LEVI Support Body

Office for Zero Emission Vehicles

energy saving trust

PA

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Concession Heads of Terms

Version Management

Authors	Doc. Version	Date	Changes
Procurement Forum	1.5.2	28-Mar-23	First Public Version
Procurement Forum	2.5.3	28-Apr-23	Second Public Version. 1) Adjustments to #21 in response to industry feedback on the worked example. Change: prioritise a p/kWh ceiling over % ceiling. Rationale: after review, a % threshold ceiling would put pressure on CPOs if electricity prices reduce and does not incentivise CPOs to procure competitive electricity prices. A p/kWh ceiling is more predictable for CPO business planning whilst still protecting consumers. 2) Other minor corrections.
Procurement Forum	3.6.4	24-Aug-23	Third Public Version. 1) Extension of #4 Recommendation Change: addition of recommendation for a process to approve specific sites. Rationale: where service providers suggest sites, these should be reviewed by LAs.

			2) Improvement of language in #6 Recommendation Change: Update from ‘own’ to ‘responsible for’. Rationale: Local Connection Assets are owned by the Distribution Network Operator so the language of ownership is not appropriate. This clause addresses who is responsible for them via the energy supply contract. 3) Refinement of #21 Notes and Recommendation Change: Major re-write of Notes to encompass a wider recommendation. Recommendation updated to incorporate Margin Cap and/or Benchmarking review. Margin Cap mechanism and worked example updated accordingly. Rationale: Feedback from readers indicated that the original formulation was not clear. Further detailed feedback received from service providers was mixed on the use of the margin cap and some LAs have a strong preference for benchmarking. 4) Refinement of #32 Change Protocol Notes and Options Change: Update of notes to include greater reference to CCR16 and other circumstances where change control may be needed, including when the service provider must be replaced. Options now include comments to align the change process to the LA’s standard boilerplate approach. Rationale: The Change Protocol must be clear and legally established to be relied-upon throughout the contract Term.
Procurement Forum	4.6.4	8-Nov-23	Fourth Public Version 1) Minor update to #21 to correct calculation error in the worked example.
Procurement Forum	4.7.4	16-Jan-24	Fifth Public Version 1) Minor update to #22 to correct ‘Gross Profit’ to ‘Gross Margin’ in recommendation, where #21 Tariff Administration is referenced
Jacob Roberts	5.1.1	25-Feb-25	Update to align with terminology used in the template EVI concession procurement documents, co-developed by Crown Commercial Service and the LEVI Support Body. Additional clarity provided on definitions including: Critical Service Failures; Relief Events; LA & supplier default; Compensation Events; Change in Regulations; Concession Fees and Implementation Plans.

			Update to calculation of margin cap in #21 Tariff Administration, where supplier cost of electricity now used instead of wholesale cost of electricity. Updated references to Concession Contract Regulations 2016 and redirected to Procurement Act 2023 as appropriate.

Introduction

Summary:

The Heads of Terms sets out many of the key contractual and commercial terms that LAs will need to consider for a ***Concession*** contract. Each section outlines the commercial principle(s) along with the range of options which could be chosen from. Guidance notes are added to highlight interdependencies between sections or points for consideration. Best practice from the LA's perspective is given as a recommendation.

Considerations:

Early consideration and engagement with the market on these critical issues prior to commencing the procurement process will help secure the delivery of an efficient and effective service contract.

The Heads of Terms clauses are not meant to be a template contract but will shape the eventual contract when combined with more standard clauses (such as confidentiality, data protection or recitals) either from the LA legal department's template contracts or common frameworks. Therefore, this document does not cover an in depth and rigorous legal review of terms but is meant to be a starting point for LAs to ensure the important commercial principles regarding EVI procurement and delivery are taken into account before the legal contracting stage.

Commercial Arrangements are highly subjective to the circumstances of the collaborative parties involved in them. It is advised that LA or LAs ensure rigorous public procurement guidance provided by the UK Government and bodies like the Competition and Markets Authority (CMA) is followed alongside this contextual guidance. This will ensure that any commercial arrangements that the LA is entering into promotes healthy competition and increases the potential for good value for money being provided to the end-users.

Important Note:

These Heads of Terms have been developed based on industry best practice at the time of writing. With this in mind, this document does not provide an exhaustive list of contract clauses and the deep analysis required to develop a legally robust contract. It aims to be a guide to help the Local Authority (LA) consider the commercial principles behind the key contractual terms that form an EVI Concession Contract.

It is advised that the LA takes appropriate legal, financial, and technical advice prior to forming a contract. Ultimately, the LA's project scope, agreements with the supplier, local underlying laws, regulations and requirements will be fundamental factors affecting the final draft of any contract.

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Heads of Terms:

1. Term

Definition:	The length of time from Commencement Date to the End Date of the contract.
Commercial Principle(s):	Agree an optimum duration that will enable the service provider to make a reasonable return on their investment, given reducing levels of public subsidy, without locking the LA into unduly long contracts.
Notes:	Current Government subsidy schemes assumes that the level of public subsidy available for EVI will be lower than in previous grant schemes. This means that Concession contracts are likely to be longer as the proportion of capital investment being delivered by the service provider is higher. The term largely depends on this quantum of private finance being mobilised and the forecast future utilisation of the planned EVI. However, the **Term** must balance this with providing the opportunity for incumbents to be challenged by other providers and new entrants, to ensure competition. Ideally the term should match multiples of the expected useful economic life of the asset but may be adjusted to account for other project-specific commercial variables. Procurement exercises may choose to allow the **Term** to be a variable in the service provider's tender return, rather than defining a **Term** in the specification.
Possible Options:	8 – 20 years.
Recommendation:	15 years starting from contract signature.

