any material provided by the Buyer to the Supplier for use in any campaign conducted as part of the Marketing Services,**remain the property of the Buyer.*
- c. *Without limiting clause 12.a, Intellectual Property Rights in:*
 - *the Powerswitch brand, including the name, logo, any trademarks and the URL for the Powerswitch Website;*
 - *the Powerswitch Website (including layout, graphics and content);*
 - *the Comparison Model; and*
 - *the Retailer Plan Data,**remain the property of the Supplier.*

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- d. *Any New Intellectual Property Rights developed by the Supplier in the performance of the Services vest in the Supplier on their creation.*

7.3 The following new clause 12.2 is added to Schedule 2:

“Licence to Buyer: *The Supplier grants to, or will procure for, the Buyer, subject to the Buyer’s compliance with clause 12:*

- a. *a non-exclusive, royalty-free, world-wide, sub-licensable, licence from the Start Date until the End Date to:*
- *use and publish the Powerswitch brand for the purpose of promoting Powerswitch to consumers; and*
 - *use and publish the Powerswitch Website URL to direct traffic from the WMN URL to the Powerswitch Website.*
- b. *a perpetual, irrevocable, non-exclusive, world-wide, transferable, sub-licensable, royalty-free licence to:*
- *use, analyse and modify; and*
 - *having modified, then publish (provided that any publication does not negatively affect the Supplier’s Powerswitch business model),*
- the Retailer Plan Data provided by the Supplier for the purposes of discharging its statutory functions, and delivering against EPR recommendations; and*
- c. *a perpetual, irrevocable, non-exclusive, world-wide, transferable, sub-licensable, royalty-free licence to use, copy, modify or distribute, for any purpose, any New Intellectual Property Rights developed by the Supplier in the performance of the Marketing Services that incorporate material that contains the Buyer’s Intellectual Property Rights.”*

7.4 The following new clause 12.3 is added to Schedule 2:

“Licence to Supplier: *The Buyer grants to the Supplier a non-exclusive, royalty-free licence from the Start Date until the End Date to use the Intellectual Property Rights in clause 12.1b for the purpose of performing the Services, subject to the Supplier’s compliance with clauses 2.3f and 12.4 of Schedule 2.”*

7.5 The following new clause 12.4 is added to Schedule 2:

“Compliance with brand policies: *The Licences in clauses 12.2 and 12.3 are subject to compliance with any branding policies or other guidelines in relation to use of the relevant Intellectual Property Rights as notified by the owner to the other Party.”*

7.6 The following new clause 12.5 is added to Schedule 2:

“Supplier warranty: *“The Supplier warrants that performing its obligations under this Contract and providing the Services and any Deliverables, product, work, or material developed, created, or supplied in the course of performing those obligations or providing the Services will not breach any third party’s Intellectual Property Rights.”*

7.7 The following new clause 12.6 is added to Schedule 2:

“Supplier indemnity: *The Supplier indemnifies the Buyer in respect of all losses, liabilities, costs, demands, claims, and expenses of any kind (including legal costs on a solicitor-client basis) the Buyer sustains or incurs directly or indirectly as a result of:*

- a. *a breach of clause 12.5; and*
- b. *consumer claims against the Buyer arising from, or in connection with:*
 - *detrimental reliance by a consumer on any of the contents published by the Supplier on the Powerswitch Website (including the results generated by the Comparison Model); or*
 - *the Supplier’s breach of the Privacy Act 1993 or its own privacy notice.”*

8. Extraordinary Event

8.1 For the purpose of this Contract, “Extraordinary Event” includes a change to the Code.

9. Liability

9.1 The following new clauses 15A.1 is added to Schedule 2:

“Exclusion of consequential loss: *Subject to clause 15A.3, neither Party will be liable for indirect, consequential or incidental loss or damage resulting from or connected with the performance of its obligations under this Contract.”*

9.2 The following new clause 15A.2 is added to Schedule 2:

“Liability cap: *Subject to clause 15A.3, the maximum liability of the Supplier in respect of any matter arising out of or in connection with this Contract will not exceed 100% of the total Charges payable by the Buyer for the Services under this Contract.”*

9.3 The following new clause 15A.3 is added to Schedule 2:

“Exclusions to liability: *Notwithstanding clauses 15A.1 and 15A.2, the Supplier will not be released from and its liability will be unlimited in relation to:*

- a. *its breach of clause 13 of Schedule 2 (Confidentiality);*
- b. *its breach of clause 2.3e of Schedule 2 (Privacy); and*
- c. *its obligation to indemnify the Buyer under clause 12.6 of Schedule 2.”*

10. General

10.1 The following new clause 16.11 is added to Schedule 2:

“Assignment: *The obligations of the Supplier under this Contract may not be assigned or transferred in whole or in part without the Buyer’s prior approval in writing.”*

Schedule 4: Governance

1. Framework

1.1 The governance structure for the Services and the relationships contemplated by this Agreement are set out in the following table.

1.2 The parties will participate in the specified forums and meetings, and such other meetings as reasonably requested by the Buyer.

Service area	Forum purpose	Attendees	Meeting frequency	Meeting inputs
General operations	Review monthly performance	Contract Managers	Monthly	[Reference relevant report(s)].
	[Specify other standing monthly agenda items]	Contract Managers	Monthly	
Marketing Services	Marketing strategy review		Quarterly	
	Campaign planning		Monthly	
	Monitor campaign progress		Monthly	
	Review effectiveness of Marketing Services.			
Development Services	Maintain Roadmap		Quarterly	
	Consider Business Cases			
	Oversee Enhancement implementation projects			

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Schedule 2

Standard Terms and Conditions—Services

Length of Contract

- 1.1 **Start Date:** This Contract starts on the Start Date. Services must not be delivered before the Start Date.
- 1.2 **End Date:** This Contract ends on the End Date.
- 1.3 **Renewal:**
- a. The Buyer may extend the End Date the number of times, and for the additional period (**Additional Period**), set out in Schedule 1 by giving the Supplier Notice at least 20 Business Days before the then current End Date (**Extension Notice**).
 - b. If the Buyer gives an Extension Notice, the Contract will be renewed for the Additional Period on the same terms, unless the Parties agree otherwise in a Variation.

The Services

- 2.1 **Both Parties' obligations:** Both Parties agree to:
- a. act in good faith and honestly in their dealings with each other
 - b. discuss matters affecting this Contract or the delivery of the Services, whenever necessary
 - c. notify each other promptly of any actual or anticipated issues that could:
 - significantly impact on the Services or the Charges, and/or
 - receive media attention, and
 - d. comply with all applicable laws and regulations.
- 2.2 **Buyer's obligations:** The Buyer must:
- a. provide the Supplier with any information and/or access to Buyer Personnel the Supplier has reasonably requested to enable the delivery of the Services
 - b. make decisions and give approvals reasonably required by the Supplier to enable delivery of the Services, within reasonable timeframes, and
 - c. pay the Supplier the Charges for the Services in accordance with this Contract.
- 2.3 **Supplier's obligations:** The Supplier must:
- a. deliver the Services:
 - on time (including meeting all Milestones on time), except where delay is caused by the Buyer, and to the required performance standards and quality set out in Schedule 1 or reasonably notified by the Buyer to the Supplier from time to time, and
 - with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry

s 9(2)(a)

- b. ensure that its Personnel have the necessary skills, experience, training and resources to deliver the Services
 - c. provide all equipment and resources necessary to deliver the Services, and
 - d. comply with any relevant codes of conduct listed in Schedule 1, including (if applicable) the Supplier Code of Conduct issued by the Procurement Functional Leader (see www.procurement.govt.nz).
- 2.4 **Approved Personnel:** Where Approved Personnel have been agreed in Schedule 1, the Supplier must:
 - a. use those Approved Personnel in delivering the Services, and
 - b. obtain the Buyer's prior written approval if it wishes to change any Approved Personnel.
- 2.5 **Premises:** If the Supplier is at the Buyer's premises, the Supplier must observe the Buyer's policies and procedures, including those relating to health and safety, and security requirements, as provided to the Supplier.
- 2.6 **Health, Safety and Security:** The Supplier must:
 - a. consult, cooperate and coordinate with the Buyer regarding the Parties' overlapping obligations under, and what is required from the Supplier to assist the Buyer to comply with the HSW Act as it relates to, of affects, the Contract
 - b. comply, and ensure that its Personnel comply, with their obligations under the HSW Act as it relates to, or affects, the Contract
 - c. comply with all reasonable directions of the Buyer relating to health, safety, and security, and
 - d. report any of the following that applies to the Supplier or the Buyer, or relates to or affects the Contract:
 - notifiable injury, illness, incident or event, or any notice issued under the HSW Act or any other health and safety legislation, and
 - Protective Security Incident.
- 2.7 **Employment standards:** The Supplier must:
 - a. comply with its obligations under the Employment Relations Act 2000, Minimum Wage Act 1983, Wages Protection Act 1983, Holidays Act 2003 and the Parental Leave and Employment Protection Act 1987, and
 - b. report any instances where the Supplier is being investigated by the Labour Inspectorate, or where the Supplier has been found by the Labour Inspectorate, Employment Relations Authority, or the Employment Court to have breached any of the legislation referenced in clause 2.7.a.
- 2.8 **Respect:** The Supplier must deliver the Services in a manner that:
 - a. is culturally appropriate for Māori, Pacific and other ethnic or indigenous groups, and
 - b. respects the personal privacy and dignity of all individuals.

Charges and payment

- 3.1 **Maximum amount:** The Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include Fees and, where agreed, Expenses and Daily Allowances. s 9(2)(a)

- 3.2 **Valid tax invoice:** The Supplier must provide valid tax invoices for all Charges on the dates or at the times specified in Schedule 1. The Buyer has no obligation to pay the Charges set out on an invoice that is not a valid tax invoice. A valid tax invoice must:
- clearly show all GST due, if any
 - be in New Zealand currency or the currency stated in Schedule 1
 - be clearly marked 'Tax invoice'
 - contain the Supplier's name, address, NZBN and GST number, if the Supplier is registered for GST
 - contain the Buyer's name and address and be marked for the attention of the Buyer's Contract Manager or such other person stated in Schedule 1
 - state the date the invoice was issued
 - name this Contract and provide a description of the Services supplied, including the amount of time spent in the delivery of the Services if the Charges are based on an Hourly Fee Rate or Daily Fee Rate
 - contain the Buyer's contract reference or purchase order number if there is one
 - state the Charges due, calculated correctly, and
 - be supported by GST receipts if Expenses are claimed, and any other verifying documentation reasonably requested by the Buyer.
- 3.3 **Payment:** Subject to clauses 3.4 and 11.4(e), if the Buyer receives a valid tax invoice:
- on or before the 5th Business Day of the month, the Buyer will pay that invoice by the 20th calendar day of that month, or
 - after the 5th Business Day of the month, the Buyer will pay that invoice by the 20th calendar day of the following month.
- 3.4 **Dispute:** The Buyer must notify the Supplier within 10 Business Days of the date of receipt of a tax invoice if the Buyer disputes any part of that tax invoice, and the Buyer:
- must pay the portion of the tax invoice that is not in dispute (and the Supplier will provide a further valid tax invoice for the undisputed amount if required), and
 - may withhold payment of the disputed portion until the dispute is resolved.

Contract management

- 4.1 **Contract Manager:** The persons named in Schedule 1 as the Contract Managers will manage the Contract, including:
- managing the relationship between the Parties
 - overseeing the effective implementation of this Contract, and
 - acting as a first point of contact for any issues that arise.
- 4.2 **Changing the Contract Manager:** A Party may change its Contract Manager by telling the other Party, in writing, the name and contact details of the replacement.

Information management

- 5.1 **Information and Records:** The Supplier must:
- keep and maintain Records in accordance with prudent business practice and all applicable laws

s 9(2)(a)

- b. make sure the Records clearly identify all relevant time and Expenses incurred in providing the Services
- c. make sure the Records are kept safe and are easy to access
- d. give information to the Buyer relating to the Services that the Buyer reasonably requests, in a format that is usable by the Buyer, and within a reasonable time of the request
- e. co-operate with the Buyer to provide information promptly if the information is required by the Buyer to comply with an enquiry or its statutory, parliamentary, or other reporting obligations
- f. make its Records available to the Buyer during the term of the Contract and for 7 years after the End Date (unless already provided to the Buyer earlier), and
- g. make sure that Records provided by, or created for, the Buyer are securely managed and destroyed on their disposal.

5.2 **Reports:** The Supplier must give the Buyer the reports, by the due dates, stated in Schedule 1.

The contractual relationship

- 6.1 **Independent contractor:** Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment.
- 6.2 **No representing:** Neither Party has authority to bind or represent the other Party in any way.
- 6.3 **Transfer of rights or obligations:** The Supplier must not transfer any of its rights or obligations under this Contract without the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

Subcontractors

- 7.1 **Subcontracting:** The Supplier must not enter into a contract with someone else to deliver any part of the Services without the Buyer's prior written approval.
- 7.2 **Supplier responsibilities:** The Supplier:
 - a. must ensure that each Subcontractor is suitable and has the capability and capacity to deliver that aspect of the Services being subcontracted
 - b. must ensure that:
 - each Subcontractor is fully aware of the Supplier's obligations under this Contract, and
 - any subcontract it enters into is on terms that are consistent with this Contract
 - c. is responsible for delivering the Services under this Contract even if aspects of the Services are subcontracted, and
 - d. is responsible for the acts and omission of any Subcontractor as if they were the acts and omissions of the Supplier.

