SCOTTISH FUTURES TRUST

Scottish Futures Trust

Top Ten Commercial Considerations for Local Authorities for EV Infrastructure Service Contracts

January 2024

1.0 Summary

This commercial insights paper captures feedback from the market gathered by the Scottish Futures Trust (SFT) over the past two years to help guide local authorities in the development of future concession or service type contracts with the private sector to expand public Electric Vehicle (EV) charging services at scale.

SFT's Net Zero Transport Team is working closely with Transport Scotland, local authorities and the private sector to develop alternative business models for public EV infrastructure in Scotland. This activity is supported through the Electric Vehicle Infrastructure Fund (EVIF), where up to £30m of public sector funds will be used to leverage private investment for public EV charging services.

For local authorities seeking to develop a concession or service type contract with the private sector, this paper sets out the **top ten** commercial considerations along with a suggested approach.

Each commercial consideration assumes a private sector led approach which is described in more detail in Section 3. This Section also sets out things to consider for future contracts.

Each initiative should be considered on a case by case basis to reflect project specific circumstances and further developments in the market and this guidance document is intended to support Local Authorities and is not a substitute for independent legal and procurement advice.

Commercial Issue	Suggested approach for local authorities
1. Numbers, type & capacity	Specify requirements based on outcomes for localities rather prescribe numbers, type and capacity.
2. Site selection	Identify priority localities but allow flexibility in final location if it lowers installation costs or increases usage.
3. Existing chargepoints	Ensure assets are at least OCPP 1.6 compliant and utilisation data and maintenance logs are available.
4. Tariff setting and review	Service provider to set & vary tariffs but with an agreed protocol to ensure tariffs remain competitive.
5. Contract length	Set an appropriate period to allow the service provider to recoup and make a return on the invested capital.
6. Grid connections	Allow the location and phasing of the installation programme to flex in response to grid capacity constraints.
7. Revenue / profit share	Revenue share with a minimum fee is suggested. Additional profit sharing may be appropriate in later years.
8. Key performance indicators	Focus KPIs only on those areas necessary to monitor service quality, chargepoint availability and reliability.
9. Early authority termination	If the Authority seeks early (no fault) termination, the Authority should pay appropriate compensation.
10. Liability cap	Set a proportionate cap on the service provider's liability to Authority in the event of poor performance.

2.0 Background and Context

Scottish Government has set out its vision for the public EV charging network. The vision places the needs of local communities, businesses and visitors at its heart and is structured around five themes:

1. **Comprehensive and convenient –** so that the network is well-designed and reliable with chargepoints located where people need them across Scotland.
2. **Meeting the needs of users** – where using chargepoints is simple, safe and affordable and works for everyo**ne regardless of their age, health, income or other needs.**
3. **Grown with private investment** – to help the network develop at scale and pace across all of Scotland, leveraging the skills, expertise and resources of a growing number of chargepoint network providers.
4. **Clean, green energy** – where Scotland's electric vehicles are 'fuelled' from Scotland's abundant renewable energy potential and where chargepoints are integrated into a flexible, modern energy system.
5. **Wider sustainable transport system** – where locations of chargepoints shorten car journeys and reduce dependency of privately owned vehicles by providing people with opportunities to travel using car clubs, or public transport – as well as enabling journeys by walking, wheeling and cycling.

As Scotland seeks to expand its public EV charging network, local authorities have a key role to play in enabling the delivery of a comprehensive network across Scotland that complements the significant standalone investment from the private sector which will be essential to meet forecast demand.

The annual investment in Scotland's public EV charging network may, in time, approach £100m and it is anticipated that the majority of this will come from the private sector. To ensure Scotland leverages as much private sector investment as possible from the grant funding available, it is essential that future local authority contracts which seek to mobilise private capital are based on an equitable allocation of risk.

This commercial insights paper reflects on SFT's extensive engagement over the last two years with chargepoint operators, funders, local authorities and other UK delivery support bodies as to the allocation of key risks and responsibilities in future contracts.