2. *Break Clauses*

Definition:	A pre-agreed point in time when the contract can be ended early.
Commercial Principle(s):	Provide an opportunity for the LA to exit the contract before the **Term** ends.
Notes:	Unless financial **Compensation** is offered when they are exercised, **Break Clauses** in contracts are often viewed by the service provider as simply shortening the contract, i.e. the commercial value a 7-year contract with a break at 5 years is a defacto 5-year contract. The service provider is less likely to invest if they know the LA can walk away before they have had their chance to make a reasonable return on their investment.
Possible Options:	• No break clause. • Any number of whole years up to one less than the **Term.**
Recommendation:	Do not include a **Break Clause** without cause only at a specific point in time**.** Use the **KPI Framework** as the mechanism for ensuring high-quality delivery, with contract termination possible if required improvements are not achieved.

3. Extensions

Definition:	A pre-agreed length of time which can be added to the Term if certain conditions are met.
Commercial Principle(s):	Provide an opportunity for the contract to be lengthened with minimal additional legal and administrative effort, subject to timely, cost-effective, and high-quality delivery by the service provider.
Notes:	The **Extension** clauses should specify which aspects of the contract are rolled over and which are available for re-negotiation. If the contract falls under the provisions of Procurement Act 2023, then the details of any **Extensions** should be published within the initial procurement requirements. Usually, key commercial terms will be kept the same, but an **Extension** offers the opportunity for the LA to review and enhance certain terms as it is expected that the market and utilisation will have matured. **Extensions** assume that there will be no additional installations in the new period as the **Implementation Plan** will have completed. The presence of an **Extension** does not increase the value of the base case of the contract to the service provider but may be viewed as an upside. It is likely that the service provider will price their offering on the Term and not the Term + Extension. From the LA’s perspective, it gives the opportunity for a successful service to be rolled over easily without having to re-tender the whole contract. If a service provider is not achieving the **KPIs**, then the LA is under no obligation to extend the contract. An **Extension** may also be needed if a new tender is delayed due to administrative constraints at an LA. Note that **Extensions** risk reducing competition in the local market.
Possible Options:	• No extension. • Short extension to allow for administrative constraints. • One extension in whole years up to five.
Recommendation:	Allow the possibility of a short extension on the same basis for administrative constraints of **one year**, without a commitment to extend**.**

4. Sites

Definition:	The locations where the service provider should deliver EVI.
Commercial Principle(s):	Ensure that EVI is deployed where the LA's EVI and related Strategies require.
Notes:	In order to deliver the EVI programme, the LA and service provider will eventually need to agree the specific **Sites** for deployment, number and type of chargepoints. Local authorities may choose to assist with relevant **Permits** where this will assist in the deployment of EVI at the **Sites**. Failure to provide access to any existing or new **Site** on LA land may be a **Compensation Event**. Where a minimum set of **Sites** are desirable to be specified, this requires that a comprehensive list of site addresses, owners, titles, any reserved and ancillary rights, electrical capacity, wayleaves, rights or way, consent and other pertinent details be compiled and shared. In this situation, Local authorities should carry out title due diligence on each existing and new **Sites** and provide an appropriate warranty to the service provider. On top of these, priority localities should be identified along with the outcomes desired for the areas. In this situation, the LA should have the right to approve (or veto) any specific sites put forward by the service provider. The **Change Protocol** should enable additional **Sites** to be added and for existing/new **Sites** to be removed during the **Term.** Rights of access to install, operate, maintain and replace chargepoints on any **Site** will terminate on the **Expiry** of the Contract.
Possible Options:	• Do not specify sites. • Specify target areas/zones with desired charging outcomes. • Specify sites. • Specify sites with type and number of desired chargepoints. • Allow new sites to be proposed and agreed.
Recommendation:	Provide a list of any minimum-required specific sites and a comprehensive list of the necessary information for these. In addition, provide a list of the target areas/zones for additional **Sites** and desired charging outcomes, along with a process to approve specific sites put forward by the service provider. Include a **Change Protocol** for new sites to be suggested and agreed.

5. Existing Assets

Definition:	Charging Assets which have already been deployed by the LA.
Commercial Principle(s):	Ensure that Charging Assets in good working condition are leveraged to make a more commercially attractive opportunity for the service provider.
Notes:	Transferring **Existing Assets** into the service contract is only possible when the hardware is able to meet the baseline requirements of the **Technical Schedules** to enable it to be controlled by new service providers. There may be benefits to transferring the **Existing Assets** into the service contract, which may make a more commercially viable solution or improve value for money. Authorities should check that there are no restrictions on the transferability of any **Existing Assets** and that the assets are in sufficiently good condition to merit transfer. All relevant data relating to **Existing Assets** should be made available to bidders during the tender period, which may include technical specifications of the existing assets to check for interoperability. Bidders would be expected to carry out their own due diligence on this information and no warranty should be given by the authority as to the completeness or accuracy of this data. Where possible, existing product warranties should be transferred. Depending on interoperability, **Existing Assets** should be excluded partially from the **Key Performance Indicators**. Where **Existing Assets** are not included but the **Sites** where they are deployed are included, service providers may choose to swap out older charging assets for newer ones. If **Existing Assets** are swapped-out, consideration should be given to WEEE Regulations and the reduction of e-waste.
Possible Options:	• Include no existing EVI. • Include some existing EVI, for example by chargepoint type (slow/standard/fast/rapid/ultra-rapid) or by use case (on-street/destination/enroute etc) • Include all existing EVI.
Recommendation:	No requirement for the incoming service provider to include existing EVI. Where **Existing Assets** are in sufficiently good condition and are available to be offered, include details of the assets as an option for the new service provider to take on, if this improves commercial attractiveness.