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Insurance

- 8.1 The Supplier is responsible for ensuring its risks of doing business are adequately covered, whether by insurance or otherwise. If required in Schedule 1, the Supplier must:
- a. hold the insurance, with a reputable insurer, as specified in Schedule 1, and maintain that insurance cover for the term of this Contract and for a period of 3 years after the End Date, and
 - b. provide a certificate confirming the nature of the insurance cover and proving that each policy is current within 10 Business Days of any request from the Buyer.

Conflicts of Interest

- 9.1 **Avoiding conflicts of interest:** The Supplier:
- a. warrants that as at the Start Date, it has no Conflict of Interest in providing the Services or entering into this Contract, and
 - b. must do its best to avoid situations that may lead to a Conflict of Interest arising.
- 9.2 **Obligation to tell Buyer:** The Supplier must tell the Buyer promptly, in writing, if any Conflict of Interest arises in relation to the Services or this Contract. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed. Each Party must pay its own costs in relation to managing a Conflict of Interest.

Resolving disputes

- 10.1 **Negotiation:** The Parties agree to use their best endeavours to resolve any dispute that may arise under this Contract. The following process will apply to disputes:
- a. a Party will notify the other if it considers a matter is in dispute
 - b. the Contract Managers will attempt to resolve the dispute through negotiation
 - c. if the Contract Managers have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution, and
 - d. if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the Parties shall refer the dispute to mediation or, if agreed by the parties, some other form of alternative dispute resolution.
- 10.2 **Mediation:** If a dispute is referred to mediation, the mediation will be conducted:
- a. by a single mediator agreed by the Parties or if they cannot agree, appointed by the Resolution Institute
 - b. on the terms of the Resolution Institute Mediation Rules, and
 - c. at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Resolution Institute.
- 10.3 **Costs:** Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 10.
- 10.4 **Effect of dispute:** If there is a dispute, each Party will continue to perform its obligations under this Contract as far as practical given the nature of the dispute. s 9(2)(a)

- 10.5 Taking court action:** Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 10.1, unless that Party requires urgent relief from a court.

Ending this Contract

- 11.1 Supplier's request to terminate:** At any time during the term of this Contract the Supplier may notify the Buyer that it wishes to terminate this Contract. The Buyer will, within 20 Business Days following receipt of the Supplier's Notice, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination. If the Buyer:
- consents, the Contract will be terminated on a date that is mutually agreed between the Parties, or
 - does not consent, the Contract will continue in full force as if the Supplier's Notice requesting termination had not been given.
- 11.2 Buyer's termination for convenience:**
- The Buyer may terminate this Contract at any time by giving not less than 20 Business Days' Notice to the Supplier.
 - If the Buyer terminates the Contract under this clause then, subject to all other clauses of this Contract, the Buyer will pay the Supplier for all Services performed up to the End Date.
- 11.3 Buyer's termination for cause:** The Buyer may terminate this Contract immediately, by giving Notice, if the Supplier:
- becomes bankrupt or insolvent
 - has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed
 - becomes subject to any form of external administration
 - ceases for any reason to continue in business
 - does something or fails to do something that, in the Buyer's opinion, results in damage to the Buyer's reputation or business
 - has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Services, the Buyer, or
 - provides information to the Buyer that is misleading or inaccurate in any material respect.
- 11.4 Termination for breach:**
- If a Party breaches this Contract (**defaulting Party**), the non-defaulting Party may give a default Notice to the defaulting Party.
 - A default Notice must state:
 - the nature of the breach, and
 - the time and date by which it must be remedied.
 - The period allowed to remedy the breach must be reasonable given the nature of the breach.
 - The non-defaulting Party may terminate this Contract immediately by giving a further Notice to the defaulting Party if the defaulting Party does not remedy the breach as required by the default Notice.
 - If the Buyer gives a default Notice to the Supplier, the Buyer may also:

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- withhold any payment of Charges due until the breach is remedied as required by the default Notice, and/or
- if the breach is not remedied as required by the default Notice, deduct a reasonable amount from any Charges due to reflect the reduced value of the Services to the Buyer.

11.5 Supplier's obligations:

- a. On giving or receiving a Notice of termination, the Supplier must immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Contract.
- b. On termination or expiry of this Contract, the Supplier must, if requested by the Buyer, promptly return or securely destroy all Confidential Information and other material or property belonging to the Buyer.

11.6 Accrued rights: The termination or expiry of this Contract does not affect any rights of a Party which:

- a. arose prior to the End Date, or
- b. relate to any breach of this Contract that arose prior to the End Date.

11.7 Buyer's rights: Subject to clause 11.2(b), if this Contract is terminated the Buyer:

- a. will only be liable to pay Charges that were due for Services delivered before the effective date of termination, and
- b. may recover from the Supplier or set off against sums due to the Supplier, any Charges paid in advance for Services or Deliverables that have not been provided.

11.8 Handing over the Services:

- a. The Supplier will provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Buyer or any person appointed by the Buyer during the term of this Contract and for a period of 10 Business Days after the End Date.
- b. If required by the Buyer, the Supplier will provide additional assistance to support any replacement supplier to deliver the Services, for a period of up to 3 months from the End Date at a reasonable fee to be agreed between the Parties, based on the Charges.

Intellectual Property Rights

12.1 Ownership of Intellectual Property Rights:

- a. Pre-existing Intellectual Property Rights remain the property of their owner.
- b. New Intellectual Property Rights in the Deliverables become the property of the Buyer when they are created, and the Supplier agrees to do all things necessary to give effect to this clause 12.1(b).
- c. New Intellectual Property Rights that are not in the Deliverables will become the property of the Party that created them.
- d. The Supplier grants to the Buyer a perpetual, non-exclusive, worldwide, transferable, sub-licensable and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the Buyer to:
 - receive the full benefit of the Services and Deliverables, and
 - use, copy, modify and distribute the Deliverables.

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12.2 Supplier warranties: The Supplier warrants that:

- a. it is legally entitled to grant the licence in clause 12.1(d), and
- b. the Buyer's use of anything provided by the Supplier and incorporated in the Services and Deliverables, for the purposes communicated to, or that are or ought to be known by, the Supplier, will not infringe the rights, including Intellectual Property Rights, of any third party.

The Supplier's liability for breach of the warranties in this clause is not subject to any limitation or cap on liability that may be stated elsewhere in this Contract.

Confidential Information

13.1 Protection of Confidential Information: Each Party agrees to not use or disclose the other Party's Confidential Information to any person or organisation other than:

- a. to the extent that use or disclosure is necessary for the purposes of providing the Deliverables or Services or, in the case of the Buyer, using the Deliverables or Services
- b. if the other Party gives prior written approval to the use or disclosure
- c. if the use or disclosure is required by law (including under the Official Information Act 1982), Ministers, parliamentary convention or any other regulation, rules or policy that is binding on that Party, or
- d. if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

13.2 Obligation to inform staff: Each Party will ensure that its Personnel:

- a. are aware of the confidentiality obligations in this Contract, and
- b. do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

13.3 Security: Each Party will:

- a. put in place and maintain adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use by third parties,
- b. notify the other Party if it becomes aware of any suspected or actual unauthorized use, copying or disclosure of the other Party's Confidential Information, and
- c. comply with any reasonable direction of the other Party in relation to any suspected or actual breach of the obligations in this clause 13 as the other Party reasonably requests.

Notices

14.1 Requirements: All Notices must be:

- a. in writing and delivered by hand or sent by post, courier or email to the recipient Party's address for Notices stated in Schedule 1, and
- b. signed, or in the case of email sent, by the appropriate manager or person having authority to do so.

14.2 Receipt of Notices: A Notice will be considered to be received:

- a. if delivered by hand or sent by courier, on the date it is delivered
- b. if sent by post within New Zealand, on the 5th Business Day after the date it was sent

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- c. if sent by post internationally, on the 9th Business Day after the date it was sent, or
 - d. if sent by email, at the time the email enters the recipient's information system and it is not returned undelivered or as an error,
- but a Notice received after 5pm on a Business Day or on a day that is not a Business Day will be considered to be received on the next Business Day.

Extraordinary Events

- 15.1 **No liability:** Neither Party will be liable to the other for any failure to perform its obligations under this Contract to the extent the failure is due to an Extraordinary Event.
- 15.2 **Obligations of affected Party:** A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible. The Notice must state:
- a. the nature of the circumstances giving rise to the Extraordinary Event
 - b. the extent of that Party's inability to perform under this Contract
 - c. the likely duration of that non-performance, and
 - d. what steps are being taken to minimise the impact of the Extraordinary Event on the performance of this Contract.
- 15.3 **Termination:** If a Party is unable to perform any obligations under this Contract for 20 Business Days or more due to an Extraordinary Event, the other Party may terminate this Contract immediately by giving Notice.

General

- 16.1 **Variations:** A Variation must be agreed by both Parties and recorded:
- a. in writing and signed by both Parties, or
 - b. through an exchange of emails,
- where the signatories or authors have delegated authority to approve the Variation.
- 16.2 **Entire contract:** This Contract, including any Variation, records everything agreed between the Parties relating to the Services. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the Services before this Contract was signed, whether they were oral or in writing.
- 16.3 **Waiver:** If a Party does not immediately enforce its rights under this Contract that:
- a. does not mean that the other Party is released or excused from any obligation to perform at the time or in the future, and
 - b. does not prevent that Party from exercising its rights at a later time.
- 16.4 **New Zealand law, currency and time:** This Contract will be governed and interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars, unless Schedule 1 specifies a different currency. Dates and times are New Zealand time.
- 16.5 **Publication:** The Supplier must obtain the Buyer's prior written approval before making reference to the Buyer or this Contract in its publications, public statements, promotional material or promotional activities.

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- 16.6 **No derogatory remarks:** Each Party undertakes not to publicly make objectionable or derogatory comments about the Services, this Contract, the other Party or any of the other Party's Personnel, and to ensure that its Personnel do not do so.
- 16.7 **Signing the Contract:** The date of execution is the date this Contract has been signed by both parties. This Contract is properly signed if each Party signs the same copy, or separate identical copies, including electronic copies, of the Contract Details section.
- 16.8 **No poaching:** During the term of this Contract and for a period of 6 months after the End Date neither Party shall, without the other's written consent, deliberately seek to employ or hire any person who is or has been employed by the other and involved in the delivery of the Services. This does not apply where a person has responded to a legitimate advertisement.
- 16.9 **Clauses that remain in force:** The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Information management), 8 (Insurance), 10 (Resolving disputes), 11 (Ending this Contract), 12 (Intellectual Property Rights), 13 (Confidential Information), 14 (Notices), 16 (General) and 17 (Definitions).
- 16.10 **Precedence:** If there is any conflict or difference between the documents forming this Contract (as stated in the Contract Details section) then the order of precedence is:
1. a Variation
 2. Schedule 1
 3. any Attachment to Schedule 1, and
 4. Schedule 2.

Definitions

When used in this Contract the following terms have the meaning beside them:

Attachment Any supplementary document named in Schedule 1 as an Attachment to this Contract.

Approved Personnel A person who is engaged by the Supplier to deliver the Services and is named in Schedule 1.

Business Day A day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday, and public holidays. A Business Day starts at 8.30am and ends at 5pm.

Buyer The Buyer is the entity named as the Buyer in the Contract Details section.

Charges The total amount payable by the Buyer to the Supplier as stated in Schedule 1, including Fees and any Expenses and Daily Allowances.

Confidential Information Information, including data and personal information, that:

- is by its nature confidential
- is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
- is provided by either Party or a third party 'in confidence', or
- either Party knows or ought to know is confidential.

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Conflict of Interest A Conflict of Interest arises if a Party or its Personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Contract, such that the Party's or its Personnel's independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

- actual: where the conflict currently exists
- potential: where the conflict is about to happen or could happen, or
- perceived: where other people may reasonably think that a person is compromised.

Contract The legal agreement between the Buyer and the Supplier that comprises the Contract Details section, Schedule 1, this Schedule 2 and any other Schedule, and any Variation and Attachment.

Contract Manager The person named in Schedule 1 as the Contract Manager.

Daily Allowance An allowance to cover accommodation, meals and incidentals for the Supplier's Personnel if they are required in order to deliver the Services or to travel overnight away from their normal place of business, as agreed in Schedule 1.

Daily Fee Rate A fee payable for each day spent in the delivery of Services. A day is a minimum of 8 working hours.

Deliverables An output resulting from the delivery of the Services as stated in Schedule 1. A Deliverable may be a document, a piece of equipment, goods or information or data stored by any means.

End Date The earlier of the date this Contract is due to end as stated in Schedule 1, as may be extended under clause 1.3, and the date of termination as set out in a Notice of termination, or any other date agreed between the Parties as the date the Contract is to end.

Expenses Any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the Services and agreed to in Schedule 1.

Extraordinary Event An event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care.

Fees The amount payable to the Supplier for the time spent in delivery of the Services calculated on the basis stated in Schedule 1, excluding any Expenses and Daily Allowances.

GST The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.

HSW Act means the Health and Safety at Work Act 2015.

Hourly Fee Rate A Fee payable for each hour spent delivering the Services.

Intellectual Property Rights All industrial and intellectual property rights whether conferred by statute, at common law or in equity, including, but not limited to copyright, trademarks, designs and patents.

Milestone A phase or stage in the delivery of Services resulting in a measurable output. Payment of Fees is usually due on the satisfactory delivery of a Milestone.

New Intellectual Property Rights Intellectual Property Rights developed under this Contract or in the performance of the Services.

Notice A communication from one Party to the other that meets the requirements of clause 14.

Party The Buyer or the Supplier, and together they are the Parties.

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Personnel All individuals engaged by either Party in relation to this Contract or the delivery of Services. Examples include: the owner of the business, its directors, employees, Subcontractors, agents, external consultants and co-opted or seconded staff.