Other related guidance which has been prepared by SFT includes:

1. Critique of existing EVI procurement options
2. Initial Draft – Concession Contract – Template Front End
3. Insights Report on Tariffs

3.0 Top Ten Commercial Issues

3.1 Chargepoint numbers, type, and capacity

Transport Scotland has provided funding for local authorities to develop public EV chargepoint Strategies and Expansion Plans (SEPs). These SEPs will identify each local authority's assessment of the likely need for additional chargepoints in the medium and long term as well as the components of this additional demand where they consider private investment on its own may not be viable and new contract models are required.

It is recognised that the initial pipeline of installations identified in these SEPs will be a best estimate at a point in time based on range of assumptions. To ensure on-going alignment with Scotland's vision for public EV charging and to enable the flexibility to respond to updated demand forecasts as well as developments in the EV charging market, it is suggested that future contracts set a charging outcome to be realised for communities as the top level outcome rather than mandate the delivery of the chargepoint numbers, types and capacities at specific locations.

The installation pipeline set out in the SEP could identify priority localities and form the basis of an initial rolling investment plan that is developed in partnership by the local authority and the appointed service provider.

Things to think about:

- Early engagement with planning and highway/roads departments in relation to required consents.
- Identify priority localities in the installation pipeline to align with the authority's vision and outcomes for public EV charging.
- Ensure the procurement process and contract documents allow for additional or substitute chargepoint installations to be proposed by either the local authority or the appointed service provider and they include for a schedule of rates to allow pricing on a transparent basis.
- Guard against overly prescriptive specifications but ensure that input requirements reflect national and local policy objectives which are not covered by existing regulations.
- Develop principles for changes to chargepoints e.g. removal or relocation during the contract period and how these will be agreed.

3.2 Site selection

In a similar manner to the suggested approach to identify chargepoint numbers, type and capacity, it is suggested that the appointed service provider has the opportunity to offer alternative locations if these can offer a better solution and that approval by the authority is not unreasonably withheld.

Many SEPs have identified possible locations for new chargepoints based on an initial desk-top assessment of site suitability, estimated grid connection costs and available grid capacity. As more information becomes available during the installation phase it may offer better value for money for an alternative location to be identified or for the phasing of the installation programme to be re-profiled. Many potential service providers advocate a partnership approach to identifying final site locations.

Things to think about:

- Early engagement with the distribution network operator (DNO) prior to procurement to assess the suitability of proposed locations is essential.
- In advance of procurement carry out landownership checks and grid capacity checks on priority locations for the first tranche of installations that are most likely to form part of the installation programme in the first 12 months following contract award.
- In partnership with the service provider develop and regularly update a rolling programme of title checks and grid capacity assessments for planned installations to meet the desired outcomes.

3.3 Existing Chargepoints

Local authorities currently own and operate over 2,100 public chargepoints. Transferring responsibility for one or more element associated with existing public chargepoints to a service provider, including the operation, maintenance or replacement, may improve the commercial viability of a future concession type contract. Local authorities will have to consider a range of factors when identifying the preferred option(s) associated with future ownership, operation and replacement of existing public chargepoints, including existing and future conditions of grant applied by Transport Scotland funding. It is recognised that there is no specific requirement for responsibilities associated with existing chargepoints to transfer at the start of the contract, although this is recommended in most cases. Regardless of the approach, where any element associated with the operation of existing chargepoints is to transfer to a third party it will be important that as much information as possible is made available to prospective service providers. This should include:

- Details of existing warranties
- Maintenance history
- Fault and fault resolution logs
- Interoperability
- Open Charge Point Protocol (OCPP) compliance
- Utilisation data
- Historic introduction and changes to tariffs
- Land ownership and any parking restrictions
- Requirement for chargepoint branding

Things to think about:

- What would trigger replacement of an asset (e.g. age / performance) and where might there be exceptions (e.g. persistent fault or uneconomical out of warranty repair).
- Where appropriate, the service provider's rights to access, maintain and replace any transferred chargepoint.
- Consider offering a time limited "grace period" for performance against Key Performance Indicators (KPIs) for transferred chargepoints.
- Consider developing a handover protocol to ensure the smooth transition of existing chargepoints. This could be a phased handover over the installation period.
- Where existing chargepoints are to be replaced ensure the contract reflects any conditions of grant which require for such chargepoints to be repurposed or reused within the public or third sector.
- The need to ensure an alternative back office solution is in place well in advance of the expiry of the current ChargePlace Scotland contract, regardless of whether elements associated with operation of existing chargepoints are transferred to the service provider or not.