6. *Local Connection Asset Ownership*

Definition:	The electrical and communications connection assets from the feeder cabinet up to the **Charging Assets**.
Commercial Principle(s):	Ensure that the LA is able to benefit from the **Local Connection Assets** beyond the **Term** of the contract.
Notes:	Investment in **Local Connection Assets**, which are often below ground, is unlikely to be replicated at each site during the life of the contract and usually has a longer useful economic life than **Charging Assets**. Where it has capital to invest (i.e. from internal capital budgets, Government subsidy schemes, Asset Financing or other), the LA may consider subsidising or paying for these assets. Their design and deployment should be completed in a manner which allows for easy upgrade in the future (for example using standardised retention sockets or groundworks). Responsibility for servicing, maintenance and repair rests with the owner of the **Local Connection Assets** and it is in the service provider's interests that these are maintained in sufficiently good condition to enable the service. **Local Connection Assets** investments also add value to that site.
Possible Options:	• LA is responsible for all assets. • LA is responsible for some assets. • LA is not responsible for any assets. • Asset responsibility is transferred to the LA at the end of the contract.
Recommendation:	Ensure responsibility for Local Connection Assets is transferred to the LA at nil cost at the end of the contract.

7. *Charging Asset Ownership*

Definition:	**Charging Assets** include the EV charging hardware, telecommunications equipment, internal software (sometimes called “firmware”), and integrated battery storage units (if used). It does not include back-office management systems.
Commercial Principle(s):	Ensure the LA has the option to take on **Charging Assets** at the end of the **Term**, should they wish to do so.
Notes:	The contract **Term** should be sufficiently long to enable the service to amortise the upfront investment costs. The service provider will be incentivised to maintain and repair the **Charging Assets** to ensure ongoing revenue, thus increasing the chance that the assets will be operational at the end of the contract. Where **Charging Assets** have capabilities or functionalities above and beyond the minimum required in the **Technical Schedules**, LAs may wish to request this to be declared in any tender submissions.
Possible Options:	• LA owns all assets. • LA owns some assets. • LA owns no assets. • Assets are transferred to the LA at the end of the contract.
Recommendation:	The Service Provider owns, maintains and operates the assets for the duration of the **Term.** At the end of the **Term**, the **Exit Strategy** should apply. If **Charging Assets** are to be transferred to the LA, this should be at nil cost to the LA and at the discretion of the LA. Else, the **Charging Assets** should be decommissioned at nil cost to the LA.

8. Permits

Definition:	The consents and permissions needed to deliver the contract
Commercial Principle(s):	Ensure that the service provider is legally permitted to deliver the contract
Notes:	The Service Provider should be responsible for obtaining all **Permits** and Necessary Consents, including but not limited to: • Use of Local Authority Premises; • Planning Permission; • Site Access Permission; • Land Leases; The LA should choose to provide assistance with permitting, where they are in a position to do so. Where planning or other necessary Consents are being sought after Contract Award, the authority may wish to offer a **Relief Event** for matters out of the reasonable control of the Service Provider. Where **Existing Assets** are transferred, the local authority should exhibit the relevant consents to bidders and may wish to offer some form of representation or warranty as to the statutory consents for existing assets only.
Possible Options:	• Service provider obtains all permits. • Service provider obtains some permits and LA obtains all other permits. • LA obtains all permits.
Recommendation:	The service provider should be responsible for securing all necessary permits. The LA should offer a **Relief Event** for matters outside of the reasonable control of the service provider.

9. *Grid Connection (new or upgraded)*

Definition:	A brand-new or upgraded electrical connection to the DNO network.
Commercial Principle(s):	Reduce the cost of the new or upgraded grid connection.
Notes:	The cost of obtaining a new or upgraded **Grid Connection** is one of the largest aspects of the capital investment. The LA should make as much data as possible available to all bidders to help inform costings. This should include feedback from the DNO and indicative connection costs for any named **Sites**. This will be for unwarranted information purposes only. It is worth considering which party is best to secure the new or upgraded grid connection and who holds the connection agreement. Key considerations will be which party can secure the most cost-effective purchase of electricity. If the Service provider secures the **Grid Connection** this should be able of being novated to the Authority to facilitate changes to the service providers in future. The **Change Protocol** may be engaged where a particular **Site** cannot be delivered due to matters outside of the reasonable control of the service provider.
Possible Options:	• Service provider responsible for new/upgraded grid connections and retains this. • Service provider responsible for new/upgraded grid connections and transfers ownership at contract end. • LA responsible for new/upgraded grid connection.
Recommendation:	The service provider transfers responsibility for any grid connections to the LA at the end of the contract. The LA should offer a **Relief Event** for matters outside of the reasonable control of the service provider.

10. Grid Connection (existing)

Definition:	A pre-existing electrical connection to the DNO network.
Commercial Principle(s):	Retain long-term control over the grid connection to facilitate service provider changes in future.
Notes:	The LA should make as much data as possible available to all bidders to help inform costings. This will be for unwarranted information purposes only. If it is responsible for the existing grid connection, the relevant information should be made available to the service provider as part of **Site** information.
Possible Options:	• LA responsible for existing grid connection.
Recommendation:	LA remains responsible for the current grid connection.

11. Technical Specifications for Capital Works and Operations

Definition:	The requirements that the EVI network must fulfil at commissioning and in-use.
Commercial Principle(s):	Ensure that safe, high-quality, user-friendly and future proofed EVI is installed.
Notes:	The contract should include a Schedule which captures current and emerging regulations, guidance, industry best practice in areas such as: • Capital Works • Hardware Standards and Specifications • Backoffice Systems and Software Functionalities • Customer Interface • Accessibility **Changes in Regulation**, standards or technology may evolve over the contract **Term** so it is important that both parties have the means within the **Change Protocol** to address this.
Possible Options:	See work on **Technical Schedules**
Recommendation:	See **Technical Schedules.** The service provider takes all regulation and technology obsolescence risk.