Pre-existing Intellectual Property Rights Intellectual Property Rights developed before the date of, or independently from, this Contract.

Protective Security Incident A security incident that is:

- a breach of protective security policy or procedures
- an approach from anybody seeking unauthorised access to officials or official information, or
- any other event that harms, or may harm, the security of the Buyer and/or the Buyer's Confidential Information.

Records All information and data necessary for the management of this Contract and the delivery of Services. Records include, but are not limited to, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

Services All work, tasks and Deliverables, including those stated in Schedule 1, that the Supplier must perform and deliver under this Contract.

Schedule An attachment to this Contract with the title 'Schedule'.

Start Date The date when this Contract starts as stated in Schedule 1.

Subcontractor A person, business, company or organisation contracted by the Supplier to deliver or perform part of the Supplier's obligations under this Contract.

Supplier The person, business, company or organisation named as the Supplier in in the Contract Details section.

Variation A change to any aspect of this Contract that complies with clause 16.1.

GMC Contract Variation – SERVICES

Contract Variation

Buyer: Electricity Authority, a Crown entity established under section 12 of the Electricity Industry Act 2010

NZBN 9429041901847

Level 7, ASB Bank Tower, 2 Hunter Street, Wellington 6011

Supplier: Consumer NZ Incorporated

NZBN 9429000014502

Level 5, 17 Whitmore Street, Wellington 6011

Contract: Powerswitch Contract

Contract reference number: [19-20C088]

Contract dated: 30 June 2020

Variation

The Buyer and the Supplier are Parties to the Contract.

The Parties agree to vary the Contract. The scope of the Variation is set out in the attached Schedule of Changes. The Variation is effective from the Effective Date stated in the Schedule of Changes.

Subject to the changes made in any Variation, the terms and conditions of the original Contract remain in effect.

Words used but not defined in this Variation have the same meaning as they do in the Contract.

Acceptance

Signed for and on behalf of the Buyer:

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(signature)

Name: James Stevenson-Wallace

Position: Chief Executive

Date: 3 March 2022

Signed for and on behalf of the Supplier:

(signature)

Name: Jon Duffy

Position: CEO

Date 28 February 2022

Schedule of Changes

Effective Date: 1 March 2022

Changes to Contract Details

The Contract

1. Change to “Parts of this Contract”

- 1.1 A new item 5 is inserted “Attachment 3 to Schedule 1: ... Audit & Strategic Review”, with the numbering of the previous item 5 [“Schedule 2: ...”], and subsequent items, consequentially amended.
- 1.2 Item 7 - “Schedule 4: Governance” is deleted from the description of the documents forming this contract.

Changes to Schedule 1 – Description of Services

Contract Management and Personnel

2. Change to Contract Managers

- 2.1 The Contract Managers details set out in clause 1 of Schedule 1 are replaced as follows:

Reference Schedule 2 clause 4

	Buyer's Contract Manager	Supplier's Contract Manager
Name:	s 9(2)(a)	
Title/ position:	Commercial Manager	Powerswitch Manager
Address:	Level 7, Harbour Tower, 2 Hunter Street, Wellington 6143	Level 5, 17 Whitmore Street, Wellington 6011
Phone:	s 9(2)(a)	
Email:		

3. Change to Addresses for Notices

- 3.1 The Addresses for Notices details set out in clause 2 of Schedule 1 are replaced as follows:

Reference Schedule 2 clause 14

	Buyer's address	Supplier's address
For the attention of:	s 9(2)(a)	
c.c. Contract Manager		
Delivery address:	Level 7, Harbour Tower, 2 Hunter Street, Wellington 6143	Level 5, 17 Whitmore Street, Wellington 6011
Postal address:	Level 7, Harbour Tower, 2 Hunter Street, Wellington 6143	P O Box 932, Wellington 6140
Email:	s 9(2)(a)	

Description of Services

4. Change to Introduction

- 4.1 The Introduction described in clause 5 of Schedule 1 is amended as follows:
- in the second bullet point of clause 5.1, “section 16(10)(i)” is replaced with “section 16(1)(i)”
 - clause 5.2 is replaced in its entirety by: “The Buyer conducted its “What’s My Number Campaign” (WMN) from 2011 to 2020.”
 - clause 5.5 is replaced in its entirety by: “The WMN price comparison tool is no longer available on the Buyer’s website and the Buyer has retired the WMN brand and quick calculator. Consumers wishing to check for estimated potential savings, compare electricity and gas retailers’ pricing plans and initiate a switch will do so exclusively via the full calculator on the homepage of the Powerswitch Website.”

5. Change to Milestones

- 5.1 The Introduction described in clause 7 of Schedule 1 is amended as follows:
- delete the heading and text in its entirety, leaving a blank clause with the heading “Left blank”

6. Change to Supplier’s Reporting Requirements

- 6.1 The Supplier’s Reporting Requirements set out in clause 9 of Schedule 1 are amended as follows:
- a new row [report] is inserted under “Regular Quarterly Reports” with the “Description of report” being “Financial overview” and the description being “Report on quarterly expenditure and revenue, detailing expenditure [and revenue] across and within each of the Powerswitch Services, Marketing Services and Development Services for the reporting period. Reporting to include detail as to outcomes achieved in relation to each item, for example with respect to Development Services commentary would be expected on expenditure and activity in relation to the drivers/outcomes set out in clause 4.4.1 of Attachment 1 (Detailed Service Description).”
 - the shaded row in the table with the “Description of report” column headed “Regular Monthly Reports” is moved down the table to sit immediately above the row in the table with the “Description of report” column headed “Powerswitch Services (Rolling totals)”
 - in the two rows in the table with the “Description of report” columns headed, respectively, “Powerswitch website availability” and “Performance against KPIs over the preceding month”, the words “monthly” and “month” [respectively] in those headings are deleted and replaced with “quarterly” and “quarter”, and those two rows are moved higher up the table so they sit under the shaded row with the “Description of report” column headed “Regular Quarterly Reports”
 - in the “Due date” column, references to the “4th of the appropriate month” are replaced by the “10th of the appropriate month”
 - in the “Due date” column, references to the “4th of every month” are replaced by the “10th of the appropriate month”
 - in the “Description of report” column headed “Powerswitch Services (rolling totals)” under “General website traffic” the bulleted item “Sessions by network regions” is amended to read “- Profiles by network regions and, as applicable, sessions by geographic regions”
 - in the “Description of report” column headed “Powerswitch Services (rolling totals)” delete in its entirety the bulleted list “WMN quick calculator page usage ...” and ending “Total repeat calculations”

- in the “Description of report” column in the table, headed “Other reports” the bracketed words are replaced by the following text “Other reports as reasonably requested, including, for example, post-campaign marketing reports that would appropriately be reported on earlier than the next “Marketing Effectiveness” quarterly report falling due (e.g. a major winter campaign report that should present insights and lessons learned in addition to statistics)

Charges

7. Change to Fees

7.1 The Fees described in clause 10 of Schedule 1 are amended as follows:

- the heading of clause 10.1 is amended to read “Fixed Fee for Services”
- clause 10.1 is amended to read “A fixed Fee of \$1,200,000 excluding GST per annum (payable in 12 equal monthly instalments) is payable by the Buyer to the Supplier for delivery of the Services for each Contract Year.”
- a new clause 10.1A is inserted, headed “Residual Fee for 2021-22 Contract Year Services”
- that new clause 10.1A is to read “A one-off residual fee of \$171,686.00 excluding GST (the “2021-22 Residual Fee”) is payable by the Buyer to the Supplier for delivery of the Services for the Contract Year ending 30 June 2022. The Parties acknowledge that the 2021-22 Residual Fee reflects the balance of the Fees payable by the Buyer to the Supplier for the Contract Year ending 30 June 2022 after providing for (i) the 4 monthly instalments payable by the Buyer to the Supplier for the period March – June 2022 (inclusive) under clause 10.1 of Schedule 1 and (ii) Fees calculated in accordance with the Contract as it read immediately prior to the Variation effective 1 March 2022 and already paid by the Buyer to the Supplier prior to that date (or invoiced by the Supplier but still to be paid by the Buyer as at 1 March 2022) for delivery of the Services for the Contract Year ending 30 June 2022.
- clause 10.2 (“Development Services: Variable Fee”) is deleted
- clause 10.3 (“Marketing Services: Variable Fee”) is deleted
- clauses 10.4.2 to 10.4.5 are deleted

Invoices

8. Change to Timing of invoicing

8.1 The Timing of invoicing described in clause 13 of Schedule 1 is deleted in its entirety and replaced by “The Supplier must send the Buyer an invoice for the Charges monthly with payment due the 20th of the following month.”

Changes to Schedule 2 and attachments

9. Change to “Attachments”

9.1 Clause 18 of Schedule 1 is amended to include reference to [the new] “Attachment 3: Electricity Authority Expectations for Powerswitch Audit & Strategic Review” (as one of the ‘Contract documents’) and by the deletion of “Schedule 4: Governance”.

Changes to Schedule 2 and attachments

Attachment 1: Detailed Service Description

Marketing Services

10. Change to Marketing Services

10.1 The Marketing Services as described in clause 3 of Attachment 1 are amended as follows:

clause 3.2.1 (under 3.2 “Marketing Strategy”) is amended to read “The Supplier will maintain a rolling 12-month marketing strategy plan for the Powerswitch website”.

Development Services

11. Change to Development Services

11.1 The Development Services as described in clause 4 of Attachment 1 are amended as follows:

- clause 4.1.2 (under 4.1 “EPR Recommendations”) is amended by deleting the bracketed words “(including seeking additional funding via the Business Case process (refer clause 4.5.3 below) where required)”
- clause 4.1.3 (under 4.1 “EPR Recommendations”) is deleted
- clause 4.2.1 (under 4.2 “Project Governance”) is deleted and replaced by “The Enhancement Roadmap (refer clause 4.3 of this Attachment 1) and implementation of Enhancements will be overseen and administered by the Contract Managers.”
- to avoid doubt, and unless the context otherwise requires, references in clause 4.5 (“Selection, planning and implementation of service improvement initiatives”) to “Governance Group” are to be read as “the Contract Managers”
- clause 4.5.1 is replaced by the following: “General Service Improvements (BAU) and Development Enhancements & Upgrades: The Supplier will schedule and implement general service improvement initiatives (in consultation with the Buyer) over the term of this Contract. To avoid doubt, these services are included in the Fixed Fee (refer clause 10.1 of Schedule 1).”
- clauses 4.5.2 to 4.5.6 are deleted

Attachment 2: KPIs

Marketing effectiveness, Site traffic/user activities

12. Change to baseline metrics

12.1 The table set out in clause 2.1 in Attachment 2 including baseline metrics is amended as follows:

- in the “Indicator” column of the row with the “Site use” theme “Increased number of people checking and accessing price comparison information”, the bulleted indicator “Sessions by network regions” is replaced by “Profiles by network region”
- in the “Indicator” column of the row with the “Site use” theme “Improve site usability and speed”, the bulleted indicator “Average time for calculation process completion” is replaced by two new bulleted indicators, being “Average time for calculation process for data rich user journey (excluding Powerswitch API traffic)” and “Average time for data poor user journey (excluding Powerswitch API traffic)”
- in the “Indicator” column of the row with the “Site use” theme “Improve site usability and speed”, the bulleted indicator “% of calculation processes abandoned before results” is replaced by “for data rich user journey, % of calculation processes abandoned before result (excluding Powerswitch API traffic)”.
- in the “Indicator” column of the row with the “Site use” theme “Increased trust and confidence in website ...”, the word “increased” in the bulleted indicator adjacent to “Measure annually?” is replaced by “increasing”.

[New] Attachment 3: Electricity Authority expectations for Powerswitch Audit & Strategic Review

13. Electricity Authority expectations for Powerswitch Audit & Strategic Review

13.1 The following is inserted as Attachment 3 to Schedule 1:

Electricity Authority expectations for Powerswitch Audit & Strategic Review

Overview

The Authority supports Consumer NZ's (CNZ) Audit & Strategic Review of the Powerswitch system. There is significant complexity and assumptions in the calculations. The Audit & Strategic Review will support CNZ to identify where best to spend effort on improving the system. This means the breadth of scope for the Audit & Strategic Review is important, as is ensuring wider industry knowledge is used as an input where appropriate. It is advantageous for reviewers with comprehensive knowledge from within the industry to be appointed, and this knowledge to be applied when recommending options to improve Powerswitch.

For example, an isolated review may:

- seek to standardise formats without considering what standards are already available;
- not recognise the need to understand public consumption information (eg trends and changes);
- seek to develop new averages/trends – missing a large amount of public data from consumers in aggregate is available already (eg average daily winter consumption www.emi.ea.govt.nz/r/oc12n);
- not recognise the likely effects of and implications for Powerswitch of increased EV, solar PV, battery or other DER take-up, distribution pricing, and response to real-time pricing;
- not recognise the value of a post calculation check with real consumption data, and how this could be used to improve the consumption estimation engine, or validate assumptions; or
- suggest opportunities that are not cognisant of the Authority initiatives.

The Authority has six outcomes we expect the Powerswitch Audit & Strategic Review to deliver across five minimum scope areas.