3.4 Tariff setting and review

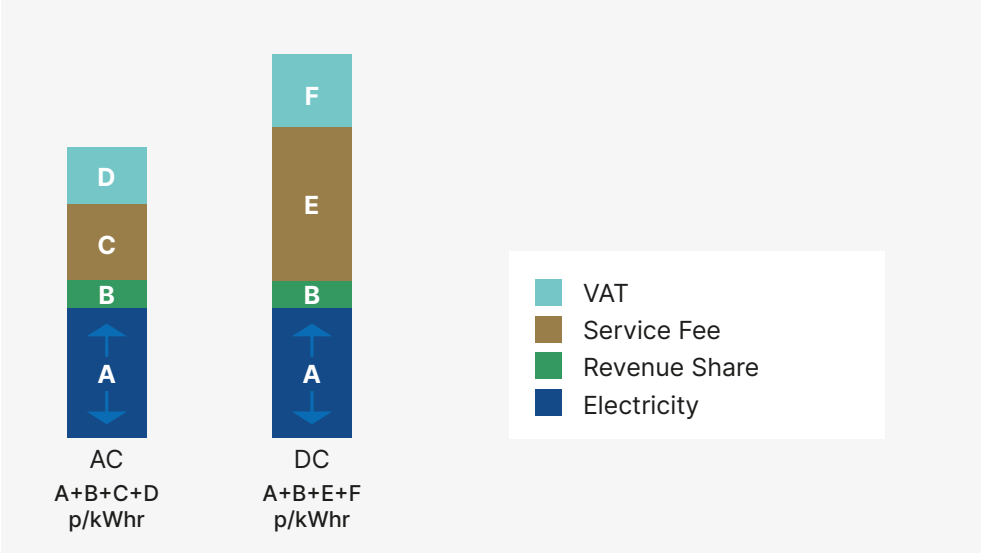
Feedback has been received that where service providers are investing their capital and taking demand and operational risk, they need to have the discretion to set and review tariffs.

There is an obvious public sector concern that the tariff for public charging services enabled by local authorities are fair, sustainable and enable future investment. SFT's Insight Report on Tariffs stressed the importance of setting tariffs that enables investment in an expanded network but which also supports the principle of a just transition through flexible pricing regimes and discounts for targeted user groups.

Where there is competition for the provision of charging services, market forces will encourage service providers to continue to develop their pricing strategies to attract users. However, in some localities which are a priority for the EVIF, there may be limited competition for charging services. Consequently there is a case for future contracts to include a review protocol to ensure prices charged remain in line with the principles of fair, sustainable and enabling tariffs.

In such circumstances the following options could be considered:

1. **Benchmarking** – the price charged is compared with the prices levied by other service providers proving broadly comparable services within the UK; and
2. **Service Fee Cap** – a capped rate (indexed) for providing the required services (over and above the cost of electricity, excluding VAT and any concession fees) is set as a bid back item at the tender stage. The reasonableness of this service fee cap and the basis on which it is indexed to be agreed prior to contract award.



The tariff charged would not be expected to exceed the lower of the benchmarked rate or the rate based on the capped service fee.

If a local authority is considering leasing individual sites (e.g for High Powered Charging (HPC)[1]) and all installation works are fully funded by the private sector, it is likely that in those circumstances tariff setting and review would be left entirely to the service provider for the duration of the lease.

Things to think about:

- Who is sourcing the electricity and how do changes out with either parties' control feed through to a change in the tariff?
- Is local competition likely to be sufficient to regulate tariffs in the best interest of consumers?
- How can flexible or lower tariffs be introduced at different times of the day or for target user groups to ensure fair charging for consumers?
- What are the most appropriate benchmarks for the tariff review protocol?
- Ensure any review process is undertaken and approved in a timely manner.
- What index should be used to adjust the service fee and the revenue share on an annual basis and what proportion of the service fee should be subject to indexation (these could be bid back items)?
- Share any proposed tariff review protocol with prospective bidders to seek feedback in advance of commencing procurement.