12. Implementation Plan

Definition:	The activities to install and commission the EVI
Commercial Principle(s):	Ensure the EVI network is delivered and commissioned in a timely fashion.
Notes:	The Implementation Plan should lay out the expected timing of installs at the beginning of the contract. This should be sufficiently long to allow the service provider to deliver their capital works, but consideration should be given as to the risk to operations that longer implementation plans might bring. The Implementation Plan may include consideration of what proportion of delivery will be considered success within the relevant timeframe (e.g. 99% of sites or 95% of chargepoints). The EVI network may also include passive provision, which encourages efficiencies in installation of the **Local Connection Assets**. Allowances should be made that these points may be activated outside of the **Implementation Plan** timeframes.
Possible Options:	• No explicit dates. • LA sets Key Milestone dates for [x] chargepoints of type [y] between [date 1] and [date 2]. • LA sets Key Milestone dates for [x] kW of total installed capacity between [date 1] and [date 2].
Recommendation:	Key Milestones should be set for the **Implementation Plan** to ensure the LA's EVI programme plan is delivered on time. **Key Milestones** mean the key delivery milestones to be met by the Service Provider as identified and described in the Implementation Plan. The activation of passive provision by installing Charging Assets after the **Implementation Plan** has ended should be allowed. The LA should offer a **Relief Event** for matters such as planning and grid connection where these are outside the reasonable control of the Service Provider.

13. Health, Safety and Environment

Definition:	The minimum standards for best practice and legal service provision.
Commercial Principle(s):	Ensure the EVI installation is conducted without detriment to anyone's health, safety or the environment.
Notes:	SHE regulations apply both to the service provider (and its subcontractors) as well as the end-users of the EVI. The **Change Protocol** may be engaged where regulations are updated during the **Term** of the contract.
Possible Options:	See work on **Technical Schedules**
Recommendation:	See **Technical Schedules.**

14. Approvals

Definition:	The right to review and approve plans ahead of time.
Commercial Principle(s):	Ensure that EVI is deployed to fulfil the LA's strategy and end-user needs in-line with its requirements.
Notes:	The service provider should include in the contract a generic set of Method Statements. These to include template designs for generic types of installation, site designs, electrical designs, project plans and the approach to Service Delivery. The contract should specify the process for reviewing items for approval, the timelines to be met and the grounds on which an LA can object. The LA may need to procure specific expertise to assist them with approvals that require additional skills.
Possible Options:	• LA to review no aspects of new or updated plans before implementation. • LA to review some aspects of new or updated plans before implementation. • LA to review all aspects of new or updated plans before implementation.
Recommendation:	LA to have the right to review all aspects of new or updated plans within an 8-week window before implementation, except where the window for approval is regulated outside of this contract (for example Section 50 or TRO).

15. Service Provider Works and Services

Definition:	The range of activities provided by the service provider to meet the LA's requirements.
Commercial Principle(s):	Ensure a high-quality, customer focused EVI network for end-users.
Notes:	The Contract should include a series of service provider Method Statements which captures how the Service Provider intends to deliver against the Specification set out in the LA's Requirements and **KPI Framework**. These could be generic installation configurations for the capital works. Changes to the Method Statements will need to be subject to the **Change Protocol** but it is expected that there are very limited grounds to reject such changes (for instance if the change breaches required consent or materially compromises the LA's EV Strategy).
Possible Options:	These are project-specific
Recommendation:	Project-specific requirements should be articulated in the contract schedules. Where there is a conflict between the LA requirements and the method statements, the LA Requirements will take precedent.

16. Key Performance Indicators

Definition:	Key measurements of the performance of the service provider.
Commercial Principle(s):	Ensure a high-quality service to the end-user.
Notes:	The service provider will be responsible for all risks associated with installing, operating and maintaining the chargepoints in accordance with **Permits**, the **Technical Specification** and their **Method Statements**. Where performance against the **Key Performance Indicator Framework** falls below an agreed threshold for a grace period (for example) 6 weeks, the LA should require the service provider to rectify their performance. Continued poor performance may trigger a Service Improvement Plan and/or **Compensation**. The LA may choose to have increasing **Compensation** levels for increasingly poor performance – these must be defined in advance in the **KPI Framework**. Continued poor performance beyond agreed thresholds in the Service Improvement Plan, or an instance of Critical Service Failure, may trigger an event of Service Provider Default and lead to Early Termination of the Contract. **Critical Service Failure** means the occurrence of any of the critical service failure incidents identified in the KPIs. Threshold for Critical service failures are intended to be calibrated through the KPI mechanism. To evidence performance against this **Key Performance Indicator Framework**, a monitoring and reporting Schedule will also be needed. Where **Existing Assets** are included in the Agreement, it may make sense to manage **KPI** performance between existing and new **Charging Assets** separately. The LA should open access to all relevant **Data** to verify performance monthly, quarterly and annual reports submitted by the service provider.
Possible Options:	The service provider should be subject to a range of measures.
Recommendation:	See **Technical Schedules.** The LA should allow a six-month grace **KPI** period to apply from contract award to any **Existing Assets**

17. Relief

Definition:	Defined events when the service provider does not achieve certain Key Performance Indicators but where this will not count towards a Service Provider Default and/or to a termination of the contract.
Commercial Principle(s):	Ensure that the contract remains commercially attractive to the service provider where circumstances are outside of the service provider's direct control.
Notes:	There may be a range of events in which the service provider cannot fulfil the contractual obligations, but relief can be claimed to prevent a Contractor Default occurring.
Possible Options:	• LA offers no opportunity for relief. • LA offers an opportunity for relief in some circumstances. • LA offers opportunities for relief in many circumstances.
Recommendation:	The LA offers some opportunities for relief, including: • Material delay in obtaining necessary **Permits**, consents and permissions, provided the service provider has complied with all relevant processes; and/or • Material delay caused by the **Grid Connection**, provided the service provider has complied with all relevant processes. • Downtime caused by grid operational problems, loss of electricity supply from the distribution network (i.e. power cut). • Material delay caused by slow response to **Approvals** by the LA**.** • **Safety Incidents** where EVI may be required to be powered down by the emergency services. • **Vehicle Faults** where issues are caused by a fault in the vehicle rather than with the EVI. • Loss of service due to EV chargepoint undergoing **Scheduled Maintenance**. • Interruption in communications networks that prevents the EV charging equipment from functioning correctly. • **Vandalism** where physical damage deliberately done to an EV charging device that prevents it from functioning. • **Force Majeure** events. The LA should not extend the **Term** for any **Relief** events that occur during the contract **Term**.