Summary of minimum scope areas	
1	Technology
2	Backend database design
3	End-to-end processes – how the entire system works (not just model), and how CNZ works it
4	Model accuracy and currency
5	Consumer outcomes and the future

Summary of expected outcomes	
1	Documentation: CNZ is provided and maintains a schedule of any problems, limitations, improvements, and possible solutions they will consider when seeking to improve Powerswitch.
2	System and data focus: CNZ understands where opportunities exist to make the system and processes more efficient, robust, flexible, useful, and accurate through better use of data, granularity, consistency, and automation.
3	Informed decision making: CNZ can target improvements, understand the benefits and trade-offs of the various development opportunities, and therefore makes informed decisions on priorities, and schedules appropriately.
4	Longer-term mindset: CNZ takes a longer-term development view and invests in Powerswitch to ensure efficient use of capital and development resource.
5	External standards: CNZ leverages recognised industry/external standards, systems, data (inc field labels), technologies, terminologies, and design standards when developing the system.
6	Future focus: CNZ understands implications of expected future electricity system, regulatory, consumer and participant trends, and takes these into account when planning developments, so that where possible, the developments are future proofed to accommodate new functionality, data, or information types.

The five scope areas and six expected outcomes should be used to augment the brief to CNZs chosen supplier. More detail on these can be found on the following pages.

We recognise CNZ may also choose to make the scope and deliverables of the Audit & Strategic Review wider than what is described above/below as deemed necessary to meet their wider needs.

Scope areas for the Powerswitch Audit & Strategic Review

The scope of the Audit & Strategic Review should be wide so that all opportunities for functionality, efficiency, and accuracy improvements can be captured by the Audit & Strategic Review. Below are five scope areas to include in the Audit & Strategic Review, and some examples of the types of questions the Audit & Strategic Review should seek to answer to successfully cover the scope area.

#	Scope area	Examples of the types of questions the Audit & Strategic Review should seek to answer
1	Technology	a. Is it using up-to-date industry standard programming languages/platforms? b. Is it secure and are the hosting situations and server technology appropriate?
2	Backend database design	a. Does it follow best practice for collecting, structuring, storing, tagging, transferring (and not overwriting) data? b. Does it handle relationships (eg child/parent company/brand etc) and related data well? c. Is the model / database structured to contain and store the right information?
3	End-to-end processes – how the entire system works (not just model), and how CNZ works it	a. Is the calculation methodology robust and fit for purpose (for all plan types)? b. Are all processes efficient and what items existing can be automated or streamlined? Inc.: i. System processes ii. CNZ business processes iii. Price/plan data ingestion iv. Consumption data ingestion v. User processes vi. Accuracy verification processes
4	Model accuracy and currency	a. Are the inputs accurate, current, standardised, and based off recognised standards? b. Where are external data weaknesses contributing to weakness in the system or processes (eg the address finder mismatching with Registry data etc)? c. Does the model's structure and use of data support useful/best functionality for consumers now and in the future? We suggest structuring the approach across the segments of data involved eg: i. <u>Consumer and connection information</u> (eg the physical location, address, dwelling characteristics, connection information, retailer, controlled/uncontrolled, distribution price code, network information etc) ii. <u>Consumption and volume information</u> (eg consumption behaviour, profiles generated for user and actual consumption/volume data entered, and ability to enter information etc) iii. <u>Pricing, cost to consumer and contract information</u> (eg plan and tariff information, incentives, penalties, bundling, time of use pricing etc) iv. Where are the strengths and weaknesses and gaps in each of these? d. Are the assumptions in the model, and the estimates generated by the system accurate (consumption, savings and cost estimates etc)? e. Are outputs accurate for multiple user scenarios and regions? including: i. Annual savings estimates ii. Annual cost estimates

		iii. Plan ranking iv. Do lowest cost options surface – even if it requires change from the consumer (eg behavioural consumption change / meter reconfiguration etc)? f. What customisations and work arounds are inefficient or problematic (eg discount factors for free hours of power)? g. Does Powerswitch’s design influence or restrain the structure of retailer’s plan designs?
5	Consumer outcomes and the future	a. Has the Audit & Strategic Review tested enough user scenarios to ensure results delivered (by both Powerswitch and the Audit & Strategic Review itself) are not skewed or self-serving? b. Is it easy for a consumer to understand (eg via result groupings or descriptions) what they need to do achieve lowest estimated cost/saving (other than switching)? c. Is the model future proofed (ie, flexible enough to respond to industry change and include new types of plans without bespoke developments per plan)? d. Does the system have the appropriate capability (and to what level) to: v. manage future scenarios where price plan options have more time of use components? vi. respond to predicted substantial take-up of EVs, DER, solar, batteries etc?

Expected outcomes

The Authority has developed six outcomes below that we expect of CNZ on completion of the Powerswitch Audit & Strategic Review. Also included are examples of the types of questions the Audit & Strategic Review should enable CNZ to answer in meeting the expected outcomes.

#	Expected outcome	Examples of the types of questions the Audit & Strategic Review should enable CNZ to answer
1	Documentation: CNZ is provided and maintains a schedule of any problems, limitations, improvements, and possible solutions they will consider when seeking to improve Powerswitch.	a. Where do synergies exist? Is there a common or foundational development to solve or act as enabler for multiple issues/improvements? b. What items should be solved and are solvable by immediate patching? c. What items can be improved through Powerswitch policy and process vs development? d. How can we best solve [X] problem (while not constraining thinking based on a limitation of the current Powerswitch system, process and UX)? e. Is there a common way to integrate things like EVs, DER and solar tariffs? f. Are there regulatory or data opportunities to advise the EA of? g. Which of the EPR recommendations can we solve, how is this best done?
2	System and data focus: CNZ understands where opportunities exist to make the system and processes more efficient, robust, flexible, useful, and accurate through better use of data, granularity, consistency, and automation. --	a. How do we remove the need to undertake development work, and/or use bespoke workarounds to host various current and new plan types? b. How do we decrease the human resource work burden? c. How to we best enable greater filtering and comparison of results (including non-price info), and consistent plan descriptions? d. What more can we do with data and results to support consumers comparing information and easier and informed switching decisions?

	<i>(Covering at least reference data, data inputs and outputs, model and calculation methodology, processes, results, and results interrogation by users).</i>	e. How can users reliably discover the lowest cost plan (and their lowest potential annual cost) in the results? What are the barriers that prevent this and the output being useful? eg: a. Not recommending a meter reconfig? b. Not making use of ½ hour data? c. Not recommending a user changes consumption profile? d. Not making a user aware of conditions / added steps etc? f. How could users' best model how their costs might change should they be: a. considering a change in consumption behaviour (voluntarily or required to make best use of a time of use plan/ hours of power etc) b. considering other purchases that impact on energy use (eg insulation, heat pump, EV, battery etc?) g. How could we dynamically/automatically monitor accuracy of the system?
3	Informed decision making: CNZ can target improvements, understand the benefits and trade-offs of the various development opportunities, and therefore makes informed decisions on priorities, and schedules appropriately.	a. Is it better to patch a problem, delay a fix for medium term development that solves multiple issues, or do both? b. What are the benefits of a technology solution vs a policy or process solution, or are all or a combination required? c. What are the likely unintended consequences or roll-on effects of a development? d. What are the implications for the back/front end for a development?
4	Longer-term mindset: CNZ takes a longer-term development view and invests in Powerswitch to ensure efficient use of capital and development resource.	a. Where is it best and most efficient to invest to enable longer-term benefit to consumers and future proofing? b. How do we best schedule developments in the roadmap? c. When do we develop to contend with expected change in user behaviour and participant offers?
5	External standards: CNZ leverages recognised industry/external standards, systems, data (inc field labels), technologies, terminologies, and design standards when developing the system.	a. If standardised data formats are useful for the model, do they exist already (ie try not to reinvent the wheel), have they been updated, where are they weak, what external information / data can we leverage? b. How can we use actual consumption data (and to what granularity, level and when), what new functionality or user experience would this support? c. What standard formats or descriptors are we not using that would make sharing and receiving information easier?
6	Future focus: CNZ understands implications of expected future electricity system, regulatory, consumer and participant trends, and takes these into account when planning developments, so that where possible, the developments are future proofed to accommodate new functionality, data, or information types.	a. Real-time pricing is coming, how could/should our system align with / leverage this change? b. How would we contend with multiple trader relationships at a single ICP? c. How do we contend with multidirectional power flows? Increased uptake of solar, batteries and arbitrage, EV other DER services etc? d. How do we contend with more time-of-use tariffs, and situations where users are responding to more than a single price signal or tariff? e. How do we better integrate bundled deals like telecoms and inducements? f. How could we add value by interpreting consumption data for a user?

Changes to Schedule 3: Special Conditions

Definitions

14. **Change to definitions**

- 14.1 The bracketed text beside the term “Governance Group” in clause 1.1 is deleted and replaced with the following bracketed text “[unless the context requires otherwise, reference in this Contract to “[the] Governance Group” is to be read as reference to [the] Buyer’s Contract Manager and Supplier’s Contract Manager acting together]”.

The Services

15. **New Supplier Obligation – [First Principles .. [or similar]] Audit & Strategic Review**

- 15.1 The amended [replacement] clause 2.3 of Schedule 2 set out in clause 2.4 of the Special Conditions is amended by the addition of a new item “g.” which reads:

“[The Supplier must] within one month of signing of the Variation effective 1 March 2022 (1) commence the Powerswitch Audit & Strategic Review contemplated and discussed by the parties and informed by the Buyer’s expectations for that Audit & Strategic Review as set out in Schedule 1 as Attachment 3 to this Contract, and (2) complete that Audit & Strategic Review by 30 June 2022, and (3) share with the Buyer the Audit & Strategic Review reports and outputs - referencing those against the expected outcomes of the Buyer as set out in that Attachment 3.”

Changes to Schedule 4: Governance

Framework

16. **Change to governance structure, forums and meetings**

- 16.1 Schedule 4 [Governance] is deleted in its entirety.

Amendment and Restatement Agreement

Electricity Authority

The Buyer

and

Consumer NZ Incorporated

The Supplier

Date 14 June 2023

BELL GULLY

WELLINGTON BELL GULLY BUILDING, 40 LADY ELIZABETH LANE
PO BOX 1291, WELLINGTON 6011, DX SX11189, NEW ZEALAND
TEL +64 4 915 6800

This **Amendment and Restatement Agreement** is made on 14 June 2023

between (1) **Electricity Authority (the Buyer)**

and (2) **Consumer NZ Incorporated (the Supplier)**

Introduction

- A. The Buyer and the Supplier are parties to the Contract for Services Agreement in respect of the Powerswitch website (the **Contract for Services**).
- B. The Buyer and the Supplier have agreed to amend and restate the Contract for Services.

It is agreed

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Contract for Services has the meaning given to that term in paragraph A of the Introduction; and

2023 Amended and Restated Contract for Services has the meaning given to that term in clause 2.1(a).

1.2 Contract for Services

In this Agreement words and phrases which are not otherwise defined or construed in this Agreement have the same meanings or construction given to them in clause 1.1 of Schedule 3 of the Contract for Services and as otherwise defined in the Contract for Services.

2. Amendment, restatement and confirmation in relation to the Contract for Services

2.1 Amendment and restatement

In consideration for the undertakings, covenants and promises provided by, and the rights, benefits and interests of the Buyer and the Supplier (as the case may be) under the Contract for Services, with effect on and from the date of this Agreement:

- (a) pursuant to clause 16.1 of Schedule 3 of the Contract for Services, the Contract for Services is amended and restated in the form set out in the Schedule to this Agreement (the **2023 Amended and Restated Contract for Services**); and
- (b) references in the 2023 Amended and Restated Contract for Services to "this Agreement" shall be interpreted as references to the 2023 Amended and Restated Contract for Services.

2.2 Confirmation

Other than as amended and restated under clause 2.1 of this Agreement, the Contract for Services remains in full force and effect.

2.3 Variation

The parties agree that this Agreement constitutes a Variation for the purposes of clause 16.1 of Schedule 3 of the Contract for Services.

3. Miscellaneous

3.1 Further assurances

A party must, at its own expense and within a reasonable time of being requested by another party to do so, do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

3.2 Counterparts

This Agreement may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Agreement by executing any counterpart.

3.3 Governing law

This Agreement is governed by and is to be construed in accordance with New Zealand law. The parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

Schedule: 2023 Amended and Restated Contract for Services

Contract for Services

Contract Details

The Parties

The Buyer:

Electricity Authority, a Crown entity established under section 12 of the Electricity Industry Act 2010
NZBN 9429041901847
Level 7, Aon Centre, 1 Willis Street, Wellington 6011

and

The Supplier:

Consumer NZ Incorporated
NZBN 9429000014502
Level 5, 17 Whitmore Street, Wellington 6011

The Contract

Agreement

The Buyer appoints the Supplier to deliver the Services described in this Contract and the Supplier accepts that appointment. This Contract sets out the Parties' rights and obligations.

Parts of this Contract

The documents forming this Contract are:

1. **Contract Details:** This section
2. **Schedule 1:** Description of Services
3. **Attachment 1 to Schedule 1:** Detailed Service Description
4. **Attachment 2 to Schedule 1:** KPIs
5. **Attachment 3 to Schedule 1:** Roadmap
6. **Attachment 4 to Schedule 1:** Development Plan
7. **Schedule 2:** Standard Terms and Conditions GMC Form 2 SERVICES | Schedule 2 (3rd Edition)
available at: www.procurement.govt.nz
8. **Schedule 3:** Special Conditions

How to read this Contract

- Together the above documents form the whole Contract
- Any Supplier terms and conditions do not apply
- Clause numbers refer to clauses in Schedule 2 unless otherwise indicated
- Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 17 (Schedule 2) or clause 1 (Schedule 3).

Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.