3.5 Contract Length

For those authorities considering a concession type contract the Concession Contracts (Scotland) Regulations 2016, regulation 20(3) requires that "for a concession contract lasting more than five years, the maximum duration of the concession contract must not exceed the time that a concessionaire could reasonably be expected to take to recoup the investment made in operating the works or services together with a return on invested capital, taking into account the investment required to achieve the specific contractual objectives."

1 Typically >100kW DC

Feedback from most CPOs is that for initiatives comprising mainly AC on-street or destination charging a contract length of at least 15 years is necessary and 20 years is preferred. Feedback has also been received that it can be in the order of seven to ten years to break even.

An additional consideration is to align the contract term with multiples of the expected life span of chargepoint installations. Most new chargepoints have an expected life of eight to ten years so a 15 / 20 year contract would allow for one mid-term replacement cycle of installed chargepoints.

For high powered charging an option exists for local authorities to lease suitable sites to chargepoint operators to provided fully funded services. In these circumstances the requirement for a lease of 20 to 25 years appears to be the norm.

The suggested approach at the end of any concession type contract is that all chargepoints should revert to the local authority at no cost. At that point the local authority could decide to tender a new concession, sell the chargepoints or bring the services in-house if that offers better value for money.

Things to think about:

- Engage with the market prior to commencing procurement as to the appropriate contract length.
- The contract length should be determined prior to procurement.
- An option for the authority to extend the contact length by say five years may be prudent but the initial contract term will only be considered by service providers when costing their solutions.
- What happens to the chargepoints at the end of the contract period? Consider the merits of all chargepoints along with all supporting data and information reverting to the local authority a no cost to enable effective competition for services in future.

3.6 Grid connections

Most local authority's SEPs have undertaken an initial desk top assessment of the likely capacity of the primary substation in relation to the envisaged pipeline of new chargepoints. Both Scottish Power Energy Networks (SPEN) and Scottish and Southern Electricity Networks (SSEN) are developing toolkits to help local authorities make a more informed decision as to the scope and phasing of the envisaged pipeline of new chargepoints.

Prior to commencing procurement it is suggested that local authorities engage with their local DNO to further understand the deliverability and likely connection costs of the envisaged pipeline of new chargepoints. Where this is not possible in the time available for all new chargepoints, it is suggested that an ongoing review of the phasing and prioritisation of new chargepoints is undertaken in partnership with the appointed service provider.

It is proposed that the service provider takes the risk and responsibility for applying for all new connections. However, it is considered appropriate to afford the service provider a relief event resulting from the delay by the electricity network operator, provided it has complied with all relevant processes.

Things to think about:

- Early engagement with DNOs is essential.
- Establishing a single point of contact with the DNO for all installations in the programme.
- Assess the viability and cost of grid connections for priority localities in advance of procurement.
- Ensure contract management resources are in place to develop a rolling pipeline of new chargepoint installations.

3.7 Revenue and profit share

Regardless of the delivery model adopted it is important local authorities consider how they will fund the management and administration of any future contract and how an appropriate income stream can be generated to continually plan, procure and enable any future expansion of the public network.

For most concession type contracts the concept of a concession fee, a revenue share and/or a profit share are available.

In the early years of any future concession it is likely that both revenues and profits will be low so returns to local authorities are also likely to be low. Therefore setting a percentage value of either revenue or profit due to the local authority is not likely to lead to sufficient income to properly fund the management of the contract or create a sinking funding to enable the further expansion of the network.

There is an added complexity in agreeing the way in which any profit is determined. Therefore a profit share mechanism is not recommended for the early years of any concession or service contract.

Local authorities may wish to seek a revenue share based on either a percentage of total income in any year or a p/kWh, but setting a minimum amount to ensure sufficient income is generated in the early years to fund contract management and administration activities.

Things to think about:

- How much income is necessary to fund the management and administration of the procured contract?
- What further development of the public network may require additional delivery models?
- Where multiple local authorities are working in partnership, how will any revenue share be attributed to each partner authority?
- The potential to target any revenue share over and above the minimum required to fund contract management activities to support investment in areas such as accessibility and targeted support for specific user groups.
- The ability to disapply any revenue share in certain circumstances (e.g. income is greater than need and a lower tariff could be offered to all users or targeted groups)
- In addition to an on-going revenue share, should an excess profits provision be included in the latter years to enable an equitable share of excess profits between the local authority and the concessionaire when profits are materially greater than forecast returns?