18. Compensation Events

Definition:	Situations when a party would be entitled to financial compensation from the counterparty for direct costs and/or losses.
Commercial Principle(s):	Ensure that the contract remains commercially attractive to the service provider where circumstances are outside of the service provider's control and provide mechanism to apply financial penalties to service provider for poor performance.
Notes:	There may be a range of events in which the service provider might be not only entitled to **Relief**, but also financial reimbursement. The contract should define the form of **Compensation** and method to calculate the amount. Any financial compensation due should be able to be set-off against any **Concession Fees** due to the LA in the same contract year. Furthermore, there may be a range of events in which the LA may be entitled to levy financial penalties in the case of poor performance.
Possible Options:	• No opportunity for compensation. • An opportunity for compensation in some circumstances. • Opportunities for compensation in many circumstances.
Recommendation:	The LA offers some limited opportunities for **Compensation**, including: • Failure to provide access to LA-owned **Sites** specifically included in the contract; • Relocation, removal or blockage of an active **Site** by the LA during the contract **Term**; and/or • LA Default or Force Majeure (see **Early Termination**). The service provider pays **Compensation** when: • Performance does not meet pre-agreed **Key Performance Indicators**; • Delivery is not achieving Key Milestones set out in the Implementation Plan; and/or • In the event of Service Provider Default.

19. Insurance

Definition:	The effective financial protection of the LA and end-users.
Commercial Principle(s):	Ensure a sufficiently high insurable value for all relevant risks.
Notes:	Insurance is essential to ensure that the LA and service provider are appropriately protected against a range of risks and to ensure that the charging service is not unduly impacted by these hazards.
Possible Options:	• Service provider to obtain a range of insurances. • The LA should be a named party on insurance policies for assets on its land.
Recommendation:	LA to require that the service provider holds a minimum level of: • Public liability - £10m • Employer's liability - £10m • Professional indemnity - £2m • Product liability - £10m Contractor's all-risk insurance could be accepted as long as it covers the same risks.

20. Financing

Definition:	The sources of income, grants and borrowing to fund any capital investments and/or ongoing operating costs.
Commercial Principle(s):	Enable the optimum financing structure through a range of public and private income sources to maximise LA value for money.
Notes:	Through pre-procurement market engagement, the LA should establish a contract structure and risk allocation that could support a commercially viable service and an efficient financing structure. Finance for the LA could be sourced from: • LA Capital Funds • Regional Capital Funds • National Capital Funds • Loans • Asset Financing • Bonds • Service provider Funding. • Equity; The Concession commercial arrangement is organised around service provider funding, but this may be supplemented with the other sources. Further notes are available in the Knowledge Repository
Possible Options:	• Service provider finances all capital investment. • LA pays for capital investment in new or upgraded connections. • LA contributes part of the capital costs during the contract **Term.**
Recommendation:	Where it has capital to invest (i.e., from internal capital budgets, Government subsidy schemes, Asset Financing or other), the LA is advised to see if it can subsidise the cost of upgraded or new grid connections but may choose to contribute more to the overall capital investment.

21. Tariff Administration

Definition:	The price paid by end-users
Commercial Principle(s):	Ensure competitive and fair prices for end-users, without constraining the ability to change tariffs quickly to respond to circumstances.
Notes:	The EVI market is not yet considered sufficiently mature for competition to be fully relied-upon at-present to ensure fair prices for end-users; price transparency is not available to all users and alternative options are limited in many cases. The Service Provider should have the ability within **Tariff Administration** to adjust the tariff to reflect changes to input costs outside their direct control such as electricity rates and Changes in Regulations as described above. It is important to establish who is responsible for **Tariff Administration** and how any tariffs are to be reviewed and adjusted (up and down) during the contract **Term**. Any control or influence by the LA should allow for innovation in off-peak tariffs, including and up to time-of-use pricing. Furthermore, any control or influence should not discourage cost-effective energy purchase and hedging. Where the LA is involved in reviewing the tariff, the Contract should include a Schedule (The Tariff Review Process) to establish the protocol by which both this happens.
Possible Options:	• Service provider full control of tariffs. • Service provider controls the tariffs under a % margin cap over total energy costs. • Service provider controls the tariffs under a p/kWh margin cap over total energy costs. • LA agrees tariff changes with a review and benchmarking process to justify changes and ensure competitiveness. • Service provider open-book accounting with LA review (i.e., making the reason for tariff changes transparent). • LA controls and sets the tariffs