Signed for and on behalf of the Buyer:
s 9(2)(a)

Signed for and on behalf of the Supplier:

(signature)

Name: Sarah Gillies

Position: Chief Executive

Date: Select date

14 June 2023

(signature)

Name: Jon Duffy

Position: Chief Executive

Date Select date

14 June 2023

Schedule 1

Description of Services

Contract Management and Personnel

Start Date	1 July 2020	<i>Reference Schedule 2 clause 1</i>
End Date	30 June 2025	<i>Reference Schedule 2 clause 1</i>

1. Contract Managers

Reference Schedule 2 clause 4

	Buyer's Contract Manager	Supplier's Contract Manager
Name:	s 9(2)(a)	
Title/ position:	Commercial Contracts Manager	Powerswitch Manager
Address:	Level 7, Aon Building, 1 Willis Street, Wellington 6011	Level 5, 17 Whitmore Street, Wellington 6011
Phone:	s 9(2)(a)	
Email:		

2. Addresses for Notices

Reference Schedule 2 clause 14

	Buyer's address	Supplier's address
For the attention of:	The Chief Executive	Jon Duffy, Chief Executive
c.c. Contract Manager	s 9(2)(a)	
Delivery address:	Level 7, Aon Building, 1 Willis Street, Wellington 6011	Level 5, 17 Whitmore Street, Wellington 6011
Postal address:	Level 7, Aon Building, 1 Willis Street Wellington 6011	P O Box 932, Wellington 6140
Email:	s 9(2)(a)	

3. Supplier's Approved Personnel

Reference Schedule 2 clause 2.4

N/A

4. Supplier's Approved Sub-contractor

Reference Schedule 2 clause 7

N/A

Description of Services

5. Introduction

5.1 The Buyer is a Crown entity whose:

- statutory objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. The Buyer has the additional objective of protecting the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers, in relation to the dealings of industry participants with domestic consumers and small business consumers (refer section 15 of the Electricity Industry Act 2010); and
- statutory functions include to promote to consumers the benefits of comparing and switching retailers (refer section 16(1)(i) of the Electricity Industry Act 2010),
(the **Statutory Objectives**).

5.2 The Buyer conducted its "What's My Number Campaign" (WMN) from 2011 to 2020.

5.3 The Supplier is an independent non-profit organisation established in 1959 dedicated to getting consumers a fairer deal. Powerswitch has been provided by the Supplier since 1999. It aims to provide consumers with access to independent, trusted, accurate and easily understood energy price-comparison information so they can make informed choices between energy plans and energy providers.

5.4 Since 2010 Powerswitch has supported the Buyer's WMN campaign by providing the quick calculator for the WMN website and more detailed price comparison services through its own website <https://www.powerswitch.org.nz/> (the **Powerswitch Website**).

5.5 The WMN price comparison tool is no longer available on the Buyer's website and the Buyer has retired the WMN brand and quick calculator. Consumers wishing to check for estimated potential savings, compare electricity and gas retailers' pricing plans and initiate a switch will do so exclusively via the full calculator on the homepage of the Powerswitch Website.

5.6 The Buyer wishes to renew and extend its current funding support to the Supplier, and the Supplier wishes to provide the following services on the terms set out in this Contract.

6. Description of Services

The services, including associated Deliverables, are as further described in Attachment 1 to this Schedule 1, but by way of high level summary comprise:

- Powerswitch Services: operating, maintaining and enhancing the Powerswitch Website and Comparison Model, including maintaining Generally Available retail plan data for electricity and gas retailers' current and historic plans as much as reasonably practicable.
- Marketing services: digital campaign and marketing services to promote the Powerswitch Website and the potential benefits / savings a consumer can gain by shopping around / switching plans; and
- Development Services: designing and implementing enhancements to the Powerswitch Website and Comparison Model functionality (excluding standard service maintenance and development required to ensure that the Powerswitch Website and Comparison Model remain operational).

7. [Left blank]

8. **Specific code of conduct / policies / health & safety / protective security / legislative requirement**

N/A.

9. **Supplier's Reporting Requirements**

Reference Schedule 2 clause 5.2

Report to:	Description of report	Due date
Buyer Contract Manager	Regular Quarterly Reports (Supplied together every 3 months)	The 10 th of the appropriate month
Buyer Contract Manager	Financial overview Report on quarterly expenditure and revenue detailing: • Expenditure and revenue across and within each of the Powerswitch Services, Marketing Services and Development Services for the reporting period • How this compares to the budgets and expected spend in each area • Breakdown of OPEX costs Reporting to include detail as to outcomes achieved in relation to each item, for example with respect to Development Services commentary would be expected on expenditure and activity in relation to the drivers/outcomes set out in clause 4.4.1 of Attachment 1 (Detailed Service Description)	The 10 th of the appropriate month
Buyer Contract Manager	Data accuracy assurance Written assurances via an authorised representative of the Supplier that the Retailer Plan Data is accurate, complete and up-to-date as much as reasonably practicable and the Comparison Model is generating robust and accurate results, particularly with respect to spot priced and time-of-use based products. Track and report on: • The number of price change requests • The quantum of price change requests (shift in prices) • Timeframes to implement changes • Status and commentary on price changes in progress • Number of new plans that require development before listing • Accuracy of price change requests, including any errors identified and the mitigation measures undertaken	The 10 th of the appropriate month
Buyer Contract Manager	Aggregated complaints and feedback Track general complaints or communication received by Supplier about the Powerswitch Website /	The 10 th of the appropriate month

Report to:	Description of report	Due date
	Comparison Tool functionality, limitations, accuracy, or suggested development opportunities. The Supplier will log the communication, and present a high-level aggregated summary report quarterly to the Buyer. This includes: • Number of call center enquiries • Number of email enquiries • Summary of reasons for enquiries • Average length of calls	
Buyer Contract Manager	Marketing Effectiveness Track and report on effectiveness of the Buyer's spend on Marketing Services, as reasonably requested by the Buyer, including: • Sustained paid search + SEO (metrics to be defined, baseline and targets to be defined); ○ Estimated media performance ○ Actual performance (CPA, CTC etc) ○ Traffic to, conversions and action on Powerswitch (including % new users) • Impact on switches campaign marketing activity and results (metrics to be defined, targets defined per campaign) ○ Estimated media performance ○ Actual performance (CPA, CTC etc) ○ Traffic to, conversions and action on Powerswitch (including % new users) • Impact on switches campaign progress and as completed, post-campaign analysis (including lessons learnt). • Adwords and search ranking rolling 12 month performance.	The 10 th of every month or at time of campaign if needed
Buyer Contract Manager	Powerswitch website availability To be measured quarterly, and 12-month aggregate	The 10 th of every quarter
Buyer Contract Manager	Progress on Development Service Track and report on the progress of Development Services and development projects including: • What has been achieved in the quarter (including any proposed Enhancements) • Current status of development projects and any proposed Enhancements • Expected position by the end of the next quarter with respect to the (including any proposed Enhancements)	The 10 th of every quarter

Report to:	Description of report	Due date
	• Likelihood of meeting Development Services targets by Milestone dates • Breakdown of spending to date (cumulative and since last update) on Development Services The reporting must align with the Roadmap set out in Attachment 3 and Development Plan set out in Attachment 4.	
Buyer Contract Manager	Performance against KPIs over the preceding quarter	The 10 th of every quarter
Buyer Contract Manager	Regular Monthly Reports (Supplied together every month)	The 10 th of every month
Buyer Contract Manager	Powerswitch Services (rolling totals where applicable): • General website traffic ○ Total sessions ○ Comparison of total sessions for current and prior year against the KPI target ○ Users ○ % new users ○ Profiles by network regions and, as applicable, sessions by geographic regions ○ Traffic by source (by device) ○ Conversions for questionnaire completes per source (by device) ○ Conversions results page per source (by device) • Specific Powerswitch Actions/activity ○ Total switches initiated ○ Comparison of total switches for current and prior year against the KPI target ○ Switches initiated by network regions ○ Retailer ranking (plan views) ○ Retailer ranking (switches initiated) ○ Powerswitch process completion (user reaches results) ○ Average time for process completion ○ Number of calculations abandoned, and trend ○ Comparison of total questionnaire completions (QCs) for current and prior year against the KPI target ○ Industry average conversion rates (initiated to confirmed)	The 10 th of every month

Report to:	Description of report	Due date
	○ Per retailer conversion rates (initiated to confirmed) ○ Number of new Powerswitch user accounts created ○ Number of repeat users logging in ○ % of users not logged in to account during sessions • Impact on switching rates ○ Switches completed who interacted with Powerswitch (matching ICP address/registry data etc) ○ % new users ○ Switches completed by network region	
Buyer Contract Manager	Irregular reports (Supplied as needed / produced / requested)	As needed / produced / requested
Buyer Contract Manager	Notification and make-good of accuracy issues In accordance with clause 2.7 of Schedule 3, the Supplier must: • provide a data report (totals etc) detailing who has been affected (ICPs, losing retailers, gaining retailers, and network regions where available; • report back to the Authority on steps taken to remediate the Issue and to prevent recurrence	As needed / produced / requested
Buyer Contract Manager	Other reports • Other reports as reasonably requested, including, for example, <u>post-campaign marketing reports</u> that would appropriately be reported on earlier than the next “Marketing Effectiveness” quarterly report falling due (e.g. a major winter campaign report that should present insights and lessons learned in addition to statistics)	As needed / produced / requested

9.1 Format of information in reports

The Supplier will present the information in the quarterly and monthly reports:

- a high-level aggregated summary report; and
- a visual and compelling format through the use of tables, bar charts, pie charts, line graphs, a traffic light warning system, or any other suitable format,

and as otherwise reasonably directed by the Buyer, including through the provision of more detailed commentary.

9.2 Allowance period for new report setup

Any new reporting to commence within a reasonable period from the Start Date as agreed by the parties to allow development of reporting functionality.

9.3 Allowance for changes to the reporting requirements

The reporting requirements specified in clause 9 of Schedule 1 may be added to, removed, or amended at any point during the term of this Contract by the mutual agreement of the Parties.

Charges

The following section sets out the Charges. Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include Fees, and where agreed, Expenses and Daily Allowances. The Charges for this Contract are set out below and are payable subject to completion of any applicable Milestones .

10. Fees

Reference Schedule 2 clause 3

The Supplier's Fees will be calculated as follows:

10.1 Fixed Fee for Services

A fixed Fee of:

- From the Start Date until 30 June 2023, \$1,200,000 excluding GST per annum (payable in 12 equal monthly instalments); and
- From 1 July 2023 onward, \$1,395,988.54 excluding GST per annum (payable in 12 equal monthly instalments),

is payable by the Buyer to the Supplier for delivery of the Services for each Contract Year.

The fixed Fee will be adjusted on 1 July 2024 and on each 1 July in each calendar year thereafter (if applicable) by the percentage equal to the percentage change in the Consumer Price Index (All Groups) as published by Statistics New Zealand (or its successor) over the preceding 12 month period.

10.4 BAU Maintenance and Development

10.4.1 The Buyer acknowledges that:

- the Supplier is a non-profit organisation;
- the funding arrangement set out in this Contract is non-exclusive; and
- the Supplier receives and relies on additional funding from third-party sources in order to maintain the Powerswitch Website.

11. Expenses

Reference Schedule 2 clause 3

N/A.

12. Daily Allowance

Reference Schedule 2 clause 3

N/A.

Invoices

Reference Schedule 2 Subject to clauses 3 and 11.7

13. Timing of invoicing:

The Supplier must send the Buyer an invoice for the Charges monthly with payment due the 20th of the following month.

14. Address for invoices

Reference Schedule 2 clause 3

	Buyer's address
For the attention of:	The current Buyer Contract Manager.
Address:	Electricity Authority - Te Mana Hiko Level 7, Aon Building, 1 Willis Street PO Box 10041, Wellington 6011, New Zealand Email invoice to: accounts@ea.govt.nz, and CC the Buyer Contract Manager

15. Other instructions about invoices

Include the Buyer's Project Code on the invoice as supplied by the Buyer's Contract Manager.

Insurance

Reference Schedule 2 Clause 8.1

16. Specific insurance

The Buyer does not require any specific insurance under this Contract other than the requirements under clause 8.1 of Schedule 2.

Changes to Schedule 2 and attachments

17. Schedule 2 of this Contract is amended as follows:

As set out in Schedule 3 (Special Conditions).

18. Attachments

Reference 'Contract documents' described at Page 1

Attachment 1 to Schedule 1: Detailed Service Description

Attachment 2 to Schedule 1: KPIs

Attachment 3 to Schedule 1: Roadmap

Attachment 4 to Schedule 1: Development Plan

Schedule 3: Special Conditions

Attachment 1: Detailed Service Description

1. Service Overview and Outcome

1.1 Overview

- 1.1.1. The Services comprise the Powerswitch Services, the Marketing Services and the Development Services, as detailed below.

1.2 Outcome

- 1.2.1. The Buyer will provide and promote web-based energy price comparison services – enabling consumers to:
- compare their existing Retail Plan with those Retail Plans currently available and on offer in the market;
 - calculate the savings that they could achieve by (i) switching retailers or (ii) staying with their existing retailer but changing the plan they are on;
 - estimate the annual cost they would pay should they switch to a selected plan; and
 - initiating that switch / plan change.

2. Powerswitch Services

2.1 Comparison Model

- 2.1.1. The Comparison Model will function to compare Retail Plans using price as a basis for comparison calculations. In order to qualify for inclusion in the price comparison, the relevant component of the Retail Plan must be Generally Available on an ongoing basis i.e.: not restricted to a short promotional sign-up period or a specific set of customers.
- 2.1.2. As at the Start Date, the Comparison Model does not support bundled plans.