3.8 Key performance indicators

Key Performance Indicators (KPIs) form an essential aspect of any service contract. A robust but equitable suite of KPIs can provide a strong incentive for the service provider to deliver a high quality, reliable and customer focussed service on an ongoing basis across all chargepoints and not just those that are commercially viable.

Overly demanding or unnecessary KPIs may deter potential suppliers from tendering or result in poor value for money solutions. Equally, too lenient KPIs may not afford the opportunity for the authority to apply remedies when service standards fall below those required.

KPI headings should link to the service specification and reflect key outcomes such as service quality, service availability and service reliability as further described below.

Service Quality

- High standard of health & safety during installation, maintenance and replacement activities.
- Maintaining interoperability with other networks.
- High standard of customer service and the availability of a 24/7 helpline.
- High standard of data management and data security.

Service Reliability

- Response times for fault resolution.
- Evidence of planned maintenance and inspections.

Service Availability

- Minimum network availability over a defined period.
- Minimum chargepoint availability for any individual chargepoint in a defined period.

Proposed KPIs need to be read in parallel to the proposed contract. Failure to meet the certain KPIs could result in a charge to the service provider being applied, trigger the need for an improvement plan or ultimately lead to early termination of the contact.

The contract should enable the KPI framework to be refreshed to ensure that services being provided continue to align with best practice. Advice should be taken to ensure that any KPI refresh is in line with legal and procurement guidelines.

If any KPI sets a standard of service that is lower than that required by legislation or any future change in law this should not absolve the service provider from complying with such legal or regulatory requirements.

Things to think about:

- Reflect and build on national guidance on KPIs and engage with potential suppliers prior to procurement via soft market testing to ensure that proposed KPIs are appropriate.
- Advice should be taken as to the extent to which alternative KPIs could be proposed as a bid back items as part of any procurement exercise.
- Consider offering a time limited “grace period” for KPI events that relate to existing chargepoints that may be transferred to the service provider.
- Charges to the service provider should be limited to areas where the local authority could incur a loss. It is expected that will be limited.

3.9 Early authority termination

There may be events during the course of any future contract where the local authority considers it appropriate to terminate on the contract early on a “no-fault” basis. These events should be very limited and only applicable in exceptional circumstances.

Where a local authority considers that this is an appropriate course of action the contract should recognise the value of investment made by the private sector up to the point of no-fault termination and a methodology should be set out in the contract to ensure (as far a possible) the service provider receives an appropriate level of financial compensation and is left in a no better no worse position.

The suggested approach is that in such circumstances the level of compensation should be based on an independent assessment of the market value of the remaining contract term at the point of early termination less any previously received grant funding.

Things to think about:

- The basis for establishing the market value of the remaining contract term.
- Setting-off the level of grant funding made available by the local authority.
- Setting-off any pre-existing claims between the service provider and the local authority.

3.10 Liability cap

Most concession type contracts include a provision for the service provider to indemnify the local authority against the direct losses or liabilities incurred by the service provider's poor performance of the contract.

Typical areas where an indemnity will be sought by the authority could include:

- Carrying out of the installation works
- Provision of the services
- Service provider default
- Third party use of the chargepoints
- Loss or damage to property
- Death and or personal injury
- Breach of data protection
- Breach of third party Intellectual Property rights.

No cap on liability can be applied for death or personal injury, but setting a financial cap on the service provider's liability for other indemnity provisions beyond that covered by insurance may be considered equitable.

Things to think about:

- Excluding claims that arise through the local authority's own breach or negligence.
- Establishing the quantum of liability over and above that covered by insurance.
- Application of an annual and/or total cap for the duration of the contract.

4.0 Further information

If you would like to discuss any aspect of this commercial insights paper please feel free to contract either

Alastair Young (alastair.young@scottishfuturestrust.org.uk) or
Matt Jackson (matt.jackson@scottishfuturestrust.org.uk)

Please feel free to visit our SFT's Net Zero Transport Team's website for further guidance and templates relating to the delivery of EV charging infrastructure.

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www.scottishfuturestrust.org.uk