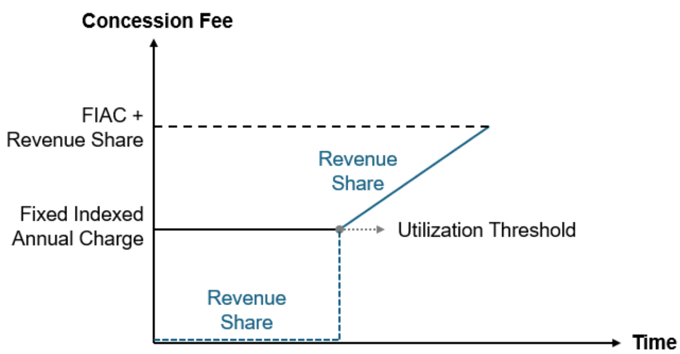
Recommendation:	There are two recommendations, which can be implemented independently or together. Firstly, **a p/kWh Margin Cap**. In this instance, the service provider should have full control to change their tariffs, without having to seek approval from the LA. The margin cap will be agreed at the beginning of the contract with reference to the wholesale cost of energy. If the service provider exceeds the cap in a given period, clawback clauses would apply to that period - this approach is expanded in more detail in the sections, below. Secondly, **a Benchmarking Review**. In this instance, the service provider must apply to the LA to change its tariff, supplying appropriate information on the tariffs currently being charged for similar EVI. The LA would have a set period of time within which to review this request to agree or decline the tariff change, after which the service provider can implement it (or not). Thirdly, **a hybrid approach** could be used, applying the p/kWh Margin Cap over the length of the contract with a **Margin Cap Review** undertaken to allow for the Margin Cap to be adjusted where this is agreed by both parties. A Margin Cap Review should be undertaken using broadly the same approach as a Benchmarking Review, with the key difference being that the outcome of the Margin Cap Review would be a change to the Margin Cap, rather than the tariff itself.

Margin Cap Mechanism:	A p/kWh margin cap could be enforced as follows: • Each period (i.e., quarterly), records of the ex. VAT revenue for charging services received from customers in £ is shared with the LA (“revenue”). • The average cost of electricity to the supplier over the same period are shared with the LA (including per-unit costs, standing charges, levies, taxes and fees) (“Supplier Cost of Electricity”). The supplier may calculate its per-kilowatt hour electricity costs in such a way as to account for any fixed electricity supply costs (such as standing charges and capacity charges) that are reasonably incurred in the delivery of the contract, provided that any such calculation is shared with and approved by the Authority. All costs to the supplier must be evidenced by providing a valid Power Purchase Agreement or equivalent document. • The total recorded energy dispensed by the service provider over the same period is shared with the LA (“total energy sold”). • The following equation is used to calculate the p/kWh Gross Margin: (Revenue / Total Energy Sold) – Supplier Cost of Electricity. • If p/kWh Gross Margin > p/kWh Margin Cap, then the difference is shared back with the LA by increasing the **Concession Fees** by the same value.

Margin Cap Worked Example EXEMPLAR VALUES ONLY	Service Provider X delivers a charging service for Loughingham Council at Nottsborough Car Park. 5 charging sockets are installed under a Concession contract in which a 50p/kWh Margin Cap is agreed. Input parameters: • In January, 1,000 kWh of charging is vended at a price of £1.50 / kWh. • In February, 1,500 kWh of charging is vended at a price of £1.50 / kWh. • In March, energy prices rise so Service Provider X chooses to put their prices up: 500 kWh is vended at a price of £1.50 / kWh, followed by 200 kWh at £2 / kWh. • The Supplier Cost of Electricity for this energy over the period averaged 35p/kWh, as reported by OfGem • The Total Energy Sold was 3,200 kWh Calculation: • Revenue = (1000 x 1.5) + (1500 x 1.5) + (500 x 1.5) + (200 x 2.0) = £4,900 • Supplier Cost of Electricity = 35p/kWh • Total Energy Sold = 3,200 kWh • p/kWh Gross Margin = (£4,900 / 3,200 kWh) – 35p/kWh = 118.125p kWh Decision: • Service Provider has breached their p/kWh Ceiling by 68.125p Action: • Service Provider pays LA the difference: (£0.68125 x 3,200) = £2,180.

22. *Concession Fees*

Definition:	The fees the LA charges the service provider to cover contract management costs.
Commercial Principle(s):	Ensure the LA's long-term contract management and administration costs are covered and the LA benefits from the value of the concession provided.
Notes:	The LA is offering the concession contract to the service provider and the **Concession Fees** represent a financial return on this opportunity. This also can cover the costs of managing the contract, which would otherwise come out of the LA's internal revenue budgets. Many service providers would prefer a profit share arrangement, even though this can be difficult to monitor and audit. This reflects that many

	service providers are not currently breaking even, so revenue shares cause an additional cost to their business. Ultimately any **Concession Fees** will be paid-for by the end-user, which may undermine the LA's EVI Strategy, or will eat into the service provider's ability to make a return on the investment. Furthermore, where the contract is subsidised by Central Government, high **Concession Fees** will be part-paid by this subsidy, which is not the desired purpose of the funding.
Possible Options:	• Service provider keeps all revenue. • Service provider pays a fixed indexed annual charge. • Service provider shares a proportion of gross revenue. • Service provider shares a proportion of gross or net profit. • LA has a right to waive its fees for a period.
Recommendation:	The LA should not agree a profit share, which is difficult to audit and reduces near-term income for the LA. Where there is not enough public funding in place to cover contract management, the LA should receive a fixed indexed annual charge to cover only contract management and administration costs. Once utilisation reaches a sufficient threshold, a small additional revenue should be added to the fixed charge to share upside value with the LA (this could be a proportion of the % Gross Margin calculated under **Tariff Administration**). The graph below illustrates how a revenue indexed annual charge and a revenue share can be used together, with the revenue share effectively "topping-up" the fixed indexed annual charge when a utilisation threshold is reached.  In exceptional circumstances, the LA should reserve the right to waive its share of the revenue, with the reduction in costs being passed directly to the end-user.