2.2 Powerswitch Website

- 2.2.1. The Supplier will provide:
- website hosting;
 - technical support and maintenance;
 - ongoing development to adapt to changing market offers and maintain an optimal user experience within existing funding levels (and as otherwise required in this Contract pursuant to the Development Services);

and will otherwise ensure that the Powerswitch Website and Comparison Model is available, responsive and fully functional (on modern browser and operating system combinations).

2.3 Retail Plan Data

- 2.3.1. The Supplier will:
- maintain the Generally Available Retail Plan Data (for both historical plans and those plans on offer in the market at the relevant time) used as inputs into the Comparison Model (by

ensuring that all Retail Plan Data as much as reasonably practicable is accurate, complete and up-to-date);

- load new Retail Plans promptly, and in any event within a maximum of 10 Business Days, following receipt from the relevant Retailer with the objective of ensuring that Retail Plan Data has been loaded into the Comparison Model and is available to consumers on and from the time that the relevant retail plans become available /on offer in the market; and
- provide the Buyer with all Retail Plan Data (including gas and dual fuel) via a CSV file or other format agreed between the Parties (by the 4th Business Day of each month).

2.4 Out of scope

2.4.1. To avoid doubt, the following matters are outside the scope of the Powerswitch Services:

- C1 EPR Rec – enhanced Billing information; this recommendation suggests that customers find electricity bills confusing and want them simplified;
- C1 EPR Rec – Direct billing by distributors; there is one distributor (The Lines Company, in the King Country) who charges consumers directly (as opposed to the lines costs being included in the retailer bill); the rec suggest this should not be allowed.
- C1 EPR Rec – Annual plan reviews – customers on Low fixed charge tariffs require retailers to review customer consumption each year; the rec suggests that we consider a review of the annual price review.
- C1 EPR Rec – Disclosing headline prices; the rec suggests retailers disclose a price for their monthly or annual packages particularly on their websites.

3. Marketing Services

3.1 Marketing Services – platforms and channels

3.1.1. The Supplier will promote the Powerswitch Website to consumers via a mixed media approach (including communications and PR).

3.2 Marketing strategy

3.2.1. The Supplier will maintain a rolling 12-month marketing strategy plan for the Powerswitch Website.

3.2.2. The Supplier will scope and implement campaigns in accordance with clause 3.3 (below) and deliver campaigns via those media that will “work” to drive traffic and ROI at the time – dependent on the target audience and scale of campaign.

3.3 Campaign planning

3.3.1. The Parties to meet on a monthly basis (or as otherwise agreed) via Governance Group to review and consult on:

- campaign concepts, creative;
- target consumer groups;
- media plan (including communications and PR, SEO, SEM, display advertising, social media advertising etc as appropriate);
- budget and schedule per campaign (inclusive of the costs of advertising (creative and placement)); and
- campaign KPIs, e.g., site traffic targets by target group.

3.4 Resources / production / approval

- 3.4.1. The Buyer may provide, and the Supplier will take into account, reasonable advice and feedback on campaign direction and content.
- 3.4.2. The Supplier acknowledges that the Buyer has the right to require the Supplier to halt and / or vary a campaign where the Buyer, acting reasonably, is concerned about mixed messaging and / or any potential for reputational damage.
- 3.4.3. The Supplier is autonomous in marketing and PR for the Powerswitch Website. All content, materials, creative will be created and provided by the Supplier, unless specifically agreed.
- 3.4.4. Campaign content, materials, creative created and provided by the Supplier are not subject to prior review or approval by the Buyer.

3.5 Sustained SEO and paid search:

- 3.5.1. The Supplier will provide as part of the 12 month marketing strategy:
 - search engine optimisation services: to provide the Powerswitch Website with improved positioning in selected search engines (including by building links from a variety of websites); and
 - search engine advertising.

4. Development Services

4.1 EPR and EnergyLink Recommendations

- 4.1.1. The report from the Electricity Price Review (released May 2019) (**EPR**) contained a number of recommendations related to consumers. The Buyer has developed an EPR Programme of Work based on the recommendations contained in the EPR.
- 4.1.2. In addition the Audit & Strategic Review commissioned by the Supplier and conducted by EnergyLink during 2022 (the **EnergyLink Report**) has made further recommendations as to future priorities for the development of the Powerswitch Website and Comparison Tool, particularly:
 - refining the approach to time-conditional plans;
 - bringing the consumption estimation algorithm up to date with EV and PV usage;
 - improving accuracy of inputs;
 - improving user experience and supporting choice; and
 - improving retailer process efficiency.
- 4.1.3. The Supplier acknowledges and agrees:
 - that the direction of future development of the Powerswitch Website and Comparison Tool should take into account the EPR recommendations and the EnergyLink Report;
 - it will assume a leadership role in:
 - identifying and implementing improvement initiatives that are part of, or align with, the EPR recommendations and the EnergyLink Report; and
 - proactively reporting back on any decision not to implement identified improvement initiatives (and provide justifications for this).

4.2 Project governance

- 4.2.1. The Enhancement Roadmap (refer clause 4.3 of this Attachment 1) and implementation of Enhancements will be overseen and administered by the Contract Managers.

4.3 Roadmap and Project Development Plan

- 4.3.1. The Supplier has:

- reviewed the EPR recommendations, and given consideration to the high level requirements outlined as improvements to the Powerswitch Website);
- actively considered the improvements referred to in the preceding bullet point during the design phase of the Enhancement Roadmap with the Buyer;
- developed an initial service improvement roadmap in consultation with the Buyer that identifies and prioritises various service improvement initiatives and their primary drivers (e.g., usability, reliability, speed) (**Roadmap**). A visual representation of the Roadmap is set out in Attachment 3 to Schedule 1; and
- maintained and updated that Roadmap over the term of this Contract as technology changes, user / consumer behaviours change and as the retailers respond. The Roadmap will be updated further in light of the EnergyLink Report, and updated and maintained throughout the term of this Contract.

- 4.3.2. Further to its obligations in respect to the Roadmap, the Supplier has developed a two-year project development plan outlining two key projects to be completed between 2023 – 2025 (**Development Plan**).

- 4.3.3. The Supplier will use all reasonable endeavours to achieve the key Milestones by the associated target dates set out within the Roadmap and Development Plan, as set out in Attachment 3 and Attachment 4 to Schedule 1 respectively, subject to clause 4.3.4.

- 4.3.4. The Supplier must complete the following Development Services Milestones by or within the timeframes indicated (as applicable):

March 23 to 1 July 23:	Determine appropriate interim discount factor which should be applied to ToU plans to account for changes to consumers consumption profiles.
July to Dec 23:	Testing and implementation of interim discount factor(s) in PS algorithm.
Jan 23 to June 24:	Stage 3 TC study is complete and long term discount factors as applied to actual (rather than estimated) user consumption profiles are now implemented in the live Powerswitch model.

4.4 Development drivers / outcomes

- 4.4.1. The Parties agree that the following principles / outcomes should underpin the Roadmap contents and the selection of Enhancement projects:

- Accuracy - Enhancements should make the Powerswitch Website more accurate and always up to date, particularly given the increasing sophistication and variable pricing of Generally Available plans.
- Trust and Confidence - Enhancements should increase stakeholder trust and confidence in the Powerswitch Website, its reliability and in how results are generated.

- Consumer centricity - Enhancements should reflect the needs to consumers in their various forms.
- Speed and ease of use - Enhancements should speed up the comparison process and make completion easier.
- Responsive - Enhancements should enable the site to respond to industry innovation to ensure consumers can compare new options.

4.5 Selection, planning and implementation of service improvement initiatives

- 4.5.1. General Service Improvements (BAU) and Development Enhancements & Upgrades: The Supplier will schedule and implement general service improvement initiatives (in consultation with the Buyer) over the term of this Contract. To avoid doubt, these services are included in the Fixed Fee (refer clause 10.1 of Schedule 1).

Attachment 2: KPIs

1. Approach

KPIs ("what" will be measured) are set out below. The Supplier will measure and report on its actual performance against these KPI measures every quarter from the Start Date. Unless otherwise agreed, the Supplier will report on KPIs in a visually compelling way through the use of tables, bar charts, pie charts, line graphs, a traffic light colouring system, or any other suitable visual format.

2. Marketing effectiveness, Site traffic / user activities

2.1 Targets to be updated by mutual agreement between the Parties:

Theme	Goal	Period	Indicator	Desired Trend
Marketing	Sustained brand awareness and SEO performance	Measure Monthly	- Organic search impressions - Ranking in organic search of key brand terms - Number of click-throughs	Trending up
Marketing	Sustained paid search promotion	Measure Monthly	- Impressions - Number of click-throughs - Click through rate - Conversion rate	Trending up
			Cost per click	Trending Down
Marketing	Cost effective campaigns driving awareness, traffic and action on site. <i>(Not exhaustive. Targets values, and indicators should be defined per campaign and combined with site usage)</i>	Measure monthly / as campaign runs	- Reach - Impressions - Number of click-throughs - Click through rate	Trending up
			- Cost per milli - Cost per click - Cost per completion - Cost per switch	Trending down
Site use	Increased number of people checking and accessing price comparison information	Measure monthly	- Total sessions - Profiles by network regions - Total users % new users - Powerswitch calculation process completions	Trending up
			Cost per completion (QC)	Trending down
Site use	More people making informed decisions based on comparison information before switching retailers	Measure monthly	- Total switches completed by users who interacted with Powerswitch - Total switches completed by network region	Trending up

	<i>(Requires EA comparison between CNZ numbers and retailer switches in registry)</i>			
Site use	Improve site usability and speed	Measure monthly	- Bounce rate - Average time for calculation process completion - Average time for calculation process for data rich user journey (excluding Powerswitch API traffic) - Average time for data poor user journey (excluding Powerswitch API traffic) % of calculation processes abandoned before results	Trending down
Site use	Increased trust and confidence in website. (Is meeting user needs).	Measure quarterly	% of total users that create inbound complaints / suggestions about common problems or limitations (include total number of complaints for reference) % of issues identified by users resolved within 5 business days. % of issues identified by users <i>not</i> resolved within 5 business days.	Trending down
		Measure annually	Increasing consumer perception of accuracy of information available to make a switching decision	Trending up

3. Powerswitch Website availability

- 3.1 Powerswitch Website and Comparison Model are available to consumers to access.
- 3.2 Measured monthly and aggregated over 12 months.
- 3.3 Regular maintenance down-time to be scheduled to occur during agreed periods of the day (and will not count as non-availability for the purposes of this KPI).

4. Accuracy of Retailer Plan Data

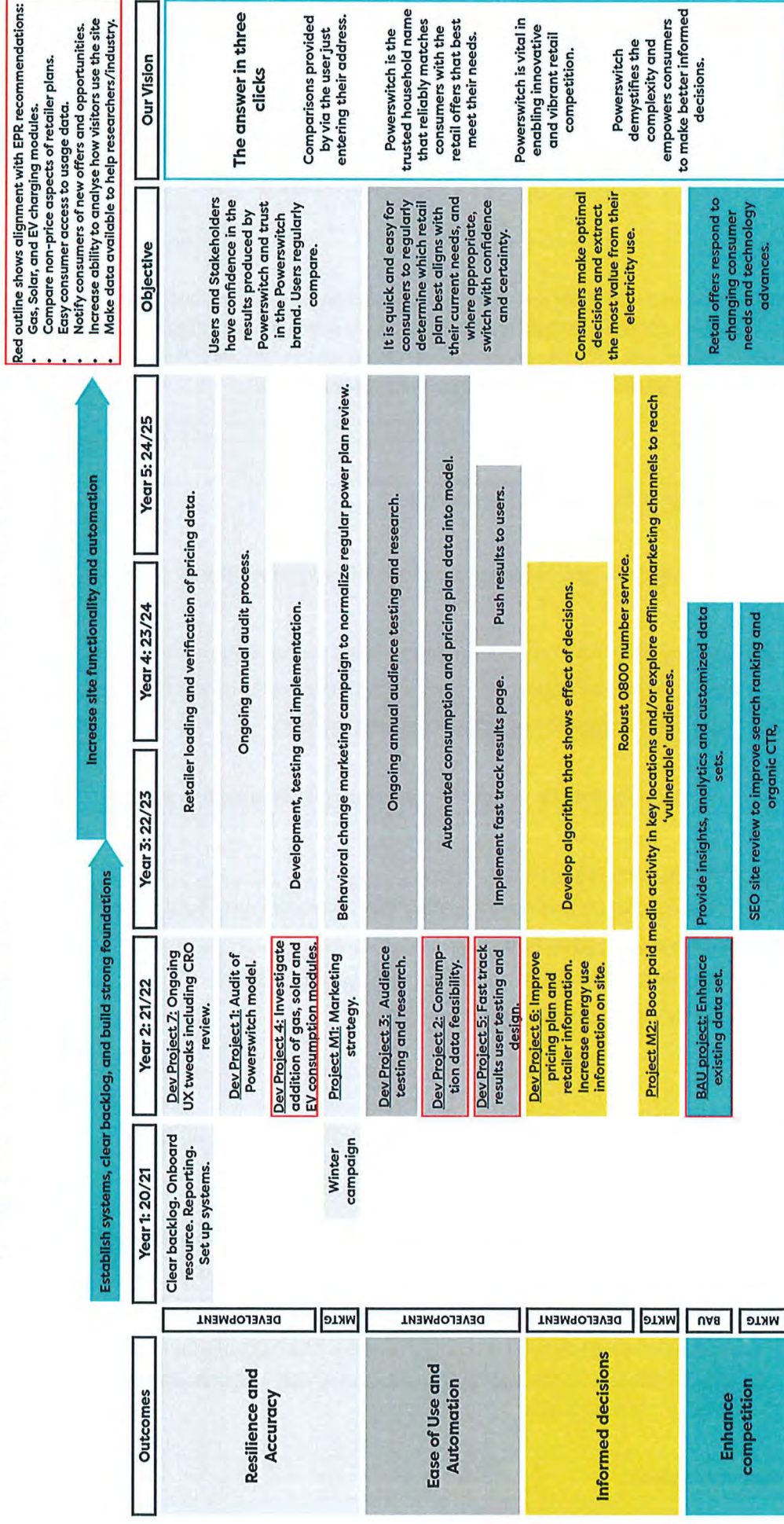
- 4.1 Retailer Plan Data is accurate, complete and up-to-date as much as reasonable practicable.
- 4.2 Targets to be updated by mutual agreement between the Parties:

Theme	Goal	Period	Indicator	Desired Trend
Tariff dataset	Increased number of plans available for users to compare	Measure Monthly	Number of live plans in the system	N/A

			• Number of historic plans in the system • Number of new plans loaded • Number of plans removed	
Tariff dataset	Accurate plans available for users and maintain relationship with retailers	Measure monthly	• Number of requests from retailer for changes •	N/A
			• Timeframe for updating changes	Within 10 days
Tariff dataset	Increased number of retailers available for users to compare	Measure monthly	• New retailers • New plan type requests	N/A
Tariff dataset	Accurate data available for users	Measure monthly	• Error rates	Trending down
			• Number of enquiries from retailers on the published tariff dataset	N/A

Attachment 3: Roadmap

POWERSWITCH Five-year roadmap to implement our vision



Attachment 4: Development Plan

POWERSWITCH DEVELOPMENT PLANS 2023-2025

Note: Plans beyond July 24 are less certain as development and circumstance may eliminate the need for some of them. Other projects are contingent on industry cooperation and rule adjustments. Investigations may reveal that some projects are not feasible or practical. Circumstances, and as yet unknown developments, may require PS development within the timeframe that are not yet anticipated .