23. *Exclusivity*

Definition:	The practice of entering into similar contracts (or not) with other service providers anywhere within the LA's administrative area in relation to the same or similar Services.
Commercial Principle(s):	Ensure a competitive and a consistent service for end-users.
Notes:	Managing exclusivity is essential to a well-functioning market that delivers value for money for end-users through a high-quality, competitively priced, consistent service. Exclusivity can be managed through the number of service providers in a given market and the constraints placed upon their operations. For example, some providers may wish to obtain assurances that LAs will not let contracts to competitors within a certain distance of their **Sites.** These provisions might be time-limited or for the duration of the **Term.** However, allowing too many service providers into a market risks a fragmented or inconsistent end-user experience. LAs will need to strike a balance between ensuring service providers make a reasonable return on their investment and encouraging competition in the local market. Total market exclusivity is considered highly unlikely as service providers may be conducting their own deployments, independent of this contract. There are examples from Netherlands where exclusivity terms have been identified as one of drivers for increased private investment in local chargepoint networks. End-user interest in such cases is managed by KPIs within contracts which are closely managed by LAs. There is a trade-off between close contract and KPI management which requires higher resourcing levels and introducing competition in the market.
Possible Options:	• One exclusive service provider. • Multiple service providers contracted with full-**Term** limits upon operations. • Multiple service providers contracted with a period of limits upon operations. • Multiple service providers contracted to deliver for different EVI use cases (e.g., car parks, on-street, destination etc) but exclusive to those use cases. • Multiple service providers with no limits upon operations.
Recommendation:	A justification of the approach to local market competition and exclusivity should be developed by the LA. This should take into account the short and long-term consequences including effect on end-users. The LA should form its position based on this justification report.

24. Data

Definition:	The information shared by the service provider.
Commercial Principle(s):	Ensure the service provider shares machine-readable access to all relevant data on the EVI operation and performance with the LA, Central Government and named entities.
Notes:	Access to data on the number, type, location, status, performance and characteristics of chargepoints deployed will be essential to monitor the EVI effectively. The scope, resolution and frequency of data requested must be balanced with the effort required to source and send it, and the value that it brings. Furthermore, some aspects of the data will be commercially sensitive and/or confidential and should be handled accordingly. This will also support management of the EVI Programme, strategic reviews and/or future planning. Static data about the **local connection assets**, **charging assets** and other solution manuals should also be made available in the event that the **Exit Strategy** requires transfer to another party. The upcoming Consumer Experience Policy is expected to make certain data sharing mandatory. Appropriate assurances should be made to the service provider that data sent to the LA will not be shared inappropriately or in breach of GDPR legislation.
Possible Options:	A range of data might be made available to Central Government, the LA and its partners on a confidential basis.
Recommendation:	See **Technical Schedules**. Personal Customer **Data** should not be shared.

25. Compliance

Definition:	Adherence to all laws and regulations, as well as the requirements of the contract.
Commercial Principle(s):	Ensure the service provider complies with relevant design, installation, operation and maintenance laws and regulations, as well as the project-specific obligations set out in the contract.
Notes:	The onus should be on the service provider to operate in a compliant and legal manner at all times. Where a **Change in Regulation,** that could not be reasonably foreseen, impacts the performance of the contract, the LA should not unreasonably withhold approval for any **Change Protocol** submission.
Possible Options:	A range of laws and legislations apply to this contract.
Recommendation:	See **Technical Schedules**. **Change Control** should allow for handling of change-in-law costs on a fair and reasonable basis.

26. Indemnity

Definition:	The apportioning and limits of liability.
Commercial Principle(s):	Ensure the LA is indemnified against any losses or liabilities that they incur as a result of the service provider's (non-) performance of the contract.
Notes:	Service Provider indemnities should be covered by the relevant **Insurance** policies. Indemnities are likely to follow LA standard contract clauses, including consideration of • Caps (maximum amount) • Obligations of the LA to notify the service provider of any claims • Allowance the service provider to make representations in relation to such claims; and/or • Obligation on the LA not to settle or compensate any claims without the service provider's prior consent
Possible Options:	A range of liabilities may be required to be indemnified by the service provider.
Recommendation:	See **Technical Schedules**.

27. Early Termination

Definition:	Situations that mean the contract might be terminated before the **Term.**
Commercial Principle(s):	Ensure the LA has the right to terminate the contract early following material breach of the contract and that the LA is clear on its rights in this situation.
Notes:	The contract should include provisions as to the level of compensation due to the Service Provider, should the contact terminate before the end of the **Term** other than **Contractor Default**. There should be no payment to the Service Provider on the natural expiry of the Contract. If **Early Termination** is being considered, a remediation period should be offered to either party to give time and space to resolve the problem.
Possible Options:	A range of major situations may trigger early termination.
Recommendation:	LA should be able to terminate upon: • Default by service provider. • Default of LA. • Force Majeure. • Repeated or consistent failure to meet **KPIs**. Service provider should be able to terminate upon: • Default by LA **Compensation** to the service provider on termination should only be considered in events of LA Default (net asset value plus loss of profit at point of termination) and Force Majeure (net asset value at point of termination). Compensation should not be offered to service providers on termination if this is triggered by repeated or consistent failure to meet **KPIs**.

28. LA Default

Definition:	A situation when the LA cannot fulfil its obligations in the contract or when the LA fails to pay any undisputed amount to the Service Provider on the date such payment is due.
Commercial Principle(s):	Ensure clarity of what constitutes an **LA Default**
Notes:	The contract should include provisions for what happens if the LA cannot fulfil its obligations. Some scenarios are explicitly mentioned in **Relief Events** and **Compensation Events**, where this impacts the service provider's ability to fulfil the contract or make a return on its investment, respectively. In extreme circumstances beyond these, an **LA Default** may be triggered, which can lead to **Early Termination.**
Possible Options:	A range of events may be considered a **LA Default**
Recommendation:	These events should be considered a material breach of contract and lead to a **LA Default:** • The local authority exercising its right to terminate at will. • Overdue payments of undisputed amounts due to the Service Provider

29. Service Provider Default

Definition:	A situation when the service provider cannot fulfil its obligations in the contract.
Commercial Principle(s):	Ensure clarity of what constitutes a **Service Provider Default.**
Notes:	The contract should include provisions for what happens if the service provider cannot fulfil its obligations. Some scenarios are explicitly mentioned in **Compensation Events**, where the LA would be due compensation. In extreme circumstances beyond these, an **LA Default** may be triggered, which can lead to **Early Termination.**
Possible Options:	A range of events may be considered a **Service Provider Default.**
Recommendation:	These events should be considered a material breach of contract and lead to **Service Provider Default**: • Winding up, dissolution, insolvency or bankruptcy • Failing to pay their debts • Failure to achieve certain milestones in the **Implementation Plan**

	• Fraudulent or corrupt behaviour • Repeated or persistent failure to meet certain **KPIs** • Failure to provide an **Improvement Plan** deemed reasonable by the Authority or failure to meet the milestones in the plan. • Committing a Critical Service Failure • Committing a Prohibited Act • Committing a Material Default • Ceases to carry on its business fully or partially which in the reasonable opinion of the Authority would materially affect the delivery of the Services • A breach by the Service Provider of its obligations to take out and maintain any of the Required Insurances • Providing untrue or incorrect material information • Subcontracting, novation or assignment of the contract to a third party without prior consent from the LA • Liability Cap being reached or exceeded • Having three or more of the Leases forfeited, or terminated (other than by mutual surrender) except if a Lease is terminated by the Landowner exercising a right to terminate other than where the Service Provider is in default

30. Exit Strategy

Definition:	The actions at the end of the contract.
Commercial Principle(s):	Enable an effective transition to a successor service provider
Notes:	A planned transition and handover protocol should be developed and submitted to the LA within twenty (20) working days after notice being served to terminate the contract, or twelve (12) months prior to the expiration of the contract, whichever is sooner. At the end of the contract term all installations should be functioning and be able to meet the LA's requirements. It is typical to build-in a transition period while the LA finds a new service provider to operate **Existing Assets** or for the service provider to make the sites good.
Possible Options:	A range of actions may be required at contract end.
Recommendation:	A backstop position is recommended whereby all sites should be decommissioned and left in an orderly and safe state, unless otherwise agreed. If a different approach is desired between the parties, within twenty (20) working days after notice being served to terminate the contract, or twelve (12) months prior to the expiration of the contract, whichever is sooner, the service provider should be required to define the following in an **Exit Strategy**: • Handover all relevant assets, data, software, manuals and the like. • Handover relevant documentation. • Leave all sites in orderly and safe state, as defined by **Technical Schedules**. • Transfer the benefit of 3rd party warranties and guarantees.

31. Change in Regulations

Definition:	The ways in which changing regulations might impact the contract.
Commercial Principle(s):	Ensure the responsibility for complying with changes in regulations lies with the service provider.
Notes:	Regulations will change over time, which may include aspects subject to the contract. Although future regulatory changes are unable to be predicted, this cannot be the responsibility of the Local Authority. Changes in Regulation could impact the service provider's ability to deliver its obligations under the contract and it is their responsibility to ensure that the service is legal and compliant. The **Tariff** provides a mechanism to address any changes in operating costs and it is anticipated that any major changes in national regulation will be consulted-upon in advance. The **Change Protocol** could be used in extreme circumstances where adjustments to the contract are needed to account for changing regulation.
Possible Options:	• Provide relief for change in regulations • Do not provide relief for change in regulations
Recommendation:	The Service Provider will not be eligible for a **Relief Event** or a **Compensation Event** for any **Change in Regulations** that could have been reasonably foreseen during the contract **Term**. It is envisaged that the service provider will manage this risk through adjustments to the tariff**.** An example of a foreseeable change in regulation would be where the UK Government had announced its intent to regulate (e.g. through a public consultation or other official statement) prior to the Service Provider agreeing to the terms of the contract. An example of an unforeseeable change in regulation would be, for example, a significant shift in UK Government policy following a change of administration during the contract term. A **Change in Regulation** that prevents performance of the contract should be treated as an event of **Force Majeure**.

32. Change Protocol

Definition:	The process by which contractual changes are proposed, reviewed, rejected, or accepted.
Commercial Principle(s):	Ensure clarity on the points of contract which can change during the **Term.**
Notes:	If the Contract must comply with Procurement Act 2023 regulations, then any changes to the contract during its term must comply with Section 74 of the regulations which lists the acceptable reasons for a change. The **Change Protocol** should enable the service provider to suggest alternative **Sites** that deliver a comparable solution for the locality where the service provider has evidenced to the reasonable satisfaction of the LA that the risk of delay or additional cost was beyond its reasonable control. The **Change Protocol** should enable the service provider to propose changes to allow for changes in regulations and technology. Authority approval of any such changes should not be unreasonably withheld. These should be a no cost to the authority for this. The **Change Protocol** should enable the service provider to propose design and installation changes where these are reasonably required to improve the project or are necessary to facilitate the continuity of the project within acceptable budgets. The **Change Protocol** should enable the LA to procure an alternative service provider where a corporate restructuring, takeover, merger, acquisition or insolvency means that the original service provider is unable to leads to the inability to meet **Key Performance Indicators.** Allow changes in **Health, Safety and Environment** regulation and good practice.
Possible Options:	Change Protocols and Change Management are relatively standardised in LA contracts. The options for consideration are usually around the turn-around time required from the parties, when a change is proposed. These can vary from 7 days to 31 days, depending on the magnitude of the change.
Recommendation:	Include a **Change Protocol** to allow changes to be proposed, reviewed, rejected or accepted, with 14-day turnarounds to ensure these are handled in a timely manner.