EnergyLink Recommendations for Powerswitch

1. The ability to get consumer data is the highest priority challenge facing Powerswitch.
2. Powerswitch has not been able to keep pace with more recent retail market innovations and can no longer effectively cover all potential retail offerings or address all aspects of consumer energy use.

The recommended priority order for addressing Powerswitch issues:

1. Refining the approach to TCPs
2. Bringing the consumption estimation algorithm up to date with EV and PV usage
3. Improve accuracy of inputs
4. Improving user experience and supporting choice
5. Improving retailer process efficiency

POWERSWITCH DEVELOPMENT PROJECTS 23-25

Project:

Complex Plans (Time Conditional, Bundled, and Conditional Offers)

Description:

Retail offers are becoming increasingly complex. The challenge for Powerswitch is to show site users complex offers in a clear, equitable, and impartial way, and with sufficient information that users can make an informed choice.

Time to complete:

Expected 24 months total

Project Status:

Project underway from beginning March 2023

Key Milestones:

Current to June 23:	Determine appropriate interim discount factor should be applied to ToU plans to account for changes to consumers consumption profiles.
Current to July 23:	UX study and testing on complex plans and site flow.
July to Dec 23:	Testing and implementation of interim discount factor(s) in PS algorithm.
July to Dec 23:	Design and implementation of complex plan UX recommendations
July to Dec 23:	Feasibility study of users consumption data access via API to MEPS
Jan 23 to June 24:	Stage 3 TC study – long term discount factors as applied to actual (rather than estimated) user consumption profiles.
Jan to March 24:	Review of UX changes. Implementation of adjustments as required.
Jan – June 24:	Implementation of API to MEPS. Application of discount factors in model.
July 24 – July 25:	Automation of comparison services in conjunction with OCR implementation (below)
July 24 – July 25:	Extension of PS to provide users with potential savings via behaviour change through automated analysis of consumption profiles in addition to plan comparison.
July 24 – July 25:	UX study and implantation of PS tools such as load shift/cost sliders, to show effect of load shifting and /or effect on consumption and energy costs of solar PV, EV, appliance changes, converting from gas.

Project:

Assorted Improvements:

Streamlining of switching

UX improvements for fast flow scenarios

Application of OCR technology

Increase PS organic SEO through new PS content hub

LPG module

Solar Module

EV Module

Retailer updating of their prices (self-serve)

Description:

Several projects are proposed to improve the Powerswitch service.

Time to complete:

Expected 24 months total

Project Status:

Projects underway from April 23 2023

Key Milestones:

Current to Dec23:	Testing and incremental roll-out of 'hybrid' lead provision to retailers. Hybrid leads will send PS data to prepopulate retailers digital sign-up forms eliminating the need for users to re-enter data already provided.
Current to May 23:	Study on UX flow for fast results pathway – optimising for movers' segment.
June to Dec 23:	Design and implementation of UX change recommendation for fast results.
July to Oct 23:	OCR feasibility trial, and investigation of model architecture changes required to accommodate.
Nov 23 to March 24:	Implementation of OCR.
July to Dec 23:	Investigate and develop PS content hub to increase organic search traffic through provision of evergreen content via PS.
Jan 24 – Ongoing:	Produce content for PS information hub.
July 24 to June 25:	Longer term projects Develop new model algorithms and UX to accommodate technological change and alternate fuel sources, namely: ▪ LPG ▪ Solar PV ▪ EV ▪ Heat pump hot water ▪ Household loads that subvert the standard consumption profiles assumed (spa pools, chillers, swimming pools etc)

Schedule 2: Standard Terms and Conditions GMC Form 2 SERVICES | Schedule 2 (3rd Edition)

Drafting Note: This page is inserted for representative effect only in this consolidated version – see the separate document containing the Schedule 2 Standard Terms and Conditions available at www.procurement.govt.nz (and subject to the Schedule 3 Special Conditions set out below)

Schedule 3: Special Conditions

1. Definitions

1.1 In the definitions section of Schedule 2, insert in the appropriate alphabetical order:

"Additional Period *The meaning given to that term in clause 1.3 of Schedule 2."*

"Business Case *The meaning given to that term in clause 4.5.3 of Attachment 1 to Schedule 1."*

"Code *The Electricity Industry Participation Code 2010."*

"Comparison Model *The tool available on the Powerswitch Website that lets consumers compare Generally Available electricity and gas retailers' pricing plans and special offers, calculate the savings that they could achieve by switching retailers, and initiate such a switch."*

"Contract Year:

- *The period commencing on the Start Date and ending on 30 June 2021;*
- *each subsequent 12 calendar month period until the End Date; and*
- *the period from the End Date to the end of the Additional Period.*

"Development Services *The services to be provided by the Supplier to design and implement the Enhancements, as further set out in Attachment 1 to Schedule 1."*

"Enhancement *A service improvement that is a material enhancement of the Powerswitch Website and Comparison Model functionality, excluding standard service maintenance and development required to ensure that the Powerswitch Website and Comparison Model remains operational).*"

"Generally Available" *has the meaning given in the Code under section 1.1(1).*

"Governance Group" *unless the context requires otherwise, reference in this Contract to "[the] Governance Group" is to be read as reference to [the] Buyer's Contract Manager and Supplier's Contract Manager acting together."*

"Issue *The meaning given to that term in clause 2.11 of Schedule 2."*

"KPIs" *The key performance indicators described in Attachment 2 to Schedule 1."*

"Marketing Services *The campaign and marketing services to be provided by the Supplier to promote the Powerswitch Website to consumers, as further set out in Attachment 1 to Schedule 1."*

"Non-Compliant Services *The meaning given to that term in clause 6.4 of this Schedule 3."*

"Participant *The meaning given to that term in section 5 of the Electricity Industry Act 2010."*

"Powerswitch Services *The operation and maintenance of the Powerswitch Website, as further set out in Attachment 1 to Schedule 1."*

"Powerswitch Website *The meaning given to that term in Schedule 1."*

“Registry The national database that is maintained by the Buyer and contains information on every point of connection on local and embedded networks to which a consumer or embedded generator is connected.”

“Retail Plans Electricity and gas retailers’ pricing plans (including dual fuel and special offers) comprising:

- historical plans, i.e., plans no longer available and on offer in the market, but which a number of consumers remain on; and
- current plans, i.e., plans that are currently Generally Available and on offer in the market (and which consumers could choose to switch to from their existing plan).”

“Retailer Plan Data The data comprised in the Retail Plans.”

“Statutory Objectives The meaning given to that term in Schedule 1.”

“Utilities Disputes” The free and independent forum for resolving consumer complaints about electricity companies (established by the sector in 2001).”

“WMN The meaning given to that term in Schedule 1.”

- 1.2 The meaning of the following term in the definitions section of Schedule 2 is deleted and replaced with the meaning set out below:

“Milestones” The milestones specified in a statement of work executed by the parties for the provision of Development Services.”

2. The Services

- 2.1 Clause 1.3 of Schedule 2 is deleted and replaced with the following:

“Renewal:

- a. The Buyer may on notice to the Supplier extend the End Date the number of times, and for the additional period (**Additional Period**), set out in Schedule 1 after [meeting through the Contract Managers and Governance Group] on or about the date that is 3 months prior to the End Date to:
 - review the Parties’ performance to determine whether the funding approach provided for under this Contract is enabling both Parties’ needs and objectives to be met; and
 - consider alternative funding options that may be available.
- b. If the Buyer gives notice under clause 1.3.a above then the Contract will be renewed for the Additional Period on the same terms, unless the Parties agree otherwise in a Variation.”

- 2.2 Clause 2.1 of Schedule 2 is deleted and replaced with the following:

“Both Parties’ obligations: Both Parties agree to:

- a. act in good faith and honestly in their dealings with each other;
- b. discuss matters affecting this Contract or the delivery of the Services, whenever necessary;
- c. notify each other promptly of any actual or anticipated issues that could:

- *significantly impact on the Services or the Charges; and/or*
- *receive media attention;*
- d. *comply with all applicable laws and regulations;*
- e. *promote the activities of the other, including:*
 - *in the case of the Buyer, by clearly profiling the Powerswitch Website on its website;*
 - *in the case of the Supplier, by clearly profiling the Buyer on the Powerswitch Website as the Powerswitch Website's primary funder (e.g., by displaying words to the effect of "Powerswitch is supported by the Electricity Authority" (while also acknowledging other funding sources)) with the specific manner in which the Buyer is profiled to be agreed with the Buyer); and*
 - *in the case of the Buyer and the Supplier, by profiling Utilities Disputes on their respective websites; and*
- f. *work together to actively promote to the electricity sector and other stakeholders, through the use of both parties existing channels, the Powerswitch Website as the independent switching tool."*

2.3 Clause 2.2 of Schedule 2 is deleted and replaced with the following:

"Buyer's obligations: The Buyer must:

- a. *provide the Supplier with any information and/or access to Buyer Personnel the Supplier has reasonably requested to enable the delivery of the Services;*
- b. *make decisions and give approvals reasonably required by the Supplier to enable delivery of the Services, within reasonable timeframes;*
- c. *pay the Supplier the Charges for the Services in accordance with this Contract;*
- d. *ensure that the Registry is live (so that the Powerswitch Website can function effectively). The Buyer acknowledges that the Supplier depends on the Registry for accuracy;*
- e. *notify and consult (via the Governance Group) with the Supplier in relation to any Code changes (including any such changes that relate to the Registry) that may adversely affect the Supplier's ability to operate the Powerswitch Website / keep the Powerswitch Website accurate. Consultation will include consideration of whether:*
 - *any consequential variations may be required to this Contract; and*
 - *and Enhancements may be required in order to accommodate the code change; and*
- f. *not conduct any WMN campaign, or other campaign that lets consumers compare electricity and gas retailers' pricing plans [and special offers], calculate the savings that they could achieve by switching retailers, and initiate such a switch, in competition with the Powerswitch Website during the term of the Contract.*

For the avoidance of doubt, nothing in this Contract prevents the Buyer from providing other consumer advice and education activities (e.g., its COVID talk to your retailer (in the 1st instance) campaign or check for way to save campaign), or otherwise from promoting or directing consumers to the Powerswitch Website."

2.4 Clause 2.3 of Schedule 2 is deleted and replaced with the following:

“Supplier’s obligations: The Supplier must:

- a. *deliver the Services:*
 - *on time (including meeting all Milestones on time), except where delay is caused by the Buyer;*
 - *so as to meet or exceed the applicable KPIs, and otherwise to the required performance standards and quality set out in this Contract; and*
 - *with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry;*
- b. *ensure that its Personnel have the necessary skills, experience, training and resources to deliver the Services;*
- c. *provide all equipment and resources necessary to deliver the Services;*
- d. *comply with the Supplier Code of Conduct issued by the Procurement Functional Leader (see www.procurement.govt.nz);*
- e. *without limiting its obligations under clause 2.8b, comply with the Privacy Act 2020 and its own privacy notice (including in relation to profiles created by users of the Powerswitch Website);*
- f. *must not at any time do anything that is likely to adversely affect the reputation, good standing or goodwill of the Buyer;*

2.5 The following new clause 2.9 is added to Schedule 2:

“Messaging: The Supplier will ensure all marketing and PR directly in relation to Powerswitch is:

- a. *directed at supporting the Buyer to discharge its statutory function and achieve the Statutory Objectives; and*
- b. *focussed on promoting to consumers the potential benefits of comparing Retail Plans and Powerswitch as the tool to help with that (i.e., as opposed to commenting on or being critical of the retailer market or participants (including retailers’ plan options or participants’ behaviours)).”*

2.6 The following new clause 2.10 is added to Schedule 2:

“Accuracy and assurance:

- a. *The Supplier will take reasonable steps, and implement reasonable measures, to ensure that:*
 - i. *Retailer Plan Data is accurate, complete and up-to-date and*
 - ii. *the Comparison Model is generating robust and accurate results.*
- b. *Upon request by the Buyer, the Supplier will outline to the Buyer the nature of those assurance steps and measures referred to in clause 2.10.a. above. The Supplier will take*

into account any reasonable suggestions made by the Buyer in relation to those assurance steps and measures.”

2.7 The following new clause 2.11 is added to Schedule 2:

“Notification and make good: *If (including as a result of a user or retailer complaints), the Supplier identifies an actual or suspected inaccuracy or lack of completeness or failure to be up-to-date in the Retailer Plan Data (including in its interpretation and application of the Retailer Plan Data) that impacts the robustness and accuracy of the results generated by the Comparison Model (each an **Issue**) then the Supplier must:*

- a. *notify the Buyer’s Contract Manager as soon as practicable of the Issue;*
- b. *provide a data report (totals etc.) detailing who has been affected (ICPs, losing retailers, gaining retailers, and network regions (where available));*
- c. *promptly take such steps as are reasonably available to it to identify the cause of the Issue and to remediate the Issue;*
- d. *communicate with consumers and Participants via appropriate channels to make them aware of the Issues and the steps that have been taken to remediate the Issue;*
- e. *report back to the Buyer on steps taken to remediate the Issue and to prevent recurrence; and*
- f. *otherwise comply with all reasonable requests of the Buyer.”*

2.8 The following new clause 2.12 is added to Schedule 2:

“Audit: *Where the Buyer, acting reasonably, identifies an actual or suspected inaccuracy in the Retail Plan Data (including in its interpretation and application of the Retailer Plan Data), the Buyer will have the right to audit, or appoint a third party to audit, the Supplier to verify data accuracy and / or Comparison Tool functionality.”*

3. Information management

3.1 Clause 5.2 of Schedule 2 is deleted and replaced with the following:

“Reports: *The Supplier must give the Buyer the reports, by the due dates stated in Schedule 1, with the format of such reports to be agreed by the Parties.”*

4. The contractual relationship

4.1 The following new clause 6.4 is added to Schedule 2:

“Non-exclusive: Without limiting the Supplier’s obligations under clauses 9.1 and 9.3, each Party acknowledges and agrees that the arrangement under this Contract to fund the Powerswitch Services is non-exclusive and the Supplier may obtain funding for the Powerswitch Services from other sources.

5. Conflicts of Interest

5.1 Clause 9.1 of Schedule 2 is deleted and replaced with the following:

“Avoiding conflicts of interest: *Subject to clause 9.3, the Supplier:*

- a. warrants that as at the Start Date, it has no Conflict of Interest in providing the Services or entering into this Contract; and
- b. must do its best to avoid situations that may lead to a Conflict of Interest arising."

5.2 The following new clause 9.3 is added to Schedule 2:

"Management of existing Conflict: The Parties acknowledge that the Supplier has a perceived Conflict of Interest in providing the Services as at the Start Date due to the funding received by the Supplier from electricity and gas retailers. The Supplier must manage this Conflict of Interest as follows:

- a. the Supplier will ensure that the Powerswitch Website and Comparison Model is operated and functions in an impartial manner, so that it does not favour any particular retailer or other funder of the Powerswitch Website and / or Comparison Model, and otherwise so that users can have confidence in the results generated by the Comparison Model.
- b. the Supplier will provide such additional details as are reasonably requested by the Buyer regarding its funding sources and relative funding amounts for the Powerswitch Website and Comparison Model, and how it uses those income streams, ; and
- c. the Supplier will include an express statement on the Powerswitch Website disclosing its funding sources and undertaking to users that funding sources do not influence the results generated by the Comparison Model."

6. Ending this Contract

6.1 Clause 11.1 of Schedule 2 is deleted and replaced with the following:

"Supplier's termination for cause: The Supplier may terminate this Contract:

- a. by giving 20 Business Days' Notice to the Buyer, if the Buyer fails to pay any Charges that are properly due, and are not in dispute under clause 3.4 of Schedule 2. The Charges must be overdue by 20 Business Days and the Supplier must have first brought this to the Buyer's attention in writing within this period; or
- b. after at least 18 months from the Start Date, by giving 180 days' Notice that includes proof to the reasonable satisfaction of the Buyer that the Supplier's funding sources for the Powerswitch Website are, or are forecast to be, below viable levels."

6.2 Clause 11.2 of Schedule 2 is deleted and replaced with the following:

"Buyer's termination for convenience:

- a. The Buyer may terminate this Contract (in whole or in part) at any time by giving 90 days' Notice to the Supplier.
- b. If the Buyer terminates the Contract (in whole or in part) under this clause then, subject to all other clauses of this Contract, the Buyer will pay the Supplier for all Services performed up to the End Date, or where the Services are terminated in part, for the terminated Services performed up to the effective date of termination of those Services."

6.3 Clause 11.3 of Schedule 2 is deleted and replaced with the following:

“Buyer’s termination for cause: *The Buyer may terminate this Contract (in whole or in part) immediately, by giving Notice, if the Supplier:*

- a. *becomes bankrupt or insolvent;*
- b. *has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed;*
- c. *becomes subject to any form of external administration;*
- d. *ceases for any reason to continue in business;*
- e. *does something or fails to do something that, in the Buyer's reasonable opinion, results or is likely to result in damage to the Buyer's reputation or business;*
- f. *has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Services or the Buyer*
- g. *provides information to the Buyer that is misleading or innacurate in any material respect;*
- h. *commits a material breach of this Contract that is not rectifiable;*
- i. *fails to rectify a material breach of this Contract that is rectifiable within [20] Business Days after receiving Notice from the Buyer specifying the breach and requiring rectification;*
- j. *repeatedly fails to perform or comply with its obligations under this Contract, whether those obligations are minor or significant (including persistent data accuracy issues);*
- k. *fails to investigate user or retailer complaints or resolve issues in the Retailer Data Plan in accordance with Attachment 1 to Schedule 1 of this Contract;*
- l. *breaches any applicable law; or*
- m. *purports to assign or transfer this Contract or any part of this Contract without the Buyer’s prior approval in writing.”*

6.4 Clause 11.4 of Schedule 2 is deleted and replaced with the following:

“Non-Compliant Services: *If any Services are defective or partly or wholly unperformed by the relevant date for performance under this Contract (**Non-Compliant Services**) then, without limiting any other remedy the Buyer may have:*

- a. *the Buyer may require the Supplier to rectify, perform or re-perform the Non-Compliant Services at the Supplier’s own cost; and*
- b. *the Buyer will have no obligation to pay for Non-Compliant Services and, if and to the extent the Buyer has already paid for any Non-Compliant Services, the Buyer will be entitled to set off such amounts against future payments due and owing under this Contract.”*

6.5 Clause 11.5 of Schedule 2 is deleted and replaced with the following:

“Consequences of expiry or termination of Contract:

- a. *Where the Supplier has given or received a Notice of termination, the Supplier must immediately do everything reasonably possible to reduce its losses, costs and expenses arising from termination of this Contract.*
- b. *Upon the expiry or termination of this Contract:*
 - *the licences granted under clause 12.2b and c will survive and the Buyer may continue to use Retailer Plan Data in its possession at the date of expiry or termination in accordance with the terms of that licence;*
 - *the Supplier agrees that it will continue to make the retail tariff data (as referenced in clause 2.3 of Attachment 1 to Schedule 1) available to the Buyer on the same terms as the Supplier makes such data available to the Ministry of Business Innovation and Employment and other public sector agencies, provided it is still producing such data;*
 - *the Supplier will refund any prepaid Charges for Services not performed; and*
 - *each Party will, if requested by the other Party, promptly return or securely destroy any property or Confidential Information of the other Party that is in its possession or control."*

7. Intellectual Property

7.1 Clauses 12.1 and 12.2 of Schedule 2 are deleted.

7.2 The following new clause 12.1 is added to Schedule 2:

"Ownership of Intellectual Property Rights:

- a. *Pre-existing Intellectual Property Rights remain the property of their owner.*
- b. *Without limiting clause 12.a, Intellectual Property Rights in:*
 - *the WMN brand, including the name, logo, any trademarks and the URL for the WMN website; and*
 - *any material provided by the Buyer to the Supplier for use in any campaign conducted as part of the Marketing Services,**remain the property of the Buyer.*
- c. *Without limiting clause 12.a, Intellectual Property Rights in:*
 - *the Powerswitch brand, including the name, logo, any trademarks and the URL for the Powerswitch Website;*
 - *the Powerswitch Website (including layout, graphics and content);*
 - *the Comparison Model; and*
 - *the Retailer Plan Data,**remain the property of the Supplier.*

- d. *Any New Intellectual Property Rights developed by the Supplier in the performance of the Services vest in the Supplier on their creation.*

7.3 The following new clause 12.2 is added to Schedule 2:

“Licence to Buyer: *The Supplier grants to, or will procure for, the Buyer, subject to the Buyer’s compliance with clause 12:*

- a. *a non-exclusive, royalty-free, world-wide, sub-licensable, licence from the Start Date until the End Date to:*
- *use and publish the Powerswitch brand for the purpose of promoting Powerswitch to consumers; and*
 - *use and publish the Powerswitch Website URL to direct traffic from the WMN URL to the Powerswitch Website.*
- b. *a perpetual, irrevocable, non-exclusive, world-wide, transferable, sub-licensable, royalty-free licence to:*
- *use, analyse and modify; and*
 - *having modified, then publish (provided that any publication does not negatively affect the Supplier’s Powerswitch business model),*
- the Retailer Plan Data provided by the Supplier for the purposes of discharging its statutory functions, and delivering against EPR recommendations; and*
- c. *a perpetual, irrevocable, non-exclusive, world-wide, transferable, sub-licensable, royalty-free licence to use, copy, modify or distribute, for any purpose, any New Intellectual Property Rights developed by the Supplier in the performance of the Marketing Services that incorporate material that contains the Buyer’s Intellectual Property Rights.”*

7.4 The following new clause 12.3 is added to Schedule 2:

“Licence to Supplier: *The Buyer grants to the Supplier a non-exclusive, royalty-free licence from the Start Date until the End Date to use the Intellectual Property Rights in clause 12.1b for the purpose of performing the Services, subject to the Supplier’s compliance with clauses 2.3f and 12.4 of Schedule 2.”*

7.5 The following new clause 12.4 is added to Schedule 2:

“Compliance with brand policies: *The Licences in clauses 12.2 and 12.3 are subject to compliance with any branding policies or other guidelines in relation to use of the relevant Intellectual Property Rights as notified by the owner to the other Party.”*

7.6 The following new clause 12.5 is added to Schedule 2:

“Supplier warranty: *“The Supplier warrants that performing its obligations under this Contract and providing the Services and any Deliverables, product, work, or material developed, created, or supplied in the course of performing those obligations or providing the Services will not breach any third party’s Intellectual Property Rights.”*

7.7 The following new clause 12.6 is added to Schedule 2:

“Supplier indemnity: *The Supplier indemnifies the Buyer in respect of all losses, liabilities, costs, demands, claims, and expenses of any kind (including legal costs on a solicitor-client basis) the Buyer sustains or incurs directly or indirectly as a result of:*

- a. *a breach of clause 12.5; and*
- b. *consumer claims against the Buyer arising from, or in connection with:*
 - *detrimental reliance by a consumer on any of the contents published by the Supplier on the Powerswitch Website (including the results generated by the Comparison Model); or*
 - *the Supplier’s breach of the Privacy Act 2020 or its own privacy notice.”*

8. Extraordinary Event

8.1 For the purpose of this Contract, “Extraordinary Event” includes a change to the Code.

9. Liability

9.1 The following new clauses 15A.1 is added to Schedule 2:

“Exclusion of consequential loss: *Subject to clause 15A.3, neither Party will be liable for indirect, consequential or incidental loss or damage resulting from or connected with the performance of its obligations under this Contract.”*

9.2 The following new clause 15A.2 is added to Schedule 2:

“Liability cap: *Subject to clause 15A.3, the maximum liability of the Supplier in respect of any matter arising out of or in connection with this Contract will not exceed 100% of the total Charges payable by the Buyer for the Services under this Contract.”*

9.3 The following new clause 15A.3 is added to Schedule 2:

“Exclusions to liability: *Notwithstanding clauses 15A.1 and 15A.2, the Supplier will not be released from and its liability will be unlimited in relation to:*

- a. *its breach of clause 13 of Schedule 2 (Confidentiality);*
- b. *its breach of clause 2.3e of Schedule 2 (Privacy); and*
- c. *its obligation to indemnify the Buyer under clause 12.6 of Schedule 2.”*

10. General

10.1 The following new clause 16.11 is added to Schedule 2:

“Assignment: *The obligations of the Supplier under this Contract may not be assigned or transferred in whole or in part without the Buyer’s prior approval in writing.”*

18 November 2024

Jon Duffy
Chief Executive / Tumu Whakarae
Consumer NZ Incorporated
Wellington

By email: Jon@consumer.org.nz

Tēnā koe Jon,

Extension agreement for Powerswitch Contract

The Electricity Authority and Consumer NZ Incorporated (the Parties) are parties to a Contract for Services in relation to the Powerswitch website which expires on 30 June 2025 (the Contract).

The Parties agree to a six-month extension to the current contract term of the Contract, so that the "End Date" as defined in the Contract is amended to be 31 December 2025.

All other terms of the Contract remain unchanged.

Please sign below to indicate your agreement.

Yours sincerely
s 9(2)(a)

Agreed for the Authority by
Mark Herring
GM Corporate and Market Services

Agreed for Consumer NZ Incorporated by
John Duffy
Chief Executive/ Tumu Whakarae